



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case no: JS 277/23

In the matter between:

JOHANNES MOTATETSI MANTSHO

Applicant

and

LIMPOPO GAMBLING BOARD

First Respondent

**MEMBER OF THE EXECUTIVE COUNCIL FOR
ECONOMIC DEVELOPMENT, ENVIRONMENTAL AFFAIRS
AND TOURISM, LIMPOPO PROVINCE**

Second Respondent

Heard: 11 September 2025

Delivered: 10 December 2025

JUDGMENT

RAJAH, AJ

Introduction

- [1] Before this Court is an application brought by Mr Mantsho seeking an order declaring unlawful and invalid the decision of the Limpopo Gambling Board not to appoint him to the advertised position of Company Secretary.

- [2] The relief sought in the main includes: (a) an order directing the Gambling Board to appoint him to the position of Company Secretary; (b) compensation equivalent to 24 months salary at the prevailing scale; and (c) an order requiring the Gambling Board to retract allegations that he failed to disclose pending disciplinary proceedings at the North West Gambling Board, both to him and to any third parties to whom such allegations were communicated.
- [3] The application is opposed.

Relevant background facts

- [4] In November 2018, the Limpopo Gambling Board advertised a vacancy for the position of Company Secretary. The advertisement appeared in, among other places, the *Sunday Times* on 13 November 2018.
- [5] Mr Mantsho applied for the position, was shortlisted, and attended an interview on 13 February 2019.
- [6] The interview panel noted that he met the minimum requirements of the position and had approximately five years of relevant experience. However, the panel expressed concern about his employment history, which showed frequent movement between positions, raising doubts about his long-term commitment.
- [7] The panel resolved that reference checks should be conducted on all shortlisted candidates before a final recommendation was made.
- [8] On 28 May 2019, information gathered during the reference checks was presented orally to the panel. No written report was produced.
- [9] Among the information conveyed was that, at the time of his resignation from the North West Gambling Board (NWGB), Mr Mantsho had referred a dispute to the CCMA. The details of that dispute were not disclosed.
- [10] During discussions, it further emerged on unproven allegations that he had been facing a disciplinary hearing at the NWGB at the time of his resignation.

- [11] On 9 September 2019, the Limpopo Gambling Board advised Mr Mantsho that he had been unsuccessful in his application. He requested written reasons the same day, which were furnished on 25 October 2019.
- [12] Mr Mantsho thereafter referred a dispute to the CCMA in terms of the Employment Equity Act¹ (EEA). The matter remained unresolved, and a certificate to that effect was issued.
- [13] He then referred the matter to arbitration. On 17 February 2023, the arbitrator ruled that the CCMA lacked jurisdiction and directed that the dispute could instead be referred to this Court within 90 days.
- [14] The present application was served on the respondents on 16 May 2023. The respondents filed their answering affidavit on 17 August 2023. On 13 September 2023, Mr Mantsho filed a replying affidavit together with a supporting affidavit.

Condonation and consideration of answering affidavit

- [15] Before turning to the merits, this Court must consider the applicant's condonation application, as well as the argument that the answering affidavit is not properly before the Court, as no formal condonation application had been made.
- [16] Regarding the formal condonation of the applicant and having considered the explanation for the delay, the extent of the lateness, the prospects of success, and the interests of justice, this Court is satisfied that condonation ought to be granted.
- [17] Accordingly, condonation is granted.
- [18] Regarding the answering affidavit, suffice it to mention that while I was unpersuaded by the reasons why there was no condonation application by the respondents, I have, in the interests of disposing of the substance of the matter, agreed to have it considered by both parties.

¹ Act 55 of 1998.

The issue

- [19] It seems the central issue before this Court is whether the decision of the Limpopo Gambling Board not to appoint Mr Mantsho to the advertised position of Company Secretary was unlawful and invalid. Should that be established, the further question is whether he is entitled to the relief he seeks.

The applicant's case

- [20] The applicant contends that he was unfairly discriminated against on an arbitrary ground and on the basis of false information. He maintains that he was the best candidate and that, but for the alleged misrepresentation regarding his resignation from the NWGB, he would have been appointed.
- [21] He further argues that the decision not to appoint him was irrational and procedurally flawed, and that the re-advertisement of the position was a disguised attempt to conceal irregularities in the process. Which, even if given the chance to answer to the alleged disciplinary hearing, same not have been possible.

The respondents' opposition

- [22] The respondents argue that the referral to arbitration was defective, as it failed to comply with section 10(6)(a)(ii) of the EEA. Even though this point was not really emphasised during argument, I will nevertheless deal with it below.
- [23] The respondents emphasise that the commissioner expressly ruled that the CCMA lacked jurisdiction and directed that the dispute could instead be referred to this Court within 90 days. On that basis, they submit that the arbitration referral was irregular and that the matter, as framed, is not properly before this Court.

Legal principles

- [24] We are aware that the EEA seeks to achieve equality in the workplace by promoting equal opportunity, eliminating unfair discrimination, and implementing affirmative action measures. It is designed to address historical disadvantages by ensuring that designated groups, including black people, women, and persons with disabilities, are equitably represented at all occupational levels.
- [25] Complementing this, the Basic Conditions of Employment Act² (BCEA) gives effect to the constitutional right to fair labour practices under section 23(1) of the Constitution by establishing and regulating basic conditions of employment. It also ensures compliance with South Africa's obligations as a member of the International Labour Organisation.
- [26] Together, the EEA and BCEA form part of the statutory framework intended to safeguard fairness, equality, and decent working conditions in the workplace.
- [27] It is against this framework that the applicant's claim must be assessed.

Analysis

- [28] The Court is not persuaded that the alleged misrepresentation concerning disciplinary action at the NWGB was the sole or determinative factor in the applicant's non-appointment. The record shows that the panel also considered his employment history, his five years of experience, his tendency to move between jobs, and its assessment that all candidates were better suited to advisory roles.
- [29] The applicant's contention that the re-advertisement of the post was a disguised attempt to conceal irregularities is not supported by the evidence before the Court. There is no sufficient basis to conclude that the re-advertisement was motivated by an ulterior purpose or that it rendered the process procedurally unfair.

² Act 75 of 1997.

[30] The numerous exchanges of correspondence between the parties, while extensive, do not alter the substance of the matter. The key issue is whether the decision of the Gambling Board violated fair labour practices.

[31] The Court is of the view that the decision not to appoint the applicant was lawful, rational, and valid. It does not fall to be reviewed or set aside.

Oral submissions of legal representatives

[32] The Court had the benefit of hearing counsel, their oral submissions, and their respective heads of argument. At the outset, Mr Mthombeni, who appeared for the applicant, raised a preliminary point that the answering affidavit was not properly before Court as no formal condonation application had been made. He argued that the Court's Rules, as reinforced by the then-applicable Practice Manual³, should not be flouted.

[33] Mr Mthombeni sought to emphasise that the applicant was the best candidate for the position and that the dominant factor in the Board's decision was the alleged pending disciplinary proceedings at the NWGB, which he contended was untrue. He further argued that the reasoning advanced by the panel, that the candidates were more suited to advisory roles, was an afterthought, and that proper regard was not given to the scorecard or to the letter communicating the outcome, which, he argued, did not sufficiently set out their reasons.

[34] Counsel pressed the point that the decision was irrational and unfair, and urged this Court to grant the declaratory relief sought. He also sought an order for costs against the respondents, citing their conduct in the matter.

[35] This Court is not persuaded by those submissions. I do not find that the disciplinary aspect as a whole was the sole factor in the decision, nor that the outcome was irrational. The record demonstrates that several considerations informed the Board's decision.

³ Practice Manual of the Labour Court of South Africa, 2013 (repealed, effective 17 July 2024).

- [36] While costs were sought, I am not convinced that there is a basis to depart from the general principle that costs do not ordinarily follow the result in this Court.

Principles on costs

- [37] In employment matters, costs do not follow the result. This Court is conferred with a discretion and is required to take into account the considerations set out in s 162 of the Labour Relations Act⁴ (LRA) when exercising it. In addition, the Court is required to perform a balancing act, whereby it strikes a fair balance between, on the one hand, not unduly discouraging prospective litigants in the employment sector from approaching the court in pursuit of relief and, on the other hand, permitting prospective litigants from bringing frivolous cases before the Court. Finally, a Court must ensure that it exercises its discretion judicially before mulcting a party with an adverse costs order.
- [38] Section 162 of the LRA empowers this Court to make orders for costs according to the requirements of both law and fairness. In doing so, the Court may consider, among other factors, whether the dispute should have been referred to arbitration rather than this Court, the conduct of the parties in initiating or defending proceedings, and their conduct during the course of litigation.
- [39] The Labour Appeal Court in *Member of the Executive Council for Finance, KwaZulu-Natal v Dorkin NO and Another*⁵ emphasised that the general rule that 'costs follow the result' does not automatically apply in labour disputes. Courts must balance the need to avoid discouraging employees from enforcing their rights against the need to protect the system from frivolous claims.

⁴ Act 66 of 1995, as amended.

⁵ (2008) 29 ILJ 1707 (LAC) at para 19.

[40] Similarly, in *Zungu v Premier of the Province of KwaZulu-Natal and Others*⁶, the Constitutional Court confirmed that cost orders in labour matters remain a discretionary exercise that must be undertaken judicially and in light of fairness.

[41] The Constitutional Court in *Long v South African Breweries (Pty) Ltd and Others*⁷ further reinforced that adverse costs orders should not be imposed merely because a party was unsuccessful. Courts must weigh fairness and conduct, and costs orders in employment disputes remain the exception rather than the norm.

[42] In applying these principles, I am not persuaded that the present matter warrants a departure from the general approach. There is accordingly no order as to costs.

[43] In the result, the following order is made:

Order

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

S Rajah
Acting Judge of the Labour Court of South Africa

⁶ 2018 (6) BCLR 686 (CC) at para 26.

⁷ [2019] 6 BLLR 515 (CC).

Appearances:

For the applicant: Percy Mthombeni

Instructed by: Ditabe & Wagner Attorneys

For the Respondents: Eddie Mashile

Instructed by: Office of the State Attorney, Polokwane

LABOUR COURT