



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No: JR447/2023

In the matter between:

AGREMENT SOUTH AFRICA

Applicant

and

**COMMISSION FOR CONCILIATION
MEDIATION AND ARBITRATION**

First Respondent

DALE SIMON NTSOANE N.O

Second Respondent

LERATO MMAPITSI ESTHER MAGOLA

Third Respondent

Heard: 11 June 2025

Delivered: 11 November 2025

JUDGMENT

MUSIKER, AJ

Introduction

- [1] This is a review application, in terms of which the Applicant seeks to review and set aside the arbitration award of the Second Respondent (Commissioner) dated 26 February 2023.

[2] The review application is opposed by the Third Respondent.

Background

[3] The Third Respondent was employed in the position of Executive Manager: Technical Services on a five-year fixed-term employment contract. The employment contract commenced on 1 July 2019 and was due to terminate on 31 July 2024. Prior to the effluxion of the contract, and on 25 May 2022, the Third Respondent resigned from the employ of the Applicant.

[4] Following her resignation from the Applicant, the Third Respondent pursued a constructive dismissal claim against the Applicant in terms of s 186(1) of the Labour Relations Act¹ (LRA), in terms of which she claimed that the working environment at the Third Respondent was 'toxic' and that she had no alternative other than to resign.

[5] After adjudicating the arbitration, the Commissioner awarded the following relief to the Third Respondent:

'The following award will be fair and equitable:

1. the respondent agreement South Africa [sic] is ordered to pay the applicant Lerato Mmapitsi Esther Magalo, Compensation equal to 12 months salary.
2. The aforementioned compensation is calculated as follows
 $R118\,024.52 \times 12 \text{ months} = R1\,416\,294.24$ And it must be paid into the applicant's bank account minus statutory deductions on or before 15 March 2023.'

[6] Aggrieved by the finding of the Commissioner, the Applicant now seeks to review and set aside the arbitration award. It is this award that forms the basis of the review application before this Court.

¹ Act 66 of 1995, as amended.

The Third Respondent's case at the arbitration:

- [7] The Third Respondent testified that she had no alternative other than to resign. In her testimony, she stated *inter alia* that:

'MS MAGALO: Commissioner, I tendered my resignation following the toxicity and the ill-treatment by the employer who created an unbearable working environment for me. My intention was to serve my entire term however after having exhausted all avenues in terms of where I could request for intervention and assistance I was left with no option but to leave.

COMMISSIONER: after exhausting?

MS MAGLO: All avenues for me to ask for assistance and intervention or appeal, I was left with no option but to leave, commissioner.

MS. CHAUKE: please explain to the commissioner when you tendered your resignation.

MS MAGALO: When?

MS. CHAUKE: When yes.

MS MAGALO: I tendered my resignation on the 25th of May 2022.'

- [8] In her letter of resignation, the Third Respondent stated:

'I hereby resign from Agreement South Africa effective 25 June 2022.

I joined Agreement South Africa in July 2019, with excitement and enthusiasm to contribute and add value to an entity I believe carries a very important mandate. I am happy to have contributed to the development of policies and procedures, which today have provided structure and guidance for the Technical Services Team. I am also happy to have contributed to the entity achieving ISO 9001 certification. I did my best to institute a culture of performance and compliance.

The work environment has unfortunately become extremely toxic. I have raised my concerns plenty at times, but there was no resolve.

I will be concluding my duties on 25 June 2022.

Regards Lerato Magola'

[9] The Third Respondent tendered her services and worked her notice period as documented in the following exchange:

'MR CHAUKE: So just to confirm for the commissioner, did you work your notice period until 25 June 2022?

MS MAGALO: I did, I worked until 25 June, while that was a Friday, a Saturday, so I stopped 24 June on the Friday.

MS CHAUKE: Okay. If a proposition is put to you, Ms Magalo, that because you worked the notice the environment was not toxic enough for you to resign, what would be your comment?

MS MAGALO: The environment was toxic, Commissioner. Me having tendered my resignation was purely because I needed every cent and penny that I would have forfeited, had I contractually not served my notice period. It does not take away from the toxicity.'

[10] In explanation of the toxicity of the environment, the Third Respondent testifies:

'MS MAGALO: Commissioner, there are a number of events that I referred to as having led to the toxic environment and the first one is that following dismissal rather, following a disciplinary inquiry of one of my subordinates, Mr. Samuel Skosana, where an independent external chairperson chaired over that or presided over that disciplinary case found the employee guilty on all five charges that were leveled against him and the sanction was a dismissal and one of the charges that were levelled were incitement of violence against me and he appealed and Mr. Somanje reinstated him. In reinstating

Mr. Skosana, Mr Somanje purely considered Mr. Skosana's side and had zero regard for my safety.'

[11] The Third Respondent goes on:

'MS. MAGALO: When Mr. Somanje reinstated Mr. Skhosana he demoted him to a position that was still within my team and Mr. Skhosana still formed part of the team that I managed. Further to that, Mr. Skhosana was given terms and conditions of demotion, which he also did not comply with and I was expected to work with Mr. Skhosana, regardless of the incitement of violence, me not being considered, must safety not being considered at all and the environment just got toxic from that point.

Mr. Somanje would not even follow through to check how things are going, how I am, considering that Mr Skhosana was still in my team instead he asked me if I truly believed if I was in danger and must have a forgiving heart.'

And:

'MS. MAGALO: And then following that I raised my dissatisfaction with the reinstatement and Mr. Somanje did not respond to that, I then raised it further with the Human Resource Committee of the Board as well as the Auditor-General Committee Chairperson who then acknowledged receipt of my e-mail in October, because that is when the case was finalized.'

Further:

'MS MAGALO: Three months later there was no meeting that was set up, excuse me, so I made a follow up in January asking if a meeting would still be taking place which was then followed by a meeting in February.

COMMISSIONER: In January of which year?

MS MAGALO: 2022. Then in February we had an MS Teams meeting chaired by Ms Ngcobo, accompanied by two other members of that committee.

MS MAGALO: in that meeting Mr. Somanje was cautioned that as much as he had the authority to reinstate, he did not have the empathy in making the decision in that he did not consider me at all and he was subsequently asked to apologize.'

[12] Despite her resignation, the Applicant went on to discipline the Third Respondent for conduct which had taken place months prior to the implementation of disciplinary action:

'MS MAGALO: Okay. This is the notice of disciplinary, employee myself Lerato Magalo, line Manager Mr Richard Somaje.

MS CHAUKE: when was this notice served on you?

MS. MAGALO: On this particular document there is no date, but I recall it was a Monday and the inquiry was meant to sit on the 17th of June 2022.

MS CHAUKE: on your letter of resignation you indicated that your last day was 24 June 2022, Your last day of your notice.

MS MAGALO: yes

MS CHAUKE: Please tell the commissioner what was the outcome of the disciplinary hearing.

MS MAGALO: By the time I had left, having served my notice until 24 June, there was no outcome to the disciplinary. I left with the case not having been concluded.'

[13] Ms Mabasa was the sole witness for the Applicant and testified regarding the appeal process of Mr Skhosana that:

'MR LUHLANGA: There was a case of Mr. Skhosana, I am not sure if you remember the case of Mr. Skhosana.

- MS MABASA: That is correct
- MR LUHLANGA: The evidence before this commissioner was that Mr. Skhosana was charged and found guilty (indistinct) and eventually appealed, are you aware of that process that unfolded?
- MS MABASA: Yes, I am aware.
- MR LUHLANGA: Can you explain to the commissioner how the appeal unfolded from (indistinct) by HR?
- MS MABASA: So from the HR side when they received the appeal it was then sent to the CEO, because according to the policy it must be sent to the CEO who will be the one who (indistinct) the appeal.
- COMMISSIONER: Appeals are sent to the CEO.
- MS MABASA: They are sent to the CEO for the CEO to attend to the appeal.
- MR LUHLANGA: Can you explain to the commissioner the parties that are involved when an appeal is considered?
- MS MABASA: So normally when an appeal is considered the parties that are there are the parties that are affected and if the employee is the one who has requested an appeal, so you will have to look at that. I am not sure whether I am understanding you, I am answering you correctly.
- MR LUHLANGA: Yes. From your knowledge is the complainant or the employer representative involved in the appeal process?
- MS MABASA: The norm for Agreement, no, the employee representatives does not get involved.'

[14] In respect of the disciplinary action taken against the Third Respondent:

- 'MR LUHLANGA: Okay. Are you able to relate to the commissioner the incident, when did the incident happened?
- MS MABASA: No, I do not have the exact date, but it was around March where we had to do an ecoASA launch, ecoASA launch,

I cannot remember the exact date and Ms Magalo was the Executive Manager for Technical Services so that launch was under her department and she did not come to the launch with the other employees who were also part of the preparations.

MR LUHLANGA: Okay, you said around March.

MS MABASA: Around March. I cannot remember the exact date, but towards the end of March.

MR LUHLANGA: How long away was she eventually charged, do you remember?

MS MABASA: Although again I would not remember the date, but I think it was around June.

MR LUHLANGA: Actually the evidence presented is that she was given the charge on the 13th of June, so it was (indistinct) on the 13th of June 2022. Are you able to maybe explain what was happening between March and 13 June 2022?

MS MABASA: So with Agreement we only have one person in the HR department and then the executive manager, at the time the executive manager had also just started, so we were not in the position to do the investigation around that ecoASA launch, and so we had to request assistance from public works to assist with their employer representative and also the prosecutor, because there was no one internally who would be able to do that.'

Analysis

[15] The Following points are common cause between the parties:

- 15.1 Skhosana, an employee at the Applicant who reported to the Third Respondent, had threatened and intimidated the Third Respondent;

- 15.2 Skhosana was the subject of a disciplinary inquiry, which took place on 11 August 2021 and was found guilty by an external, independent chairperson and the ultimate sanction of dismissal was recommended.
- 15.3 Skhosana then appealed the decision of the chairperson. An appeal hearing was concluded, to which the Third Respondent was invited. The acting CEO made a unilateral decision to withdraw Skhosana's dismissal and demoted him.
- 15.4 Skhosana was placed, once again, in the Third Respondent's department.
- 15.5 Aggrieved by the decision to reinstate Skhosana, the Third Respondent lodged a grievance. The grievance was not dealt with immediately and only some months later did the grievance hearing take place.
- 15.6 Somanje was asked to apologise to the Third Respondent.
- 15.7 Skhosana remained in the same department as the Third Respondent.
- 15.8 The Third Respondent resigned from the employ of the Applicant on 25 May 2022, and during her notice period, she was summoned to attend a disciplinary hearing which took place on 17 June 2022.
- 15.9 Upon the expiration of her notice period, there was no outcome regarding the disciplinary enquiry.

[16] The Third Respondent failed to successfully contest the following:

- 16.1 The Third Respondent feared for her life, having been threatened with violence by Skhosana in the past.
- 16.2 For fear of her life, the Third Respondent implemented additional security steps to safeguard herself, such as obtaining security (which the Applicant refused to do) and utilising Uber so that Skhosana could not track her whereabouts.

16.3 There was no basis for the disciplinary proceedings implemented by the Applicant against the Third Respondent.

[17] To its own peril, the Applicant failed to call Somanje. The Applicant's only witness spoke primarily regarding HR related matters, which, in my view, took the dispute no further.

[18] The Court in *Mogomotsi v Goredema N.O and others*² held as follows regarding the test on review:

'The test on review for constructive dismissal is whether the arbitrator was correct on all the evidence before him/her.'

[19] On the meaning of the word 'intolerable, the court in *Solidarity on behalf of van Tonder v Armaments Corporation of SA (SOC) and others*³ said:

'[39] ... The word "intolerable" implies a situation that is more than can be tolerated or endured; Or insufferable. It is something which is simply too great to bear, not to be put up with or beyond the limits of tolerance...

...

[40] Thus, employment must objectively have been rendered intolerable in the sense that no reasonable employee could be expected to put up with the conduct of the employer.'

[20] In *National Health Laboratory Service v Yona & others*⁴, the Labour Appeal Court held that:

'... The conduct of the employer towards the employee and the cumulative impact thereof must be such that, viewed objectively, the employee could not reasonably be expected to cope with it. Resignation must have been a reasonable step for the employee to take in the circumstances.'

[21] I believe that the cumulative effect of the Applicant's actions rendered the employment relationship between the Applicant and the Third Respondent

² (2022) 43 ILJ 2063 at para 4.

³ [2019] 8 BLLR 782 (LAC) at paras 39 – 40.

⁴ (2015) 36 ILJ 2259 [LAC] at para 30.

intolerable and that the Third Respondent could not be reasonably expected to cope in the environment created by the Applicant.

[22] I do not believe that the Commissioner can be faulted for having confirmed that the environment of the Applicant was toxic:

22.1 It is clear that the Applicant prioritised the job of Skhosana over the safety of the Third Respondent, and arguably, other employees. The Applicant failed in its duty to safeguard the Third Respondent.

22.2 Further, despite having lodged a grievance against the decision of Somanje, the Applicant was lackadaisical in addressing the concern, and when it did, no decisive measures were implemented.

22.3 Finally, there was no evidence before the Commissioner that the disciplinary charges implemented by the Applicant against the Third Respondent were any more than conjured-up allegations or that the implementation of discipline was necessary some three months after the alleged misconduct.

Costs

[23] I have had regard to the requirements of law and fairness in considering costs, and having done so, I am of the view that a cost order is not warranted in this matter.

[24] In the premises, I make the following orders:

Order

1. The review application is dismissed.
2. There is no order as to costs.

N.S. Musiker

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Wilhelm Bekker

Instructed by: GMI Attorneys

For the Respondent: Victor Mndebele

Instructed by: Molatudi Attorneys

LABOUR COURT