



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

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, GQEBERHA

Not Reportable

Case No: PR103/23

In the matter between:

MNQUMA LOCAL MUNICIPALITY

Applicant

and

SAMWU OBO THANDI CONSTANCE HLAZO-BANGANI

First Respondent

MXOLISI ALEX NOZIGQWABA N.O.

Second Respondent

SOUTH AFRICAN LOCAL GOVERNMENT

BARGAINING COUNCIL

Third Respondent

Heard: 07 August 2025

Delivered: 19 January 2026

JUDGMENT

ERASMUS, AJ

Introduction

- [1] This is an application for the review and setting aside of an arbitration award issued by the Second Respondent (Commissioner) under case number ECD122023 dated 18 April 2023 in terms of which the Commissioner found that Ms Hlazo-Bangani's dismissal was substantively unfair and that she must be reinstated with backpay limited to two months' salary.

Factual background

- [2] Ms Hlazo-Bangani was employed by the Applicant as the Manager of the Legal Services Department in the office of the Municipal Manager. She commenced employment with the Applicant on 2 November 2015 and was dismissed on 14 December 2021 following a disciplinary hearing involving five charges of misconduct.
- [3] Ms Hlazo-Bangani was issued with a laptop for work purposes. On Friday, 9 July 2021, she drove to work where she printed documents. On her way back home, she stopped at Ibika garage where she bought something to eat. Upon her arrival at home, her children assisted her with unpacking her vehicle and it was established that the laptop was not in her vehicle.
- [4] She contacted the intern that worked with her in her office and both of them conducted a search of her office for the laptop on Monday, 12 July 2021 before arrival of the cleaners, to no avail. Later that day, Ms Hlazo-Bangani went to the Msobomvu Police Station for purposes of reporting the laptop stolen. The police informed her to first view the CCTV footage at the garage where she suspected the laptop got stolen from her vehicle and to return to the station thereafter for purposes of deposing to a sworn statement.
- [5] Ms Hlazo-Bangani attended at the Ibika garage and viewed the CCTV footage with the garage manger, whereafter she returned to the police station and deposed to a sworn statement. The relevant paragraphs of the statement read as follows:

- "2. On 2021/07/09 Friday of about 12 I was at Ibika Garage from my work place. I was driving [registration number] white Polo Vivo. My work

laptop was in the boot with harddrive, 3G MTN, 3G Vodacom, Statutes, USB. I drove to my place of residence and when I arrived I noticed that my laptop was stolen from the boot, I suspect that it was stolen at the Garage (Ibika).

3. No one has the right to steal from me, I request police to take further investigation to this case.' (sic)

[6] On 14 July 2021, Ms Hlazo-Bangani prepared and sent a memorandum regarding the incident to the Applicant's Director of Corporate Services with the subject: "REPORT FOR STOLEN LAPTOP & OTHER DEVICES FOR WORK PURPOSES". It reads as follows:

'The above matter has the following reference:

I wish to confirm and/or declare that on or about Monday, 12th day of July 2021, have reported an incident of theft which same happened to involve Municipal asset, namely HP Laptop with IMEI No; 3G device; Hard drive, USBs and portable statutes. The docket was opened at Msobomvu Police Station under CAS..... for further investigations on the matter. Attached herewith is a statement made before Sergeant, marked "HB-1".

Trusting you will find all in order.'

[7] Despite the memorandum indicating that the police statement was attached, it was only sent through subsequently.

[8] On 24 August 2024, Ms Hlazo-Bangani was issued with a notice to attend a disciplinary hearing where she was to face three charges of gross negligence, dishonesty and misrepresentation at a hearing scheduled for 8 September 2021.

[9] On the same day, she applied for annual leave in respect of the period 30 August 2021 to 7 September 2021. She did not receive approval of her leave requested but nonetheless did not work on 30 August 2021 and visited a doctor on 31 August 2021, followed by further doctors' visits thereafter. She did not attend at work and she did not submit an application for sick leave in respect of the periods of her absence.

[10] Ms Hlazo-Bangani did not attend a scheduled meeting on 29 August 2021 and on the same day, an email was sent to her private email address, as was custom and practice by then, informing her to attend a meeting at 08h30 on 30 August 2021. Although it was not disputed that the email had been sent, it was disputed that it had been received. It is common cause that Ms Hlazo-Bangani did not attend the meeting. This resulted in two more charges being added to the hearing notification.

[11] Ms Hlazo-Bangani faced the following charges in her disciplinary hearing:

‘CHARGE 1

GROSS NEGLIGENCE – in that

1. On 09/07/2021 you negligently lost the municipal laptop and thereby contravening section 78(1) of the MFMA which states that “the assets of the municipality are managed effectively and that assets are safeguarded and maintained to the extent necessary”. The municipality incurred financial loss of approximately R30 100,00 inclusive of other accessories.

CHARGE 2

DISHONESTY – in that

2. On 09/07/2021 you signed a statement at Msobomvu Police Station under oath that there was a theft in your motor vehicle, a white polo registration On the 12/07/2021 you had an opportunity to withdraw your statement from the police because you were at the Ibika garage to view the CCTV footage which showed no incident of theft from your motor vehicle.

CHARGE 3

MISREPRESENTATION – in that

3. On 14 /07/2021 you made a false claim regarding your laptop that it was stolen whilst you knew that the CCTV footage at the garage showed no evidence that your motor vehicle was a victim of crime and thereby you made a fraudulent misrepresentation and attempted to

provide misleading information to the employer because you saw the footage at the garage and that you were not a victim of crime at Ibika garage.

CHARGE 4

GROSS INSUBORDINATION – in that

4. On 29th August 2021 at 4:56 pm received an email from the Municipal Manager instructing you to meet with Mr David Magadla at 08h30 on 30th August 2021 and discuss the contingency liabilities for inclusion in the Annual Financial Statements that were to be submitted to the Auditor General on 31st August 2021. You failed to honour that meeting and that on the 29th August 2021 you were also invited to be part of the Audit Committee meeting which you did not attend without an apology. Therefore you failed to carry out lawful instructions from the Municipal Manager thereby undermining his authority.

CHARGE 5

GROSS MISCONDUCT – in that

5. Between 30th of August and 07 [September] you took unauthorised leave of absence. The approved leave policy states that “It is incumbent upon the employee to ensure that their leave application has been approved prior to going on leave.” Therefore your absence from work without proper leave approval from your supervisor constitutes gross misconduct.’

[12] It is common cause that the statement referred to at charge 2 was signed on 12 July 2021 after a viewing of the CCTV footage on the same day.

[13] Ms Hlazo-Bangani did not participate in the disciplinary enquiry after the preliminary points raised by her representative were dismissed. She was found guilty of all the charges and dismissed. Her internal appeal was also dismissed. The value of the assets lost under her care, was deducted in two parts from her final payslips after her dismissal.

- [14] After an unfair dismissal dispute referral to the Third Respondent, the Commissioner conducted the arbitration on several days and ultimately found that the dismissal was not procedurally unfair. In addition thereto, the Commissioner found that although Ms Hlazo-Bangani was guilty of charges one and five, same did not justify dismissal as the Applicant's policy provides for repayment of the value of the lost assets and warnings as appropriate remedies. The Commissioner furthermore found that Ms Hlazo-Bangani was not guilty of the remaining charges two, three and four.

Grounds of review

- [15] The Applicant raised several grounds of review in its application and seeks an order that the award be set aside and be substituted with an award that Ms Hlazo-Bangani's dismissal is fair, alternatively that it be remitted back to the Third Respondent for a hearing *de novo*. The review was considered as one under section 145 of the Labour Relations Act (LRA)¹.
- [16] Although the Applicant did not accept the Commissioner's outcome in respect of the fourth charge against Ms Hlazo-Bangani, the Applicant's focus in its review application was directed specifically in relation to charges two and three, being the charges relating to dishonesty and misrepresentation.
- [17] The Commissioner confirms that an employment relationship is based on trust and that honesty in dealing with the affairs of the employer is expected of all employees. He further confirms that dishonest conduct by an employee involves moral turpitude which damages the trust relationship on which the contract of employment is founded and that such dishonest conduct may consist of withholding information from the employer or making a false statement or misrepresentation with the intention of deceiving the employer.
- [18] In deciding the matter, the Commissioner accepted the version of Ms Hlazo-Bangani during her evidence in chief, without any reference to her evidence and parts of her evidence during cross-examination which were contradictory. He also did not make any reference to, consider or deal with Ms Hlazo-

¹ Act 66 of 1995 (as amended).

Bangani's version that differed in many respects from the version that was put to the Applicant's witnesses during cross-examination. He furthermore did not deal with or reason his way through the concessions made by Ms Hlazo-Bangani during cross-examination.

[19] During cross-examination of the Applicant's witnesses, it was put to them that the sworn statement deposed to by Ms Hlazo-Bangani was correct. During her own testimony, it however became clear that there were material contradictions and new evidence was also introduced, which evidence did not appear in her sworn statement and was also not put to the Applicant's witnesses, such as that the CCTV footage that she viewed at Ibika garage was unclear and not of a high quality, that there was a possibility that the laptop had been lost or stolen elsewhere or in a different manner, that the laptop might have been placed behind the right seat of the vehicle rather than in the boot as she used to place the laptop either in the boot or behind the seat and her testimony that she was not sure what had happened to the laptop and that same may have gone missing at a different location or in a different manner. Her version with regards to which parts of the vehicle was visible on the CCTV footage also materially contradicted the version put to the Applicant's witnesses, in particular the manager of Ibika garage who testified during the arbitration proceedings that he viewed the footage in relation to Ms Hlazo-Bangani's vehicle with her and due to the aerial view he had of the vehicle, it was evident that no incident occurred in relation to her vehicle.

[20] In addition thereto, she did not make any mention in her statement that she had viewed the footage and why she believed that theft may have occurred at the garage despite the garage manager having maintained that it did not transpire at the garage as confirmed by the CCTV footage.

[21] These were just some of the material statements, contradictions and inaccuracies there were not considered or dealt with by the Commissioner in his award.

[22] The Commissioner also confirms that by the time of her testimony, Ms Hlazo-Bangani was still not sure what had happened to the laptop. She confirmed

that she did not know whether the laptop was lost, misplaced or stolen. Yet the Commissioner does not reason his way through his finding that her statement maintains that the laptop had been stolen, irrespective whether it took place at Ibika Garage or elsewhere.

[23] This Court agrees with the Applicant that the Commissioner's finding that Ms Hlazo-Bangani was not guilty of dishonesty and misrepresentation is contradicted by her own admission that her statement contained inaccuracies and omissions. In this regard, her statement insisted that theft took place in that the laptop was taken from the boot of her vehicle, whilst Ms Hlazo-Bangani admitted that she did not know what had happened to the laptop to the extent that she had her intern help her look for the laptop at the office. She could also not recall whether she left the laptop behind the seat of her car where she usually left it, or whether she left it in the boot of the car as she claimed in her statement.

[24] I pause to mention at this stage that leaving the laptop behind the seat of her vehicle in view of perpetrators whilst running errands inside the garage as opposed to leaving it in the boot of her car, would automatically have caused allegations of negligence to be raised against her which in turn would have resulted in her being required to make good to her employer the loss incurred to the value of R30,200. Ms Hlazo-Bangani admitted to warnings having been circulated, warning against leaving valuables in open sight. However, the laptop being stolen from a locked boot would not have resulted in such finding of negligence. And despite her statement clearly indicating that the laptop was placed in the boot, her testimony was that she was not sure whether she had indeed placed it in the boot, or whether she had placed it behind her seat which is where she had placed it most of the time.

[25] The Applicant also contended that the Commissioner had fabricated a defence for Ms Hlazo-Bangani in circumstances where such defence was not raised by Ms Hlazo-Bangani in the arbitration and could also not be sustained on the available facts. In this regard, the Commissioner stated in his award that the Applicant did not engage Ms Hlazo-Bangani further in an investigation to ascertain the likely state of affairs pertaining to the loss before charging

her. No evidence was presented to suggest that the Applicant had such a duty or obligation. The statement was submitted by Ms Hlazo-Bangani to the Applicant to assess the circumstances surrounding the disappearance of the laptop. At no stage did Ms Hlazo-Bangani provide a further updated statement or intimate a desire to do so.

- [26] Ms Hlazo-Bangani is the Applicant's Manager of Legal Services. She is an admitted advocate of the High Court of South Africa. She therefore had a heightened duty to maintain honesty in her dealings with her employer and was obliged to disclose all relevant information regarding the loss of the assets. She confirmed that the statement she deposed to was meant to assist the Applicant in determining whether her conduct in relation to the laptop was negligent or intentional. The statement was therefore critical.
- [27] Considering the errors made by the Commissioner and the inadequate consideration of material evidence before him, one cannot find that the Commissioner's award is reasonably related to the outcome. His award does not fall within the bands of reasonableness.
- [28] From the evidence of Ms Hlazo-Bangani during the arbitration proceedings, it is evident that she was guilty of misrepresentation. She mislead her employer into believing that the laptop had been placed in the boot of her car, from where it had been stolen at Ibika Garage, whilst her evidence demonstrated that she may negligently have left it behind the driver seat in full view of criminals and that it may not even have been stolen. Rather than admitting her negligence and paying for the replacement of the lost assets, she continued asserting theft from the boot. The payment in respect of the lost or stolen assets was only made by means of deductions from her salary after her dismissal. The evidence of the manager of Ibika Garage was clear and without contradictions and stands to be accepted above that of Ms Hlazo-Bangani whose testimony and versions were contradictory as referred to hereinabove. The dismissal of Ms Hlazo-Bangani stands to be upheld.
- [29] In relation to costs, this Court has a discretion to exercise. Albeit that the award stands to be reviewed and set aside, one cannot blame the First

Respondent for attempting to defend a reinstatement award made in their favour.

[30] In the premises, the following order is made:

Order

1. The award under case number ECD122023 dated 18 April 2023 is reviewed and set aside and replaced with the following award:

‘The dismissal of Ms Hlazo-Bangani is procedurally and substantively fair.’

2. There is no order as to costs.

L. Erasmus

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Adv FT Pretorius

Instructed by: Wesley Pretorius and Associates Inc.

For the First Respondent: Adv M Thys

Instructed by: Jolwana Mgidlana Inc.

LABOUR COURT