



IN THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Not Reportable

Case No:C604/2020

In the matter between:

**EKAPA MINERALS (PTY) LTD
(PREVIOUSLY KIMBERLY EKAPA MINING JV)**

Applicant

and

NUM OBO STALIN LINKS

First Respondent

**COMMISSION FOR CONCILIATION
MEDIATION & ARBITRATION**

Second Respondent

COMMISSIONER MARTIN RABIE N.O

Third Respondent

Heard: 18 September 2025

Delivered: Judgment was handed down electronically by circulation to the parties' representatives by email .The date and time for hand-down is deemed on 2 December 2025.

JUDGMENT

GURA, AJ

Introduction

- [1] This is an application for review, setting aside and or correcting the arbitration award issued by the Third Respondent, acting under the auspices of the Second Respondent, under CCMA Case Number: NC 3068/19 on or about 24 November 2020. The review application is opposed by the First Respondent. The Applicant admits to having received the Award on 30 November 2020 wherein the Applicant only filed the Review Application on 12 January 2021, wherein they filed the Review on 12 January 2021.
- [2] The Applicant herein was represented at all material times by JJ Grundlingh from Bloemfontein Chambers, whilst the First Respondent was represented by Mr Goldberg of Goldberg Attorneys Incorporated. The proceedings of 18 September 2025 were held via a virtual platform. Upon commencement of same, it became apparent and or evident that the First Respondent's Heads had not reached the Court File in chambers. Same as confirmed by Mr Goldberg were emailed at around 12:56 to the Judge's Secretary, who had to accordingly print and bring same to me in chambers. Mr Goldberg had placed on record that he had actually emailed the Heads on Monday of the Thursday of the sitting of the court. The Applicant's Counsel took offence at the First Respondent amending Heads of Argument, on the day the matter is to be heard. Mr Goldberg placed on record that same was not amending but was correcting and or corrections of the Heads. The agreed corrected parts included the heading of Mr Goldberg's papers to not read Applicant's Heads of Argument on Review but to read First Respondent 's Heads on Review. Further, that the Heads with 29 paragraphs and not the Heads with 30 paragraphs must be the Heads that the Court considers.

Background

- [3] Subsequent to the First Respondent having given Notice of Intention to Oppose, the First Respondent had failed to file an Answering Affidavit, having only filed same four hundred and seventy-five 474 days late. As per the Applicant. Furthermore, the First Respondent had also delayed in seeking condonation for such late filing, the application for condonation only having

been made around 16 months after the filing of the answering affidavit. Thus, the Applicant opposes condonation for the late filing of the answering affidavit.

Late filing of the Review Application

- [4] Common cause that the Award is dated 24 November 2020. Applicant admits to having received the Award on 30 November 2020. The Third Respondent delivered an Arbitration Award in terms of which the dismissal of the First Respondent was found to be procedurally fair, but substantively unfair. Further common cause that the Applicant brought an application for review around 11 January 2021, in terms of section 145 of the Labour Relations Act 66 of 1995 (herein the LRA).
- [5] The First Respondent's argument is that the Review Application is filed late and condonation is not sought, and further that the Arbitration Review Application should be dismissed with costs. Rule 7 A (5) was issued on 18 January 2020, but the record was only collected on 2 March 2021, which was meant to have been collected within 5 days of the party being notified that it is ready for collection. The First Respondent, in their Heads of Argument, argues that the Review Applicant, being the erstwhile employer, fails to explain this delay.¹

First respondent's dismissal

- [6] The First Respondent was in the employ of the Applicant for a period of around four (4) years at the time of his dismissal. As per the First Respondent's employment, as per his employment agreement, was that the First Respondent must undergo and pass a yearly security vetting process, which involved inter *alia* the passing of a polygraph test. The First Respondent – Employee failed such a polygraph test, which constitutes a breach of his employment agreement with the Applicant – Employer. The Employer thus subsequently dismissed the First Respondent after the latter

¹ Page 2 at para 5.

failed a second polygraph test, after due consideration and after having been placed on precautionary suspension.²

Late filing of the answering affidavit by the third respondent on review

[7] The common cause is that on 15 April 2021, the record was filed and the Applicant delivered its Notice in terms of Rule 7A (8)(a), pursuant to the Review Application. Further common cause that the First Respondent filed his Answering Affidavit on 20 March 2023. The Applicant 's bone of contention thus being that, the Answering Affidavit by the Third Respondent was filed around 475 days late, condonation for such late filing only applied for a further 16 months later³. Counsel for the First Respondent placed on record that their client-employee has applied for condonation for the late filing of the Answering Affidavit on Review and that a separate Application for Condonation has been filed and is Opposed.⁴

[8] Third Respondent further conceded that the reasons for the delay are set out and further concedes that the length of the delay is long and that the explanation fails to cover some of the periods of delay. Despite same, the Third Respondent has excellent prospects of success, thus condonation should be granted.

Requirements for condonation argued by the applicant in relation to third respondent's application for condonation for late filing of answering affidavit

[9] The Applicant went into length in their Heads of Argument in relation to the Condonation application, which the Third Respondent is to bring.⁵ That the court has a wide discretion whether condonation should be granted and has a wide discretion which should be exercised judicially, on the consideration of each and every case.⁶ That condonation is not merely there for the asking.⁷

² Page 3 at para 13 of Applicant's Heads of Argument.

³ Page 3 at para 16 of Applicant's Heads of Argument.

⁴ Footnote 2 at page 3 of Third Respondent's Heads of Arguments.

⁵ Page 4 of the Applicant's Heads of Argument at paras 17 until 56.

⁶ *S v Yusuf* 1968 (2) SA 52 (A) at 53.

The court's discretion is furthermore not absolute or unqualified and must be exercised in accordance with certain recognized principles. What is mainly required for the Applicant is to show good cause when applying for condonation.

- [10] The Applicant then proceeded to list factors, although not exhaustive, which have been identified as being relevant to the consideration of whether or not an Applicant for condonation has succeeded in showing good cause for condonation⁸. The application must be made *bona fide*, and the Applicant must show that it has reasonable prospects of success.⁹ The degree of non-compliance and the explanation for the delay.¹⁰ The importance of the case.¹¹ The nature of the relief sought.¹² The other party's interest in finality.¹³ Prejudice to the Respondent which cannot be compensated for by a suitable costs order.¹⁴ The convenience of the court. The avoidance of unnecessary delay in the administration of justice, and the degree of negligence of the persons responsible for the non-compliance.¹⁵ Willful default or gross negligence will preclude a finding of good cause.¹⁶
- [11] The Applicant argued that what is clear from the First Respondent's Answering Affidavit in the condonation application is that the delay was solely the result of gross negligence by the First Respondent and his erstwhile representatives. Further that despite the contrary being clear from the papers, the First Respondent alleges that his former attorneys were never served with

⁷ *Uitenhage Transitional Local Council v South African Revenue Service* [2003] 4 All SA 37 (SCA), 2004 (1) SA 292 (SCA) at 6.

⁸ *TLE (Pty) Ltd v The Master of the High Court and Others* 2012 (2) SA 502 (GSJ); [2011] ZAGPJHC at para 12; *Express Model Trading 289 CC V Dolphin Ridge Body Corporate* [2014] 2 All SA 513 (SCA); [2014] ZASCA 17 at paras 11 and 19; *Subramanian v Standard Bank Ltd* [2013] JOL 30321 (KZP) at para 12; See also *Gumede v Road Accident Fund* 2007 (6) SA 304 (C).

⁹ *Marco Fishing (Pty) Ltd v Gemfarm Investments (Pty) (Ltd) and* [2003] 4 All SA 614 (C) at paras 31-33; See also *Kgantsi v S* [2012] JOL 29402 (SCA) at para 7.

¹⁰ *Laerskool General Hendrik Schoeman v Bastian Financial Services (Pty) Ltd* [2009] ZACC 12; 2009 (10) BCLR 1040 (CC) at paras 15 and 16.

¹¹ *Kgobane v Minister of Justice* 1969 (3) SA 365 (A) at 369.

¹² See *Maloney's Eye Properties BK en 'n ander v Bloemfontein Board Nominees BPK* 1995 (3) SA 249 (O) 253.

¹³ *Van Wyk v Unitas Hospital (Open Democratic Centre as Amicus Curiae)* 2008 (2) SA 472 (CC), 2008 (4) BCLR 442 at para 31; See also *Laerskool General Hendrick Schoeman v Bastian Financial Services (Pty) Ltd* [2009] ZACC 12; 2009 (10) BCLR 1040 (CC) at para 16.

¹⁴ *Long v Appeal Authority iro Ndlambe Municipality and others* [2024] 1 All SA 364 (ECG); [2023] ZAECKMKHC 131 (ECG) at para 29.

¹⁵ *Ibid.*

¹⁶ *Securiforce CC v Ruiters* 2012 (4) SA 252 (NCK); [2011] ZANCHC 36 at para 12.

the papers filed pursuant to the review application.¹⁷ First Respondent further alleges that his former attorneys, Mohale Incorporated, seemed to not take the matter seriously.¹⁸ The Applicant's Attorneys argued that the allegation was never served on the First Respondent or his former attorneys is irreconcilable with the allegation that the former attorneys had not taken the matter seriously. Applicant thus submitting that a clear cause of the delay lies solely with the First Respondent and his former attorneys.

- [12] Applicant submitted further that the First Respondent fails to show that he has reasonable prospects of success. Mr Golberg argued that the First Respondent was awarded the Award in his favor and thus have excellent prospects of success. The Applicant argued that where there is no sufficient prospect of success for lateness to be condoned, the interest of justice is not served by condoning lateness.¹⁹ That the explanation for the delay must cover the entire period for the delay.²⁰
- [13] The Applicant conceded that the First Respondent's explanation for the delay constitutes the following time periods²¹: 29 April 2021 - December 2021.
- [14] January 2023 - December 2023, as well as the period for bringing the condonation application the Applicant was still not convinced. Thus, Applicant argued that despite the Answering Affidavit indicating that the explanations provided for the abovementioned periods cover the whole of said periods, from a reading of the Answering Affidavit it is clear that only minute portions of said periods are covered, notwithstanding the headings contained in the Answering Affidavit. Thus, Applicant arguing that First Respondent having failed to place before court sufficient facts to properly consider whether there is good cause for the granting of the condonation.

¹⁷ Paragraph 32 of the founding affidavit in the condonation application at Page 10 of the condonation bundle.

¹⁸ Ibid at para 43 at page 11.

¹⁹ *Princeton Protection Services (Pty) Ltd v Western Cape Provincial Government and others and related matters* [2024] 3 All SA 301 (WCC) at paras 29-30.

²⁰ *eThekweni Municipality v Ingonyama Trust* 2013 (5) BCLR 497 (CC) ;[2013] JOL30162 (CC) at para 28; *Pangbourne Properties Ltd v Pulse Moving CC and Another* 2013 (3) SA 140 (GSJ); *Van Heerden and another v Master of Eastern Cape High Court, Port Elizabeth and others* [2023] 4 All SA 875 (ECP) at para 36.

²¹ Paras 25-77 supra note 12 at page 8-18.

- [15] The Applicant cited and relied on the case of *Melane v Santam Insurance*²², wherein the court held that a slight delay and a good explanation may help compensate for prospects of success which are not strong. Argued further that the First Respondent's delay is by no means slight and fails to provide a proper explanation for the delay. That the First Respondent cannot use his lawyer's lack of diligence as an excuse not to be penalized by courts²³. Further argued that where a litigant relies on the ineptitude or negligence of his lawyer, he should show that it is not to be imputed to him.²⁴
- [16] The Applicant further argued that some allowance must be made for *bona fide* errors and omissions, and fault can only preclude relief in the event of intentional disregard, indifference or gross negligence.²⁵ Applicant argued that the First Respondent argues that Review Application were not served on him, nor his former attorneys but appears to rely on the failures or negligence of his former attorneys. However, Applicant argued that First Respondent cannot simply rely on the failures or negligence of his former attorneys as there is a general duty on a litigant to ensure that the matters in which they are involved are properly attended to. Furthermore, the failures by his former attorneys to properly attend to this matter do not constitute mere *bona fide* errors and omissions but is tantamount to gross negligence. Thus, Applicant argued that First Respondent cannot just sit back and do nothing and thereafter place the blame on his former attorneys. Thus, First Respondent's conduct with particular reference to the delay in the filing of the Answering Affidavit, also constitutes a gross negligence. Thus, Applicant argued that First Respondent has not furnished the court with a reasonable explanation and cannot reasonably expect this Court to grant him an indulgence without having properly satisfied the requirements for condonation.²⁶

²² *Melane v Santam Insurance Co. Ltd* 1962 (4) SA; [1962] 4 All SA 442 (A) at 532 B-E.

²³ *Salojee and another, NNO v Minister of Community Development* 1965 (2) SA 135 (A) at 138; *South African Express Limited v Bagport (Pty) Ltd* [2020] JOL 47309 (SCA), 2020 (5) SA 404 (SCA): where an attorney breaches court rules in flagrant and continual fashion, the attorney's negligence is inexcusable and condonation will not be granted.

²⁴ *Louw v Louw* 1965 (3) SA 750 (E), 1965 (3) SA 852 (E); *Cairns' Executors v Gaarn* 1912 AD 181 at 184; *Service Motor Supplies (1956) (Pty) Ltd v Fouche* 1960 (3) SA 672 (W); *Van Asgewen v Kruger* 1974 (3) SA 204 (O) at 205; *Ford v Groenewald* 1977 (4) SA 224 (T).

²⁵ *Burton v Barlow Rand Ltd, t/a Barlow Tractors and Machinery Co; Burton v Thomas Barlow & Sons (Natal) Ltd* 1978 (4) SA 794 (T).

²⁶ Page 10 at para 44 of Applicant's Heads of Argument.

- [17] The Applicant thus argued that the First Respondent's application for condonation ought to be dismissed with costs considering the extended period of delay. The Applicant conceded and it was further common cause that in applications for condonation for non observance of court procedure, a litigant is obliged to seek the indulgence of the court and whatever the attitude of the other side and would thus have to pay for latter's costs if it does so oppose, unless the opposition was unreasonable.²⁷
- [18] The issue this Court must decide on , is as to whether to grant the First Respondent's condonation for the late filing of their Answering Affidavit. Latter offered costs for the day and emphasized on prospects of success and thus, the Review must be heard as same will have been cured by a costs order. Further that this matter has long been on the court roll as the erstwhile employee waited for three years and the next court dates for reviews are in 2028. Rule 7 (4)(b) of the Labour Court Rules²⁸ states that a Notice of Opposition and an Answering Affidavit must be delivered within 10 days from the day on which the application is served on the party opposing the application. Rule 12(1) further states that The court may extend or abridge any period prescribed by these rules on application, and on good cause shown, unless the court is precluded from doing so by any Act. The Applicant quoted Rule 11.6.2 of the Practice Directives which state that thus, the First Respondent's application for condonation of the late filing of the Answering Affidavit, is hereby granted and latter is also ordered to pay costs. Thus, the Court proceeds on the Review Application as argued by both parties on their Heads of Arguments.

Grounds for review

- [19] First Respondent's point of departure is that the Applicant sets out various issues with the Award but fails to set out or solidify the grounds for review. Thus, the grounds for review varied and are not easy to follow. At paragraph 52 of the Applicant's Founding Affidavit, the latter sets out that after receipt of

²⁷ *Premier, Western Cape v Lakay* 2012 (2) SA 1 (SCA) at 25; *Long v Appeal Authority iro Ndlambe Municipality and Others* [2024] 1 All SA 364 (ECG); [2023] ZAECMKHZ 131 (ECG) at para 110.

²⁸ GN 1665 of 1996: Rules for the Conduct of Proceedings in the Labour Court, repealed with effect from July 2024.

the record, it will address grounds of review and provide amplification. However, the Applicant failed to file Supplementary Papers and stood by its Notice of Motion. Argued by the First Respondent, the Applicant failed to set out its grounds for review in any particularity, to show that the Award is one that is susceptible to review. First Respondent argued that the Application fails to set out why the application by the Commissioner that the sanction of dismissal is not an appropriate sanction, is reviewable. The First Respondent thus argued that, in short, there are no grounds of review raised in the papers, upon which this Court could find in the Applicant's favor. Further in the Heads of Argument, the Applicant solidifies the issue as whether the sanction of dismissal is appropriate where the employee fails to obtain the necessary vetting status.²⁹ First Respondent argues further that it is trite that an Applicant on Review cannot put its grounds of review in its Heads of Argument.³⁰

- [20] It is common cause that the First Respondent failed two polygraph tests and was dismissed for misconduct. The First Respondent argued that the Commissioner found that only one of the tests was legitimate and that Links broke a known rule, in that he failed to maintain an approved vetting clearance, and as such, he is in breach of the rule.³¹ The Commissioner then considered the sanction and found that the sanction of dismissal was inappropriate in the circumstances. Further, the charge did not relate to any wrongdoing by Links, but to his failure to maintain an approved security vetting status.³² The Commissioner sets out that in such circumstances, alternatives to dismissal would have been advisable. The Applicant submitted that the Third Respondent has erred in its interpretation of the facts and evidence in coming to a decision that the dismissal of the First Respondent was substantively unfair. Applicant's case is thus that it was justified to

²⁹ Applicant's Heads of Argument page 10 at para 48.

³⁰ Grounds of Review cannot be formulated for the first time in Heads of Argument. In *Northam Platinum Ltd v Kganyago NO and Others* [2009]ZALCJHB 55, it was held that; "In my view, the law is very clear that a ground of review raised for the first time in argument cannot be sustained. The basic principle is that a litigant is required to set out all the material facts on which he or she relies in challenging the reasonableness or otherwise of the commissioner's award in his or her founding affidavit".

³¹ Pleadings Bundle page 24 – Award at para 32.

³² Pleadings Bundle page 24-Award at Para 33.

terminate Link's employment, based on that there was a breach of the terms of the employment contract. As argued by the Applicant and placing same on record, is that the crux of the issue as regards the substantive fairness of the dismissal ,revolves around whether or not the fact that the First Respondent did not have the necessary approved security vetting status. As a result of his failure to pass multiple polygraph tests successfully constitutes a basis for termination³³. Applicant cites clause 23.1 of the Employment Code and maintains that the failure to retain an approved security vetting status whilst in the employ of the company, is a serious breach of the Employment Contract³⁴.The Third Respondent thus not in agreement that the only appropriate sanction for failing to maintain an approved security vetting status is dismissal, as per the Applicant.

- [21] As per clause 23.1 of the Employment Agreement, it is an express condition hereof that: *"It is a condition of employment that the Employee is security vetted by the Company prior to and during employment with the Company and that he/she retain an approved security vetting status whilst in the employ of the Company. Failure to retain an approved security vetting status during employment with the company will be regarded as a serious breach of his employment contract"*. Clause 23.1 further states that:

‘The employee is required to immediately supply the Company with any information that may negatively influence his/her security vetting status as per the policy prior to and during employment with the company.’

Enumerated in Clause 23.1 further that:

‘The Company relies on the integrity of its employees in order to achieve its objectives through creating an environment which is not conducive to crime... The responsibility for the protection of the Company's assets and interests rests with every employee.’

- [22] Applicant argued that failure to retain an approved security vetting status constitutes the wrong and is a direct breach of the Employment Agreement.

³³ Page 10 Paragraph 48 of the First Respondents Heads of Arguments.

³⁴ Page 5 Paragraph 22 of the First Respondent's Heads of Arguments.

Further, as regards whether dismissal is an appropriate sanction, regard must be had to the reasoning behind it, being an express requirement that an approved security vetting status be retained. Thus, failure of retaining an approved security vetting status, brings into question whether the First Respondent could fulfill his responsibility to protect the Company's assets and interests. Thus, Applicant's case being that the only reasonable appropriate sanction for failing to maintain an approved security vetting status was the dismissal of the First Respondent. Further, the First Respondent cannot continue to be entrusted with the responsibility to protect the Company's assets and interest, without such approved security vetting status.

[23] The Third Respondent further argues that the Applicant provides no basis as to why it had to dismiss the Applicant, as there should always be an alternative to dismissal, and it cannot be set out that the Applicant had no choice but to dismiss the First Respondent, cannot be.³⁵ Links was not notified to the extent he breached the employment contract, nor was he given a chance to correct the breach. First Respondent placed on record in Link's Heads of Argument the case of *Nongcantsi v Mnquma Local Municipality and Others*³⁶.

[24] The argument of the appellant's counsel is ultimately premised on the view that the production of a negative vetting result was tantamount to an allegation of misconduct in respect of which the appellant, (in terms of the LRA and in terms of section 23(1) of the Constitution which grants to everyone a right to fair labour practices) was entitled to a fair hearing. The premise is fallacious. It is not misconduct because there is no breach or alleged breach of a term of the employment agreement, which is what misconduct, in the final analysis, constitutes. A condition is not a term of a contract. While a condition is an external fact on which the existence of an obligation depends, a term relates to the nature of the obligation.³⁷

³⁵ Applicant's Heads of Argument page 12 at para 58.

³⁶ [2016] ZALAC 60.

³⁷ See *Resisto Dairy (Pty) Ltd v Auto Protection Insurance Co Ltd* 1963 (1) SA 632 (A); *Premier of the Free State v Firechem Free State (Pty) (Ltd)* 2000 (4) SA 413 (SCA), [2000] 3 All SA 274 (A); LTC Harms "Amler 's Precedence of Pleadings " (LexisNexis Butterworths; 6th Edition) at 89.

- [25] The Applicant argued that in considering whether a dismissal is substantively fair the following factors are to be considered as set out in *Parmalat South Africa (Pty) Ltd v Commission for Conciliation, Mediation and Arbitration and Others* :³⁸ In dealing with substantive fairness the respondent has to prove *inter alia* the following: (a) that there is a rule in the respondent's company prohibiting particular behavior or offence, (b) that the applicants knew about the said rule or could reasonably be expected to have known about the said rule when the offence was committed, (c) that the said rule is legitimate and reasonable, (d) that the said rule has been consistently applied (e) that the applicant indeed breached the said rule, and (f) that the sanction imposed by the employer to the applicant was appropriate under the circumstances.
- [26] Further that in considering the above requirements that clause 23.1 of the Employment Agreement states that the First Respondent must retain an approved security vetting status, which the latter failed to do. The First Respondent was or should reasonably have been aware of the requirement to retain an approved security vetting status, since it was an express term of his employment agreement. The First Respondent argued that, while the need to pass the security vetting is part of the Employment Contract and same sets out that failing the security vetting will constitute misconduct and the applicable sanction is dismissal, this does not mean that the only sanction is dismissal. The Applicant fails to set out in which circumstances the sanction of dismissal will be appropriate. The First Respondent submitted further that the Commissioners held that Link's dismissal was unfair, as Applicant's reliance on the Code means that the hearing and the need for mitigation were unnecessary. Meaning, the Applicant would have just notified Links that he failed the polygraphs, failed to maintain his vetting status and was accordingly dismissed, thus unfair. The First Respondent thus submits that the award is reasonable and thus not reviewable; thus, the Review Application stands to be dismissed with costs.
- [27] The Applicant argued that there is a sound justification for the requirement to retain an approved security vetting status. Thus, the rule is therefore

³⁸ [2009] ZALC 6; [2009] 6 BLLR 558 (LC) at para 20.

legitimate and reasonable, and was consistently applied, as it is an express term of the Employment Agreement. Further, the Third Respondent had breached the rule, as failure to pass the polygraph test constituted a failure to retain an approved security vetting status. Consequently, argued that the First Respondent's dismissal is the only appropriate sanction and substantively fair; just on this basis alone, dismissal is substantively fair. Thus, Applicant is praying for an order that reviews, sets aside and or corrects the arbitration award issued by the Third Respondent, acting under the auspices of the Second Respondent. CCMA case no. NC 3068/19 heard on or about 24 November 2020, be substituted, the said award for an award with an order for: That the dismissal of the Applicant, Stalin Links, is substantively and procedurally fair.

- [28] Molahlehi J (as he then was) in *Prowalco (PTY) LTD v Commission for Conciliation, Mediation and Arbitration and Others*³⁹ held “The court is in my view, without authority to interfere with the factual findings made by the commissioner if such findings are supported by evidence on the record. The authority of the court is highly limited in reviewing the fact findings made by the commissioner in an arbitration award. If the factual findings made by the commissioner are *prima facie* lawful and reasonable, it seems to me that the court has to defer to the commissioner's factual findings. The court may only interfere in a case involving a mistake of fact where it has been shown that such a mistake is of such a nature that it can be said that it amounted to a denial of a fair hearing for the applicant”. As a matter of principle, the court's province in dealing with factual findings of a commissioner is limited to determining whether such findings can be sustained or supported by evidence on the record. Put differently, the factual findings made by the Commissioner in an Arbitration Award is final and binding on the reviewing court unless it can be shown that: (a) there is insufficient evidence on the record to support such findings or (b) the findings were erroneously made and the error is of such a nature that it in a material manner deprived the affected party of a fair hearing or (c) the findings appear to be unreasonable, capricious or arbitrary or (d) the findings are based on evidence which had inherent contradictions which the

³⁹ [2011] ZALCPE 3, held at Port Elizabeth P608/09.

Commissioner failed to reconcile and deal with. (e) The Commissioner made the findings without resolving the material contradictions that existed in the different versions between the parties or even those that are present in the version of the winning party.

[29] In the present instance, the Commissioner applied his mind to the evidence which was presented before him and, after properly evaluating it made factual findings as he did. The findings made by the Third Respondent are not mistakenly made, are reasonable and supported by the evidence which was properly before him.

[30] In my view, there is no basis in the light of the above to interfere with the Third Respondent's Arbitration Award, and therefore the Applicant's application stands to fail. There is also no reason in law and fairness why the costs should not follow the results.

[31] In the premises, I make the following order:

Order

1. The applicant's application is dismissed with costs.

L. Gura

Acting Judge of the Labour Court

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LABOUR COURT