



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JR2709/21

- (1) Reportable: No
- (2) Of interest to other Judges: No
- (3) Revised

Signature

23/12/2025
Date

In the matter between:

SAMWU obo TS SCHEEPERS

Applicant

and

MANGAUNG METROPOLITAN MUNICIPALITY

First Respondent

THE SOUTH AFRICAN LOCAL GOVERNMENT

BARGAINING COUNCIL

Second Respondent

TL MABUSELA N.O.

Third Respondent

Heard: 2 September 2025

Delivered: 23 December 2025.

Summary: An application to review and set aside an award issued in the absence of *viva voce* evidence and which incorrectly recorded a disputed issue as common cause. The award is reviewable

because evidence was required to resolve the disputed facts regarding the inconsistent application of discipline.

JUDGMENT

GANDIDZE, J

Introduction

- [1] This is an application in terms of section 145 of the Labour Relations Act¹ (LRA), to review and set aside an arbitration award issued by the third respondent commissioner, under the auspices of the second respondent, the South African Local Government Bargaining Council (SALGBC), in case number FSD031716, dated 25 October 2021. The arbitration award found that the dismissal of the applicant employee, Ms TS Scheepers (Scheepers), represented herein by her union, the South African Municipal Workers Union (SAMWU), was substantively fair. The award is sought to be reviewed and set aside, and substituted with an order that the dismissal was substantively unfair for failure to apply discipline consistently, and that Scheepers be reinstated with full retrospective effect, or that Scheepers be awarded the maximum compensation of 12 months. In the alternative, the applicants seek an order remitting the matter to the SALGBC for a *de novo* hearing.
- [2] The first respondent, Mangaung Metropolitan Municipality (the Municipality), filed an answering affidavit but failed to file heads of argument in accordance with this Court's directive dated 3 September 2024. On the hearing date, there was no appearance for the Municipality. Mr Du Preez, for the applicants, informed the Court that contact had been made with the Municipality's attorneys of record, Molefi Thoabala Attorneys, and that the telephonic feedback was that the attorney who had been dealing with the matter had left the firm and that no one knew the status of the file. In circumstances where Molefi Thoabala Attorneys did not file a notice of withdrawal as attorneys of record, and the notice of set down for the hearing of the review application

¹ Act 66 of 1995, as amended.

was served at the email address reflected in the notice of opposition, I was satisfied that the Municipality's attorneys were properly notified of the hearing.

- [3] The review application was filed two weeks late, and the applicants sought condonation, which was not opposed. The delay is attributed to a SAMWU union official who has since left SAMWU. The delay was not excessive, and the explanation is reasonable. *Prima facie*, the applicants have prospects of success, and accordingly, condonation for the late filing of the review application is granted.

Background facts

- [4] The applicant's papers do not set out the background to the matter, and the background facts below have been extrapolated from the court file.
- [5] Scheepers and another employee, T Mkhonto (Mkhonto), both cashiers, were dismissed on 3 February 2017 for breaching Schedule 2: Code of Conduct for Municipal Staff Members, issued under the Local Government: Municipal Systems Act². That Schedule provides that a staff member of a municipality must at all times perform the functions of office in good faith, diligently, honestly and in a transparent manner. More specifically, both Scheepers and Mkhonto under-banked the Municipality's money, which they took for themselves.
- [6] Initially, their arbitration proceedings were consolidated, and the parties signed a pre-arbitration minute setting out, *inter alia*, the common and disputed facts.
- [7] The common cause facts include the charges against Scheepers and Mkhonto, their being found guilty by the chairperson of the disciplinary inquiry, and their admissions of misconduct. The facts in dispute were whether, at the disciplinary hearing, Scheepers and Mkhonto pleaded guilty to the charges, whether they had acted dishonestly, and whether the Municipality had consistently applied the rule and the appropriate sanction for the misconduct.

² Act 32 of 2000.

The pre-arbitration minute also records the only issues the commissioner was required to decide, namely, whether dismissal was the appropriate sanction and, if not, the relief.

- [8] On 2 July 2021, Commissioner Van Wyk recused herself from Scheepers' matter after it emerged that, on a previous occasion, Scheepers had lied about her mother's passing to secure a postponement of the matter, thereby committing contempt of the SALGBC. She continued with Mkhonto's matter and found her dismissal substantively fair. The entire transcript of Mkhonto's matter, the commissioner's handwritten notes, and the award in Mkhonto's matter formed part of the review record. In oral argument, Mr Du Preez, for the applicants, submitted that the court should not have regard to the contents of that transcript, as it was irrelevant to the issues to be decided. This raises the question of why those documents formed part of the record when only the record relevant to determining a review application must be placed before the Court.
- [9] Be that as it may, Scheepers' matter was allocated to Commissioner Mothusi Maje (Maje), who issued an award dated 17 July 2017, dismissing Scheepers' dismissal claim. The award was successfully challenged on review, as per the order of Mahosi J dated 25 November 2020 (without reasons). It was explained that the award was reviewed because Scheepers' representative was refused an opportunity to challenge evidence introduced by the Municipality's witness in reply. The matter was remitted to SALGBC for a *de novo* hearing.
- [10] Commissioner Mabusela, the third respondent in these proceedings, was assigned the matter, and it is his award that is sought to be reviewed and set aside.

The award by Commissioner Mabusela

- [11] The award records that the parties agreed that the facts were common cause, that no *viva voce* evidence was necessary, and that the commissioner may base his award on the evidence in the bundle of documents and the heads of

argument. The Municipality's heads of argument formed part of the review record, but the applicants' heads of argument did not, despite the applicants being *dominis litis*. Fortunately, the Municipality attached the applicants' heads of argument to their answering affidavit.

- [12] The award records the issues for determination as (i) whether, in dismissing Scheepers, the Municipality acted inconsistently, having regard to how Portia Rapudi (Rapudi), who committed similar misconduct, was treated; (ii) whether Scheepers and Rapudi committed the same misconduct; and (iii) the relief to be granted to Scheepers.
- [13] After recording the 'common cause facts', the commissioner distinguished Scheepers' case from Rapudi's on the basis, *inter alia*, that (i) while Scheepers took money from the Municipality, Rapudi took money from a member of the public, and (ii) while Rapudi pleaded guilty to the charge at the disciplinary hearing and was therefore remorseful, Scheepers initially admitted to the offence but at the disciplinary hearing pleaded not guilty and was therefore not remorseful. The conclusion was that Scheepers' dismissal was fair.

Grounds of review

- [14] It was submitted that, in dismissing Scheepers, the Municipality acted inconsistently, as Rapudi, who had similarly kept for herself money received from a member of the public for municipal services and later reversed the transaction in the system, had not been dismissed. It was also said that Scheepers intended to repay the R3500, or that the amount was subsequently paid. Submissions were also made that the award is reviewable, as the commissioner decided the matter without the benefit of oral evidence and in the absence of a stated case, and that the commissioner's finding that it was common cause that, in the disciplinary hearing, Scheepers pleaded not guilty is incorrect. Finally, it was further submitted that no evidence was placed before the commissioner supporting the conclusion that there had been a breakdown of the trust relationship, rendering continued employment intolerable.

- [15] In the applicants' heads of argument, only two grounds are advanced. These are addressed next.

No oral evidence

- [16] The main ground of review is that the arbitrator issued an award without requiring the parties to present oral evidence and without a stated case setting out the common cause facts. It was submitted that the award is therefore a nullity, and reliance was placed on the decisions in *Kgoale v Thaba Chweu Local Municipality and Others*³, *SA Social Security Agency v National Education Health & Allied Workers Union on behalf of Punzi and Others*⁴ and *Arends and Others v SA Local Government Bargaining Council and Others*⁵(Arends).
- [17] The Labour Appeal Court has addressed the issue of awards issued in the absence of *viva voce* evidence or a stated case. In *Motor Industry Staff Association & Another v McCarthy Ltd & Others*⁶ (MISA), the Labour Appeal Court referred to three of its earlier decisions.
- [18] The first was *Arends*, which found that the enquiry had been undertaken in the wrong manner, hence an irregularity, because the parties required the commissioner to determine a matter without oral evidence or a written statement of facts, in circumstances where the facts were insufficient.
- [19] The other was *Public Servants Association and Others v Minister of Correctional Services & Others*⁷ (PSA), which found the award unreasonable because it was issued in the absence of agreed facts relevant to the determination of the issue.
- [20] The third was *Intestate Bus Lines (Pty) Ltd v Phakwe & Others*⁸ (Interstate), where the Court found that, in a matter concerning the appropriateness of a sanction, even though no oral evidence had been led, the parties placed the

³ (JR 2863/19) [2021] ZALCJHB 224 (11 August 2021).

⁴ (2015) 36 ILJ 2345 (LC).

⁵ (2015) 36 ILJ 1200 (LAC).

⁶ (2021) 42 ILJ 117 (LAC).

⁷ [2017] 4 BLLR 371 (LAC).

⁸ (JA27/15) [2016] ZALAC 58 (22 November 2016).

disciplinary record before the arbitrator, which contained the key evidence, including the aggravating and mitigating circumstances and the chairperson's reasons for imposing the sanction of dismissal. Therefore, on those facts, the commissioner could determine the matter without *viva voce* evidence or a stated case.

[21] After referring to those decisions, the court in *MISA* stated this:

'[15] Contrary to what the court a quo might have held, this court did not contradict in *Interstate* what it had held in *Arends* and in *PSA*. It is self-evident from all those decisions that the principle remains the same, but every case has to be decided on its own facts. What might be adequate and sufficient in one matter may not be adequate or sufficient in another, and vice versa. All depends on the facts and circumstances of the particular matter that is being dealt with. (own underlining)

[16] In *Interstate* there was an agreement on the factual matrix, and it was adjudged by this court to have been sufficient in the light of the facts of that particular matter. The question the court a quo had to determine was whether what was put before the arbitrator by agreement between the parties, was sufficient and adequate for the arbitrator to properly and fairly determine the dispute in this matter.'

[22] After referring to the parties' cases as set out in the pleadings, the Court held:

'[25] In the light of those facts, it is unclear how the court a quo could have come to the conclusion, in effect, that the parties had agreed on the factual matrix; or perhaps, more pertinently, that, as far as the facts were concerned, the present matter was 'on all fours' with the facts in *Interstate*. In that matter, in contrast to the present, there was no dispute about the relevant facts to be utilised or imported to sustain the cases made by the parties there.'

[23] The court also found that the Court *a quo* erred in concluding that it was open to the arbitrator to extrapolate facts from the disciplinary record in the absence of the parties' agreement to that effect, and that the arbitrator should have

refused to determine the matter solely on the heads of argument, without agreement on a set of relevant facts or stated facts, and that agreeing to determine the matter as per the parties' request constituted an irregularity.

- [24] Therefore, my understanding of the law, as set out by the Labour Appeal Court, is that while some cases cannot be arbitrated in the absence of *viva voce* evidence or a stated case, others can be arbitrated without either. The determining factor is whether sufficient facts are before the commissioner. Such facts can be placed before the commissioner by a stated case or a pre-arbitration minute. The facts can also be agreed upon before a commissioner. The question that arises in the present matter is whether sufficient facts were placed before the commissioner to enable him to determine the inconsistency argument.
- [25] The award records that the proceedings were held over two days, on 14 September 2021 and 15 October 2021. The postponement ruling dated 14 September 2021 records that, on that occasion, the matter was adjourned to 15 October 2021 because the Municipality's representative was indisposed.
- [26] The applicants' founding affidavit is silent on what happened on 15 October 2021, except to state that no *viva voce* evidence was led and that there was no stated case placed before the commissioner. The applicants' affidavit also fails to mention the pre-arbitration minute I referred to above.
- [27] The Municipality's answering affidavits record that, according to Mokhali, who represented the Municipality in those proceedings, the parties informed the commissioner that '*there were (sic) very little in dispute*', and that the common cause facts were as set out in SAMWU's heads of argument, which the Municipality attached to the answering affidavit. The deponent further states that '*I take it that these common cause facts were recorded by the third respondent also while they were discussing them as according to Mr Mokhali, he was writing during the process and these facts are set out in his judgment. Mr Mokhali indicated that there was a recording device in the room, whether the discussion were (sic) recorded, we do not know. I submit that although there were (sic) not a formal document that contained the common cause*

facts or bearing the heading 'stated case', these common cause facts were discussed and agreed upon.'

- [28] The applicants did not file a replying affidavit addressing the above, specifically the contention that there was a discussion and agreement on the common cause facts, as noted in the award, and that there was a recording device in the room. One would have expected the transcript of those proceedings, as well as the commissioner's written notes, to have been filed as part of the record. For reasons that are not explained, none of these documents were filed as part of the review record. Therefore, the record placed before the Court was incomplete to that extent.
- [29] Be that as it may, it is common cause that the parties informed the commissioner that *viva voce* evidence was unnecessary because there were few facts in dispute. The issue for determination was whether the Municipality had been inconsistent in its treatment of Rapudi and Scheepers.
- [30] SAMWU's heads of argument in the arbitration proceedings set out certain facts relating to Rapudi's matter, which the commissioner relied on to distinguish Scheepers' case from Rapudi's. Whether those facts were sufficient to determine the matter is irrelevant, given that the commissioner erroneously found it common cause that Scheepers pleaded not guilty at the disciplinary hearing, when this was not the case, an issue raised as a second ground of review. This error influenced the commissioner's finding that Rapudi's case was distinguishable, rendering the award reviewable.
- [31] I also note from the award that the commissioner referred to cases of other employees dismissed for the same misconduct as Scheepers, including Mkhonto, but disregarded this information as new evidence not addressed in SAMWU's heads of argument, which the parties agreed contained the common cause facts. This is another reason why the matter must be remitted to the SALGBC, so that all that information may be placed before a commissioner to determine whether the Municipality applied discipline inconsistently, as Scheepers claimed.

[32] It is also unclear from the award whether the pre-arbitration minute filed in respect of the consolidated Mkhonto and Scheepers matters was considered, or whether it should have been.

[33] In my view, all of the above render the award reviewable.

Failure to determine the dispute between the parties

[34] I have addressed this issue briefly above, but I address it in more detail as a separate ground of review.

[35] In concluding that Scheepers' dismissal was substantively fair, the commissioner took into account, *inter alia*, that it was common cause that, at the disciplinary hearing, Scheepers pleaded not guilty to the charges, unlike Rapudi, who pleaded guilty and was not dismissed. The question is whether the commissioner was correct in recording the common cause facts, and, if not, whether, because there was a dispute on this issue, the commissioner was required to hear evidence on it.

[36] The applicants refer to SAMWU's heads of argument in the arbitration proceedings, which record one of the issues in dispute as '*whether the applicant (Scheepers) admitted guilt, be it when she was informed of the discovery of her misconduct or during the disciplinary inquiry.*'

[37] Interestingly, those heads of argument also record that it was unclear from the chairperson's ruling what Scheepers's plea was, but that the ruling indicates that Scheepers admitted her wrongdoing.

[38] In its heads of arguments in the arbitration proceedings, the Municipality submitted that in the disciplinary hearing, Scheepers pleaded '*innocent*'.

[39] I also note from the pre-arbitration minute, filed when the Mkhonto and Scheepers matters were to be dealt with together, that it records one of the facts in dispute as '*Whether the applicants pleaded not guilty to the charges and/or allegations of misconduct at their disciplinary hearings*'.

[40] Therefore, to the extent that the commissioner found it common cause that Scheeper pleaded not guilty in the disciplinary proceedings, this finding is incorrect. The parties were in dispute over the issue, and evidence was required to resolve it.

[41] The award is reviewable for that reason.

Relief

[42] The applicants sought an order substituting the arbitration award with an order that Scheepers's dismissal was substantively unfair because Rapudi was not dismissed for similar misconduct. But to do so would be to fall into the same trap the commissioner did. It cannot be said that this court is in as good a position as the commissioner to make a finding on the substantive fairness or otherwise of Scheepers' dismissal when there are disputes of fact that must still be resolved. It follows that the only appropriate order is one remitting the dispute to the SALGBC for a fresh hearing before a commissioner other than the third respondent.

[43] However, given that this will be the third arbitration hearing, the issues for determination must be confined to (i) the consistency issue, specifically whether, in dismissing Scheepers, the Municipality acted inconsistently with how it had treated other employees guilty of similar misconduct, and whether any such inconsistency renders Scheepers' dismissal substantively unfair, and (ii) the relief to be granted to Scheepers, if any.

[44] In the premises, the following order is granted.

Order

1. The arbitration award issued by the third respondent under the auspices of the South African Local Government Bargaining Council in case number FSD031716, dated 25 October 2021, is hereby reviewed and set aside.
2. The dispute is remitted to the second respondent for a *de novo* hearing before a commissioner other than the third respondent to determine

whether the Mangaung Metropolitan Municipality applied discipline inconsistently and, if any, the relief to be granted to TS Scheepers.

3. There is no order as to costs.

T Gandidze

Judge of the Labour Court of South Africa

Appearances

For the applicant: Mr T Du Preez

Instructed by: Kramer Weihmann Inc

For the first Respondent: Molefi Thoabala Attorneys (No appearance)

LABOUR COURT