

**IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT JOHANNESBURG**

Case No: JR 738/03

In the matter between

JABULANI KHUMALO

Applicant

And

**COMMISSION FOR CONCILIATION,
MEDIATION AND ARBITRATION**

1st Respondent

COMMISSIONER R D FITZCHARLES

2nd Respondent

SKY MARK SECURITY

3rd Respondent

JUDGMENT

REVELAS J: This is an application for the review of a ruling handed down by the second respondent (“the commissioner”) wherein he found that the Commission for Conciliation Mediation and Arbitration (“the CCMA”) did not have the necessary jurisdiction over the dispute between the applicant and his former employer SKY MARK SECURITY (the first respondent). The applicant had been employed as a security guard. According to the applicant, he had been dismissed by the first respondent in July 2002 when he objected to a reduction in his salary. According to him, he was given the choice of accepting the reduction or resigning. In his founding affidavit he states the following:

“On or about the first week of July 2002 when I went back to work, Kim Cawalha told me that my position is no longer available”

He then referred a dispute an unfair dismissal where the commissioner having heard both parties, ruled that the applicant had not been dismissed. Hence the lack of jurisdiction.

According to the first respondent, consultations were held with the applicant’s Union with regard to the downgrading of security guards as an operational requirement. The applicant refused to co-operate in this process. Documentation to the effect that the applicant was still

employed at the relevant time was put before the arbitrator.

The arbitrator rejected the evidence of the applicant on the basis of unreliability. He accepted the first respondent's version that the applicant was never dismissed. On his own version, the applicant had left!

From the ruling it would appear that the applicant's case before the commissioner was that the down-grading was unacceptable to him. No mention is made of the fact that he was presented with a choice of resigning or accepting the downgrading, as the applicant would have it in his founding application to the review application.

In order to have the ruling in question set aside, the applicant had to demonstrate that the commissioner did not apply his mind to the evidence before him and came to a conclusion which is not rationally connected to such evidence.

Firstly, the commissioner made a credibility finding and a review court or a court of appeal should be very cautious to interfere in such findings. The person hearing the evidence has had a better opportunity to observe the witness and unlike commissioner in question, this court was not steeped in the atmosphere of those proceedings.

Secondly, there is no record of the proceedings to support the applicant's submissions. Even if the matter is unopposed, I still have to evaluate the available evidence.

Finally, the applicant has failed to demonstrate any grounds upon which I could interfere with the ruling of the second respondent.

The application was dismissed accordingly.

E. Revelas

Applicant appeared in person.

1. Date of hearing 9 March 2004.
2. Ex tempore judgment handed down in court.
3. Typed judgment not available and typed reasons furnished.