



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

Signature

14/01/2026
Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: JR755/2021

In the matter between:

N J PIETERSE

Applicant

and

CITY OF TSWANE METROPOLITAN MUNICIPALITY

First Respondent

COMMISSIONER E MAREE N.O.

Second Respondent

SOUTH AFRICAN LOCAL GOVERNMENT

BARGAINING COUNCIL

Third Respondent

Heard: 3 September 2025

Delivered: 14 January 2026

Summary: Application to review and set aside an award which dismissed an unfair labour practice claim. The review is a disguised appeal. The award is reasonable.

JUDGMENT

GANDIDZE, J

Introduction

- [1] The applicant, Mr Nicholas Pieterse (Pieterse), applied for the promotional position of Deputy Chief: Public Information and Liaison, which he had been acting in, and was interviewed, but was unsuccessful. He was ranked the second-best candidate with a score of 59. The appointed candidate, Mr Mabaso, scored 67. Pieterse referred an unfair labour practice in terms of section 182(2)(a) of the Labour Relations Act¹ (LRA), to the South African Local Government Bargaining Council (Bargaining Council). In an award dated 25 March 2021, his claim was dismissed. The current application, in terms of section 145 of the LRA, seeks an order substituting that award with an order that his employer, the City of Tswane Metropolitan Municipality (the Municipality), committed an unfair labour practice against him, alternatively an order remitting the matter to the Bargaining Council for a fresh hearing.
- [2] The Municipality opposed the application. It filed its heads of argument without sight of Pieterse's heads of argument, which were filed late, and no condonation application was filed for their late filing.

The arbitration proceedings

- [3] Pieterse testified in support of his claim and called Nicolene Rossouw (Rossouw) as a witness. The Municipality called Ms Tshilidzi Ndwamato, a senior HR Specialist; Mr Ntome Nkutha, the Deputy Chief Emergency Medical Operations; and Dr Robin Charles (Dr Charles), the Divisional Chief Emergency and Medical Operations, as its witnesses.
- [4] The grounds of review are such that I have deemed it unnecessary to summarise the evidence led or the commissioner's findings. The evidence and the commissioner's findings are referred to in addressing each ground of review.

Grounds of review

¹ Act 66 of 1995, as amended.

Nicolene Rossouw's affidavit

- [5] In support of his unfair labour practice claim, Pieterse called Rossouw as a witness. She worked for the Municipality, in Security. During the recruitment process that led to the dispute, she worked in Dr Charles's office as the acting Senior Secretary and Staff Officer. She was also an IMATU shop steward and attended Pieterse's interview as an observer and to learn from another IMATU shop steward and a SAMWU shop steward. After the interviews, she deposed to an affidavit alleging procedural flaws in the process. That affidavit formed part of Pieterse's bundle of documents in the arbitration proceedings. Rossouw testified and was cross-examined about the contents of her affidavit. Dr Charles also testified and challenged the contents of Rossouw's affidavit, which sought to implicate him in procedural flaws during the recruitment process.
- [6] On review, it was submitted that the commissioner erred in allowing the Municipality to cross-examine Rossouw on her affidavit and in permitting Dr Charles to contest its contents, given that the pre-arbitration minute recorded that *'the parties propose that documents in their respective bundles purport to be, without admitting the correctness of the contents of the documents, unless written objection is made to a particular document no later than five days before the commencement of the arbitration.'* It was further submitted that, because the Municipality did not object to the affidavit five days before the arbitration day, the commissioner ought to have ruled that it was precluded from challenging its contents, which were 'conclusive evidence'. For this position, reliance was placed on the unreported decision of *First National Bank (A Division of Firststrand Bank Limited) v Nduzulwana NO and Others*², (FNB).
- [7] The submission need not detain the Court, as it lacks merit. The commissioner addressed the same submission in the award and correctly concluded that the relevant paragraph of the pre-arbitration minute did not support Pieterse's submission. It is clear from that paragraph of the pre-

² (JR1597/09) [2015] ZALCJHB 206 (16 July 2015).

arbitration minute that the parties did not admit the correctness of the contents of the documents forming part of the bundle. Therefore, the inclusion of Rossouw's affidavit in the bundle, or any other document for that matter, did not mean that the contents were gospel and could not be challenged. In fact, at one point, when the Municipality sought to introduce new documents, Mr Geldenhuys, Pieterse's legal representative, submitted that he would ask questions about the contents of the documents to be entered into evidence. This is how it is done, and it is surprising that, on review, the submission the commissioner dismissed is repeated. The submission also ignores that the pre-arbitration minute recorded that no evidence on affidavit will be accepted, which explains why Rossouw was called to testify about the contents of her affidavit.

- [8] It also makes no sense to argue that Rossouw can be called as a witness to testify about the contents of the affidavit but cannot be cross-examined on those contents. Dr Charles was also cross-examined on the contents of Rossouw's affidavit.
- [9] I was unable to find in the reconstructed transcript any indication that the commissioner ruled that Rossouw could not be cross-examined about the contents of her affidavit, as submitted on Pieterse's behalf.
- [10] The *FNB* decision relied upon is of no assistance to Pieterse's case. That matter concerned a pre-arbitration minute that limited the grounds on which the procedural fairness of a dismissal could be challenged. In such a case, the commissioner must confine his decision to that issue and cannot find the dismissal procedurally unfair for other reasons. This is very different from the present matter, where the pre-arbitration minute recorded that the correctness of the documents in the bundle is not admitted.
- [11] There is also the complaint that Dr Charles' version disputing the contents of the affidavit was not put to Rossouw, and therefore Rossouw's version had to be accepted as correct, in accordance with the Constitutional Court's decision

in *President of the Republic of South Africa and Others v South African Rugby Football Union and Others*³.

- [12] During her cross-examination, Rossouw was challenged on the contents of her affidavit. She was specifically asked whether she had evidence to support the allegations set out therein, and she responded, '*I do not have evidence, but I promise you this happened*'. When Dr Charles testified, he stated that some portions of Rossouw's affidavit were accurate and others were wrong, and he specified which portions were correct and which were incorrect. I am unable to identify what was not put to Rossouw that Dr Charles testified about for the first time. In oral argument, it was submitted for Pieterse that the Municipality did not intend to call Dr Charles as a witness, but it is unclear how Pieterse would have known this, and the relevance to the issues the Court is called upon to determine on review.
- [13] It was also submitted that the commissioner ought not to have attached weight to Dr Charles' version, as he attended the arbitration proceedings solely to clear his name and therefore had something to gain by testifying, unlike Rossouw. Rossouw testified that he intended to clear his name but also stated that this was not the only reason he testified, without specifying what the other reason was. Be that as it may, in circumstances where Rossouw's affidavit and her testimony referred to alleged discussions with Dr Charles about the interview process, the latter was required to rebut that version, as necessary. The commissioner's finding that it was Rossouw who had something to gain by testifying for Pieterse (an issue dealt with below) is reasonable.
- [14] There is no merit in this ground of review, which consisted of nit-picking in the hope that one of the several complaints raised would find favour with the Court. This is the wrong approach in review applications.

³ 2000 (1) SA 1 (CC).

The credibility and reliability of witnesses

- [15] It was submitted that the commissioner erred by disregarding the contents of Rossouw's affidavit and by labelling her a disgruntled employee biased in favour of Pieterse.
- [16] On the facts before her, the commissioner's approach was reasonable, and it is immaterial that the Municipality did not raise these issues.
- [17] Rossouw's own version was that she had served the Municipality in an acting capacity for six years without compensation. The disgruntlement was patent.
- [18] The commissioner also noted that although Rossouw's mother and Pieterse divorced in 1996, Rossouw and Pieterse had continued to maintain contact regarding work matters, and that there had been an attempt to downplay the relationship.
- [19] The conclusion that Rossouw had ulterior motives for testifying against the Municipality was not unreasonable.
- [20] The commissioner also found that the other two Municipality witnesses corroborated Dr Charles's version of the interview process. Therefore, the commissioner cannot be faulted for preferring Dr Charles's version to that of Rossouw.
- [21] There is no merit in this ground of review.

The municipality did not follow its processes

- [22] Yet another ground of review was that the commissioner ought to have found that, by not promoting Pieterse, the Municipality failed to comply with its own processes. This relates to the fact that the interview panel comprised three members from the same Department, whereas the Staffing Policy, a collective agreement, requires two representatives from a department to ensure fairness.

- [23] After addressing each of Pieterse's complaints about the process, the commissioner found that the complaint regarding the panel's composition contravening the Staffing Policy had no merit. She found that the complaint was based on Pieterse's desire for a panel that would favour him over other candidates.
- [24] On review, the only complaint pursued is that there were three Department representatives rather than two. That issue was addressed in the award, and the commissioner's conclusion is based on the evidence presented, including Pieterse's concessions.
- [25] In any event, a failure to comply with policy does not constitute an unfair labour practice. The same interview panel assessed all three candidates, not just Pieterse. To the extent that Mr Govender's participation in the interview process was a concern, the commissioner correctly noted that Govender scored both Pieterse and Mabaso 17, while the other panellists scored the candidates lower.
- [26] The case authorities relied upon in support of Pieterse's case, which the commissioner is alleged to have ignored, need not all have been referred to in the award, which records that they were all considered. I must add that no purpose would have been served by referring to case authorities that were irrelevant to the issues to be decided, such as the decision in *Gcaba v Minister of Safety and Security and Others*⁴, which was cited in the closing submissions made on behalf of Pieterse.
- [27] With reference to relevant case authority, the commissioner recognised that she was required to determine whether the Municipality had acted unfairly towards Pieterse. She also stated that she was required to determine whether the Municipality had acted irrationally or arbitrarily, had been motivated by bias, malice or fraud, had failed to apply her mind, or had exercised its discretion for insubstantial reasons or on a wrong principle. However, that statement does not detract from her understanding that, ultimately, the test was one of fairness. She also appreciated that Pieterse bore the onus of

⁴ (2010) 31 ILJ 296 (CC).

proving that the Municipality had acted unfairly towards him, and that he failed to discharge that onus.

- [28] Like all the grounds of review, this ground is an attempt to appeal against the award, which is impermissible.

The legal opinions

- [29] The chairperson of the interview panel was Govender, the Chief of Emergency Services. On review, it was submitted that the commissioner erred in disregarding the legal opinions obtained by the Municipality, which held that Govender's appointment was null and void for lack of qualifications. It was further submitted that the commissioner ought to have admitted those opinions as conclusive evidence that Govender had no legal standing to participate in the interviews. It was also submitted that the Municipality did not object to the legal opinions and, therefore, their contents had to be accepted without leading evidence.
- [30] Above, I have already found that the last submission regarding the documents in the bundle as conclusive evidence is based on a misunderstanding of the relevant paragraph of the pre-arbitration minute.
- [31] Returning to the remaining submissions, the first hurdle for Pieterse is that the legal opinions were obtained after the interview process had been finalised. The issue before the commissioner was whether the Municipality committed an unfair labour practice against Pieterse by failing to promote him. As correctly noted in the award, Govender's appointment and his lack of qualifications did not prejudice Pieterse, as all candidates were assessed and scored by Govender. In fact, Govender was the only panellist to score Pieterse and Mabaso 17, the highest score.
- [32] More importantly, if the issue was that Govender unlawfully scored the candidates, Pieterse's remedy was to seek to set aside the entire process rather than to seek protected promotion based on a process he contended was flawed.

- [33] Even if the Public Protector's report concluded that Govender's appointment was null and void, that did not mean Pieterse's unfair labour practice claim had to succeed. That information would have been relevant to an application to set aside the entire recruitment process. Pieterse neither sought nor could have sought such an order through an unfair labour practice claim.
- [34] The commissioner was correct to find that the issues canvassed in the legal opinions did not prejudice Pieterse. There is also no merit in this ground of review.

The commissioner failed to grant relief when he was required to do so

- [35] It was submitted that Pieterse sought protected promotion⁵, but the commissioner found that Mabaso, the successful candidate, ought to have been joined to the proceedings. The submission is that this is bizarre and grossly irregular. It was also submitted that the commissioner failed to determine the relief to be granted to Pieterse.
- [36] The submission regarding the reference to Mabaso on this issue borders on misleading the Court. The issue of the non-joinder of Mabaso arose because Pieterse was not seeking an order setting aside the interview process and requiring it to be redone, in which case Mabaso would have had to be joined. The commissioner pointed out that this was not the relief Pieterse sought. In fact, the commissioner went further and found that the defective process could not be relied upon to obtain a protected promotion, which was the relief Pieterse sought. The findings are all reasonable.
- [37] Once the commissioner found that the Municipality had not committed an unfair labour practice against Pieterse, the inquiry concluded. No relief can be granted where an unfair labour practice claim is dismissed.
- [38] The submission in Pieterse's affidavit that the commissioner found an unfair labour practice to have been committed is incorrect and constitutes another misrepresentation to the Court.

⁵ Or compensation.

[39] The ground of review is dismissed.

Closing remarks

[40] In *Sidumo and another v Rustenburg Platinum Mines Ltd and others*⁶, the Constitutional Court stated that the grounds of review set out in section 145 of the LRA have now been suffused with the reasonableness standard. This means that for this court to interfere with the award on review, it must be persuaded that the outcome was one no reasonable decision-maker could have reached. The submission in Pieterse's papers that the award induces a sense of shock is based on an outdated review test, and points to a lack of diligence in advising Pieterse to file the review application.

[41] During the arbitration proceedings, Pieterse challenged the recruitment process on several grounds, most of which were not pursued on review. Those challenges were correctly abandoned, and the ones pursued lacked merit. While it is understandable that being unsuccessful in a position can aggrieve an applicant, there comes a point at which an unsuccessful applicant must accept their fate. If there were any truth to the allegations of interference in the recruitment process to favour Mabaso, Pieterse, who was legally represented, ought to have approached the correct forum to challenge the decision. Instead, he filed an unfair labour practice claim with the Bargaining Council. The award is not one that a reasonable decision-maker could not reach, and the review application ought not to have been brought.

Costs

[42] In this court, costs are awarded in accordance with the requirements of law and fairness. This review application should never have been filed, as it would have been evident to any labour practitioner that it was doomed to fail. Meritless submissions were made in an attempt to appeal against the award, which is impermissible. In argument, a bizarre submission was advanced that the Municipality did not understand Pieterse's case and had not read the record. To compound matters, Pieterse's heads of argument were filed late,

⁶ [2007] 12 BLLR 1097 (CC).

and no condonation application was filed. Given all of this, the Court has begrudgingly decided not to award costs, as Pieterse pursued the matter on the advice of his legal representatives and because there is an ongoing employment relationship between the parties. He was however ill-advised to file this review application.

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

Order

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

T. Gandidze

Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Mr CJ Geldenhuys of CJ Geldenhuys Attorneys

For the Respondent: Ms Mitchell

Instructed by: Mothle Jooma Sabdia Inc.

LABOUR COURT