THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JR 280/23

In the matter between:

GMP TRADING TRADING CC T/A TAXI RAND FOOD MARKET **First Applicant**

CERA AZUL TRADING (PTY) LTS T/A WALTLOO MEAT AND

CHICKEN MEGA NUMLOG TRADING CC

T/A WALTLOO MEAT AND CHICKEN MINI **Second Applicant**

and

COMMISSION FOR CONCILIATION,

MEDIATION AND ARBITRATION **First Respondent**

TREVOR WILKES N.O **Second Respondent**

RHODA CHATIKOBO AND OTHERS **Third Respondents**

Heard: **9 September 2025**

Delivered: **10 December 2025**

JUDGMENT

RAJAH, AJ

Introduction

[1] This is an application brought in terms of section 157(1) read with section 145 of the Labour Relations Act[1] (LRA). The applicant, GMP Trading (the employer), seeks an order reviewing and setting aside an arbitration award issued under the auspices of the Commission for Conciliation, Mediation and Arbitration (CCMA) on 23 January 2023 under case number GAJB 21563-22.

[2] On the day of hearing, only the employer was represented. The employer was represented by Mr Themba Manlhungu from Human Resources. The employees, cited as Ms Rhoda Chatikobo and Others, were unrepresented.

[3] Given the seriousness of the matter, and the fact that it concerns close to 100 employees, it concerns threats of violence to both parties and affects rights beyond labour law, the Court adjourned the hearing for 30 minutes to consult with colleagues before proceeding and it was satisfied that the matter should be heard by default.

Relevant Material facts

[4] The factual matrix set out below is drawn from the documents before the commissioner as well as the transcript. GMP is in the business of selling food and other meat products in various places including Alexandra, where the employees were employed in different capacities including cashiers, cleaners, and packers.

[5] It is common cause that their dismissals arose in the context of what has become known as "*Operation Dudula*". The evidence demonstrates that the operation consisted of groups of individuals who, acting outside the law, forcefully removed employees from their workplace.

[1] Act 66 of 1995, as amended.

[6] Those employees were largely foreign nationals. The removal was neither authorised by the employer nor sanctioned by law. It amounted to disruption of the workplace through intimidation and coercion.

[7] This Court is mindful that South Africa is a constitutional democracy founded on the rule of law. It is also mindful about certain civic groups who perpetuate violence and intimidation sometimes with very serious consequences.

[8] However, the Constitution of the Republic of South Africa, 1996 (the Constitution), in its preamble and Bill of Rights, affirms that the country belongs to all who live in it. Section 23 guarantees everyone the right to fair labour practices. The unlawful conduct of private groups cannot be permitted to override the constitutional and statutory rights of employees, whether nationals or foreign nationals no matter the threats they make.

Submissions

[9] Mr Mahlangu along with the papers before this court, did not dispute that the dismissals were unfair, but emphasised the danger to the business and its premises if employees were reinstated. He argued that the payment of one week's severance pay should be regarded as an act of good faith and that the company could not afford more.

[10] When pressed by the Court with hypothetical questions, for example, what if a similar operation were to target older workers being South African nationals to make way for younger ones as part of an '*operation tsamaea*', or even threaten his own position Mr Mahlangu could only respond that the state entities had failed to act and that reinstatement was therefore impossible.

Legal Principles

[11] This Court accepts that the employer faced operational challenges. However, such challenges do not justify stripping employees of their constitutional and statutory protections in such an abrupt manner. The rights of workers, whether nationals or foreign nationals, are protected by the LRA and the Constitution.

[12] The test for review is settled. In *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others*[2], the Constitutional Court held that the question is whether the decision reached by the commissioner is one that a reasonable decision-maker could not reach on the material before them.

[13] Considering the totality of the evidence, the commissioner correctly found that the dismissals were unfair. The commissioner's award properly balanced the substantial merits of the dispute, as required by section 138 of the LRA, and falls within the bounds of reasonableness.

[14] The ground of review advanced before this Court is that the commissioner failed to apply his mind to the fact that businesses were closing as a result of Operation Dudula, and that both the employer and the employees' lives were in danger.

[15] This Court does not dismiss the seriousness of the threats posed by unlawful operations of this nature. However, the Court is not convinced that such considerations justify upholding the dismissals or overturning the award. The commissioner was alive to the context in which the dismissals occurred, namely that employees were forcefully removed from the workplace by third parties. The commissioner correctly focused on whether the employer had a fair and lawful basis to terminate their employment.

[16] The evidence demonstrates that the trigger for the dismissals was not misconduct by the employees but rather the unlawful conduct of outside groups. In fact, it is common cause and conceded in oral submissions that the employees did nothing wrong.

[17] The employer's reliance on danger and disruption, without taking steps to restore or protect the employees' positions, does not render the commissioner's award unreasonable.

[18] The proper test for review remains that set out in *Sidumo*: whether the decision reached by the commissioner is one that a reasonable decision-maker could not reach.

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[2] [2007] 12 BLLR 1097 (CC).

[19] Moreover, as the Labour Appeal Court explained in *Goldfields Mining South Africa (Pty) Ltd v Commission for Conciliation, Mediation and Arbitration and Others*[3], the Court must consider the totality of the evidence and avoid a piecemeal approach.

[20] On a consideration of the totality of the evidence, this Court is satisfied that the commissioner's conclusion that the dismissals were substantively unfair is one that a reasonable decision-maker could reach. The review application must therefore fail.

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

<u>Order</u>

1. The arbitration award issued under the auspices of the Commission for Conciliation, Mediation and Arbitration (CCMA) on 23 January 2023 under case number is upheld.

2. The employer is directed to pay to the employees, within 14 days of this judgment:

   2.1 compensation equivalent to 12 months' remuneration calculated at each employee's rate of remuneration at the date of termination; and

   2.2 The amounts referred to above shall bear interest at the prescribed rate with effect from the 15th day after the date of this judgment to the date of payment.

3. There is no order as to costs.

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[3] [2014] 1 BLLR 20 (LAC).

S. Rajah

Acting Judge of the Labour Court of South Africa

<u>Appearances:</u>

For the applicant: Themba Mahlangu of Watloo - Alex

For the respondent: No appearance