

**SAFLII Note:** Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)



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

Signature

Date

## THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case No: J1081/23

In the matter between:

**MINISTER OF POLICE**

**First Applicant**

**NATIONAL COMMISSIONER:  
SOUTH AFRICAN POLICE SERVICE**

**Second Applicant**

**PROVINCIAL COMMISSIONER:  
SOUTH AFRICAN POLICE SERVICE**

**Third Applicant**

**SOUTH AFRICAN POLICE SERVICE**

**Fourth Applicant**

and

**SAFETY AND SECURITY SECTORAL  
BARGAINING COUNCIL (SSSBC)**

**First Respondent**

**THABE PHALANE N.O.**

**Second Respondent**

**SAM HENDRI PIETERSEN**

**Third Respondent**

**KAREL CHRISTOPHER MASHEGO**

**Fourth Respondent**

**Heard: 26 February 2026**

**Delivered: 5 March 2026**

Labour law - Review - Condonation — Significant delay with inadequate explanation - Interests of justice remain decisive – prospects of success, prejudice and importance of matter - Condonation granted – Applicant ordered to pay costs for its inadequate explanation for delay.

Police officials – Third Respondent - Misconduct - Failure to investigate suspected stock theft – No misconduct established – Dismissal substantively unfair – Arbitration Award - Commissioner's decision reasonable.

Police officials – Fourth Respondent - Misconduct - Failure to investigate suspected stock theft - Visible brand marks on impounded cattle ignored – Reliance on unverified telephone information – Ignorance of earlier statements - Release of cattle to unauthorised person without proper verification - Purchase of impounded cow by investigating officer - Contradictory and improbable evidence - Serious misconduct established — Dismissal substantively fair

Arbitration award – Fourth Respondent - Reviewability - Commissioner misconstrued material evidence and failed to analyse inconsistencies – Findings – Commissioner's decision set aside and substituted - Unfair dismissal claim dismissed.

Arbitration award - Section 158(1)(c) application - No basis to interfere with award regarding third respondent - Award made order of court.

**This judgment was handed down electronically by circulation to the parties' legal representatives by email. The date of hand-down is 5 March 2026.**

---

## **JUDGMENT**

---

**MAKHURA, J**

## Introduction

- [1] This matter concerns an opposed review application brought in terms of section 145 of the Labour Relations Act<sup>1</sup> (LRA) against the arbitration award issued by the second respondent (commissioner) dated 8 November 2022. This review application is accompanied by an application for condonation for its late delivery.
- [2] The third respondent, Sam Handri Pietersen (Pietersen), and the fourth respondent, Karel Christpher Mashego (Mashego), oppose both the review and condonation applications. Pietersen filed his answering affidavit outside the prescribed time period and accordingly seeks condonation for its late delivery. He has also launched an application in terms of section 158(1)(c) of the LRA to have the arbitration award made an order of court.

## Condonation applications

- [3] The applicant states that it received the award on 9 December 2022. The review application was therefore due on 20 January 2023. The explanation provided for the delay up to 3 April 2023 is, in my view, overall reasonable. However, the explanation for the period between 3 April and 28 June 2023 is inadequate. During these approximately three months, the deponent waited for authorisation from the National Commissioner without making any follow-up enquiries. After authorisation was finally granted on 28 June 2023, the deponent forwarded a request to the State Attorney to initiate the review application.
- [4] The instruction to the State Attorney was sent on 30 June 2023. The State Attorney then took an additional month and a half before appointing counsel. There is no explanation why the State Attorney, in this case, Matome Madibogo, as a qualified attorney, could not draft a review application. Instead, the Court is merely informed that urgent quotations were sought from counsel and that counsel was appointed only on 15 August 2023. The review application was eventually launched on 29 August 2023.

---

<sup>1</sup> Act 66 of 1995, as amended.

- [5] Having considered the explanation for the delay as a whole, I am not satisfied that it provides a full and reasonable account of the delay. Nevertheless, it is trite that the overarching test in a condonation application is the interest of justice, which requires consideration of all relevant factors.<sup>2</sup> As the Constitutional Court (CC) emphasised in *Mphephu-Ramabulana and Another v Mphephu and Others*<sup>3</sup>:

‘While I am of the view that the extremity of the delay, coupled with the paucity of the explanation provided, justify the immediate refusal of condonation, I am mindful that this Court has said that lateness and inadequacy of the explanation provided are not necessarily dispositive of the question of condonation. This is because the other factors relevant to condonation may favour its granting and tilt the interests of justice to the other side of the scale...’

- [6] Therefore, whilst I accept that the application is late and that there are unexplained gaps, these deficiencies are decisive. The CC has said that other factors may tilt the scale of justice to the other side. The employees involved in this matter are police officials whose daily duties include upholding and enforcing the law and contributing to the administration of justice, and who have been alleged to have failed in these critical duties. I have also considered the prospects of success, as set out more fully later when I deal with the review application, as well as the potential prejudice to the employees may suffer. In my view, the potential prejudice can be mitigated by an appropriate costs order. In the circumstances, the interest of justice favours granting condonation.
- [7] Having considered all these factors, the applicant’s condonation application must succeed. However, due to its failure to provide a full account for the entire period, it must bear the costs of the condonation application.

---

<sup>2</sup> *Grootboom v National Prosecuting Authority and another* 2014 (2) SA 68 (CC); [2014] 1 BLLR 1 (CC) at paras 22 – 23; *Brummer v Gorfil Brothers Investments (Pty) Ltd* 2000 (2) SA 837 (CC); 2000 (5) BCLR 465 (CC) at para 3; *Van Wyk v Unitas Hospital (Open Democratic Advice Centre as Amicus Curiae)* 2008 (2) SA 472 (CC); 2008 (4) BCLR 442 (CC) at para 20.

<sup>3</sup> [2021] ZACC 43; 2022 (1) BCLR 202 (CC) at para 38.

[8] The same principle applies to the third respondent's unopposed application for condonation for the late delivery of his answering affidavit. The third respondent has provided a reasonable explanation for the two-months delay, and his application is therefore granted.

[9] I now turn to the merits of the review application.

### Material facts and evidence

#### *The charge sheet*

[10] The employees were charged with two identical allegations of misconduct. The first charge was serious misconduct as provided for in regulation 5(3)(b)(iii) of the *South African Police Service Discipline Regulations, 2016*<sup>4</sup> (SAPS Regulations) in that between 30 October 2018 and 8 November 2018, at Murryhill Pound and Onderstepoort Auction, they:

'Performed an act, or failed to perform an act with the intention not to comply with [their] duties and responsibilities, in that [they] confiscated suspected stolen cattle near Vereeniging, [they] impounded the cattle, but failed or neglected to trace the rightful owner and that, [they] handed these cattle back to a person who could not lawfully possess them.'

[11] Regulation 5(3)(b)(iii) provides that an employee will be guilty of misconduct if he or she performs any act or fails to perform any act with the intention not to comply with his or her duties or responsibilities.

[12] The second charge was serious misconduct as provided for in regulation 5(3)(t) of the SAPS Regulations, 2016, in that on 8 November 2018, they:

'Conducted [themselves] in an improper, disgraceful and unacceptable manner, by attempting to sell a cow at the auction which was the property of Mr SW Fourie from Christiana.'

---

<sup>4</sup> *South African Police Service Discipline Regulations*, GG 40389 of 1 November 2016.

- [13] Regulation 5(3)(t) provides that it makes it an offence for an employee who conducts himself or herself in an improper, disgraceful and unacceptable manner.
- [14] On 17 July 2018, they were found guilty of both allegations of misconduct. Pietersen was dismissed with effect from 26 July 2018. Pietersen held the rank of captain at the time of his dismissal. Karel Christoher Mashego (Mashego) was dismissed on 18 July 2018. At the time of his dismissal, he held the rank of sergeant. The applicants challenged the substantive fairness of their dismissal.

#### *The evidence*

- [15] Pietersen was employed with effect from 12 January 1994. At the time of his dismissal, he had over 24 years of service with the SAPS and held the rank of Captain. Mashego joined the SAPS on 3 June 2002, had 16 years' service, and held the rank of Sergeant at the time of his dismissal.
- [16] On 30 October 2017, the two employees reported for night shift duty. They were part of a special operation at the Vaal area, led by Colonel Greyling, joined by Captain van der Walt, Warrant Officer Pretorius and Constable Mahlangu. In the early hours of 31 October 2017, Greyling and van der Walt left the operation, leaving Pietersen, as the most senior officer of the remaining employees, in charge of the operation.
- [17] At approximately 4h30, Pietersen and the remaining officers stopped a red Mitsubishi Pajero towing a green trailer containing nine cattle, including three calves. This vehicle was driven by Bafana Watt (Watt). Watt had three passengers. Pietersen's evidence was that upon enquiring from Watt about the ownership of the cattle, Watt said that they belonged to him. However, Watt did not have a certificate of ownership and for the transportation of the livestock. The evidence was that Watt and the passengers searched for the certificate in the vehicle, but could not find it. Watt then directed them to a nearby farm, owned by Reuben Mhlongo (Mhlongo).

- [18] When they arrived at Mhlongo's farm, they offloaded the cattle. One cow had been lying down injured in the trailer. Pietersen was in constant contact with Greyling, and together they decided to impound the cattle on suspicion that they were stolen. Watt and his companions were not arrested at that stage pending further investigation. Pretorius was instructed to photograph the cattle, which he did.
- [19] The cattle were taken to the Murrayhill Pound, where Mashego booked them in, except for the injured cow, which later died. Salani, a pound employee, testified that Mashego failed to record the brand marks even though they were visible. Both Salani and Pretorius confirmed that the cattle had clear brand marks, which Pretorius could point out on the photographs. Mashego's evidence on the brand marks was inconsistent. He variously claimed that the cattle had "*no brand marks*", "*no visible brand marks*" and that the brand marks were not "*clearly visible*", that there were "*vague brand marks*" and that they were not visible "*with a naked eye*". He later argued that the brand marks on the cattle, specifically on the cow he allegedly purchased on behalf of a relative, which was a subject of the attempted auction, were added after the cow was confiscated on 8 November 2017.
- [20] The operation continued until the afternoon of 31 October 2017. Pietersen informed Mashego, Mahlangu and Pretorius that Greyling had assigned Mashego to open an enquiry docket and conduct the investigation. He also told them they could leave and take the following day, 1 November 2017, off.
- [21] Although Pietersen's evidence was that Watt informed him that the cattle impounded on 31 October 2017 belonged to him, Mashego recorded a different version in his investigation diary on 31 October 2017. He recorded:

'Six cattle and three calves (sic) were found inside the trailer being transported to plot 54 Rietkuil by Bafana Watt driving a red Mitsubishi Pajero reg JZY 394 GP. Bafana was not having a section 8 document and alleged that the cattle come from Thabiso of Potchefstroom to Mr Reuben Mhlongo who was found at his plot.

The cattle were having many brand marks which were later tested. One cow was trampled by other cattle and sustained injuries and died. The cattle were pounded at Murrayhill Pound for further investigation.’ (Emphasis added)

[22] In another uncommissioned statement, Mashego wrote that:

‘On Tuesday 2017/10/31 at about +-5:00 I was officially on duty at Sebokeng when I stopped a red Mitsubishi Pajero reg J[...] towing a green trailer reg V[...] which was loaded with cows and calves (sic). There were four occupants inside the Mitsubishi. The driver Bafana Watt said that he is transporting the cattle from Potchefstroom and he doesn’t know the place where they loaded. He said the cattle are going to Reuben (Mhlongo) who stays at plot 54 Rietkuil.

Reuben Mhlongo was called and said the cattle belongs (sic) to him and he bought them from Thabiso. Bafana was escorted to Reuben’s plot and suspected that the cattle might be stolen because he failed to produce the purchase papers. The cattle were taken to Murrayhill Pound for safe keeping and investigate further.’ (Emphasis added)

[23] Mashego’s statements conflict with Pietersen’s version during arbitration. Pietersen claimed that Watt said the cattle belonged to him, while Mashego wrote that Watt said the cattle belonged to Mhlongo. This is also inconsistent with Mashego’s own testimony that he had not even spoken to Watt at the roadside. Mashego’s statements also contradict themselves, suggesting variously that the cattle were bought from Thabiso, belonged to Mhlongo, and were being transported from Potchefstroom to Mhlongo’s farm.

[24] The cattle, per the evidence before the commissioner, had the following brand marks, SF Smiley, VHW and PSF. Mashego’s own written statement acknowledged that the cattle had “*many brand marks*”, although during his cross-examination, he tried to read his statement as the cattle “*not having many brand marks*”. Pietersen and Mashego entered a formal admission at the arbitration that the brand mark “SF Smiley” or “Smiley SF” was registered to VTV Boerdery EDMSA Beperk of Christiana, owned by Schalk Willem Fourie (Fourie).



- [25] Pietersen returned to duty on 2 November 2017. His evidence was that after the parade, which starts at 7h30 and takes about 15 minutes, he overheard Mashego telling Greyling that he received the section 6 and 8 certificates from Watt and had *“followed up on all the relevant information, and everything”*. According to Pietersen, Greyling replied that *“if [he] was sure and if [he is] satisfied with the investigation, [he] can hand over the cattle to Mr Watt”*. Mashego did not challenge Pietersen’s account of his conversation with Greyling.
- [26] The cattle were released by Mashego and handed over to Watt on 2 November 2017. However, Watt left one cow. Salani testified that Watt said that he would return later to collect the remaining cow. However, around 12h00 on the same day, Mashego phoned Salani and informed him that he would send someone to collect the cow later that day. No one arrived to fetch the cow on 2 November 2017.
- [27] In his statement dated 9 November 2017, Mashego described the events of 1 and 2 November 2017 as follows:

‘On Wednesday, 2017/11/01 at about +- 10h00 I was busy on my investigations when I received a call from Mr Ben Van Zyl of Hartswater informing me that he had sold the cattle to Mr Bafana Watt of Evaton. I asked for the document section 6/8 which he send (sic) to me. He gave me the description of all the cattle and I was satisfied with the explanation as it is the same information which I received from Mr B Watt when he was found with the cattle.

The article 6/8 was not given when the cattle were loaded at Hartswater and it was forwarded to me.

On Thursday 2017/11/02 at about +-10h00 the cattle were handed over to the lawful owner Mr B Watt ID 930209 95528 087 of Evaton. In the morning of Thursday 2017/11/02 my commander Colonel Greyling was notified and he gave a go ahead... cattle ... be handed over to the lawful owner which I did. He also saw the section 8 document.’ (Emphasis added)

- [28] Despite Pietersen not being challenged when he testified about the conversation he overheard between Mashego and Greyling on the morning of 2 November 2017, Mashego later gave a different version. Although his written statement said he “*notified*” Greyling and received approval, in his oral testimony, Mashego claimed, for the first time in his evidence-in-chief, that Greyling actually *instructed* him to release the cattle to prevent a potential civil lawsuit.
- [29] Further, despite his statement saying that Ben van Zyl (van Zyl), the alleged seller of the cattle to Watt, called him and forwarded the certificate to him, Mashego testified that he, in fact, called van Zyl and that he received van Zyl’s contact details from Watt. He then allegedly called van Zyl and asked him questions to satisfy himself that indeed van Zyl was the lawful owner and seller of the cattle. After the telephone conversation, Mashego was satisfied that van Zyl was the lawful owner and that Watt had purchased the cattle from him.
- [30] The SAPS uses an Animal Identification System to verify livestock brand marks and trace ownership, including checking for any links to stock-theft cases. When Mashego was questioned about what investigation he actually conducted after opening the enquiry docket, he said that he took Watt’s driver’s licence details and phoned van Zyl, who allegedly confirmed selling the cattle to Watt. Mashego could not have profiled Watt because the ID number written on his statement was incorrect. He further claimed to have searched the SAPS Crime Administration System (CAS) even though there was no CAS number for the case. He later said that he was just “*randomly*” searching because there were no visible brand marks and that he was merely “*assuming*” what the brand mark might be.
- [31] Regarding the cow left behind, Salani testified that Watt told him he planned to return later to fetch it. Mashego’s version was inconsistent. First, he said that Watt could not load the cow because it did not fit in the trailer. He said that after Watt was handed over the cattle:

‘the only one which was left was not, did not fit in the trailer and when [he] asked him why he said no, talk to Elson [Salani] that he must find me a buyer because he saw that that place is an auction so he wanted to sell one cow.’

[32] Later, Mashego explained that:

‘... initially he asked that guy, Elson then I just heard the conversation when he asked that guy then I, after I handed him the cattle then I heard and then he called me and then he said he left one cow, the one cow that he left he wants a buyer, can I, is there anyone whom I know and I asked him did Elson assist you. He said no, this guy did not assist me, can you please assist me.

Then I asked him why, he said no, my costs were... [indistinct] and then you took my trailer, he was complaining a lot, you took my trailer and then going to Hartswater to collect that document and then come back and give it to you, it was costly, it cost me so much.

Then he asked if I can at least help him and then from the perspective of, you know a person and ubuntu I said okay, let me call around and then somebody can come and buy that cow.’

[33] Mashego’s explanation of how he learned about Watt wanting to sell the cow is contradictory. At one point, he claimed Watt asked Salani to look for a buyer; at another, he said Watt phoned him personally to request help in finding one. He claimed the cow was left because it did not fit in the trailer, yet later said Watt wanted to cover the costs incurred in travelling to Hartswater. His explanation is questionable because Watt did not know where Hartswater was when he was questioned during cross-examination. Mashego phoned Salani around midday on 2 November to inform him that someone would collect the cow, indicating the sale had already been concluded, even though Mashego insisted the transaction occurred only after he had gone off duty. The exact timing and circumstances of the cash payment and invoice remain unexplained.

[34] Mashego found a buyer for the cow, a distant relative who needed livestock for a traditional ceremony on 11 November 2017. Mashego claimed that he paid Watt

R6500.00 in cash on 2 November 2017 for this cow. When asked whether he considered this transaction improper, he denied any wrongdoing, saying he was off duty when the purchase took place and therefore did not view it as inappropriate.

- [35] When Watt was arrested in December 2017, he made a statement saying that when Mashego released the cattle, he kept one cow and that he did not know *“for what”*. At arbitration, Watt changed his version and attempted to support Mashego’s account, claiming that his December 2017 statement may have been inaccurate because he gave it in Sesotho and something may have been *lost in translation*.
- [36] From the evidence presented, it appears that Mashego, who released the cattle to Watt around 10h00, had already ended his shift by the time he completed the transaction with Watt. Watt collected the cattle at around 10h00 and drove back to Evaton, having left one cow behind supposedly for sale. By approximately 12h00, Mashego had already contacted Salani to say someone would fetch the cow, showing that the arrangement to sell it had already been finalised. Yet Mashego insisted that the sale only occurred when he was off duty and/or going home. The precise timing of the cash payment and the issuing of the invoice remains unclear, considering the tight timeframe between Watt’s departure and Mashego’s midday call.
- [37] Pietersen testified that he saw Mashego on 3 November 2017. On this day, Mashego informed him that he had booked out the cattle to Watt and that he bought one cow from him, on behalf of one of his family members who needed it for a traditional ceremony. Mashego also showed Pietersen the receipt of R6500.00 for the purchase and asked him if he knew anyone who could assist with transportation of the cow. Pietersen said that his daughter was expecting two cattle to arrive that day, and arrangements had already been made for Lourens to collect those cattle for delivery to an abattoir. Mashego asked whether Lourens could also collect his cow, and they agreed on a transport fee of R200.

Although Mashego did not challenge Pietersen's testimony, he later claimed that he knew nothing about the transport arrangements until Monday, 6 November 2017, only to concede during cross-examination by Pietersen's representative that he had indeed participated in making the arrangements.

- [38] According to Salani, Mashego phoned him again on 3 November 2017, informing him that someone was coming to collect the remaining cow. Around 9h00 that morning, Lourens arrived at the pound and told Salani he had been sent by Pietersen. As a result, Salani released the cow to Lourens under Pietersen's name. Lourens then transported both Pietersen's daughter's cow and the cow allegedly bought by Mashego to his farm after being unable to deliver Pietersen's daughter's cow to the abattoir, which was closed.
- [39] Lourens later informed Pietersen that his daughter's cow was pregnant. A decision was taken that the pregnant cow must be sold at the auction on 8 November 2017. Coincidentally, issues arose regarding the cow Mashego claimed to have bought for the family member. The family member for whom Mashego supposedly purchased the cow discovered it was a heifer, not a bull, and therefore unsuitable for the ceremony. The family member instructed Mashego to sell it at the upcoming auction and find a bull instead. During cross-examination, Mashego also admitted that the cow he purchased was pregnant, just like Pietersen's daughter's cow. As a result, Lourens was asked to transport both cows to the 8 November 2017 auction.
- [40] On 7 November 2017, Fourie, the lawful owner of the cattle with the brand marks SF Smiley, along with a private investigator, de Jager, met with Mashego. They showed Mashego a video footage of the red Pajero with a green trailer. Mashego was informed that the vehicle was involved in the theft of Fourie's livestock. Mashego informed them that he had already released the cattle to Watt and allegedly gave them directions to Mhlongo's farm. Mashego refused to accompany Fourie and de Jager to Mhlongo's farm.

- [41] On 8 November 2017, Lourens transported the cattle to the auction. Pietersen tried to secure an early auction number but failed, and Mashego also failed to secure one. Pietersen ultimately instructed Lourens to return the cattle to his farm. Jan Hendrik Labuschagne (Labuschagne), the applicant's second witness, testified that he and a colleague responded to a complaint at around 12h57 that day about suspected stolen cattle being sold at the auction. Two cows were involved: one with the SF Smiley brand (linked to Fourie) and one with the brand \$T2P3 (belonging to Pietersen's daughter). Labuschagne spoke to Lourens, who said that Pietersen had asked him to register the cows under his name at the auction, which he refused. An employee at the auction also refused. Labuschagne photographed the cows and arranged for them to be taken to the Cullinan Pound for safekeeping. The cattle were first taken to Lourens' farm.
- [42] During the cross-examination of Labuschagne, Mashego put forward the argument that both Labuschagne and Pretorius were conspiring against him. He claimed that on the day of the auction (8 November 2017), the cow allegedly purchased by him had *no* brand mark and that it was taken to Lourens' farm specifically to be branded. This was inconsistent with earlier evidence from multiple witnesses and Mashego's own written statement, which had confirmed that the cattle had visible brand marks.
- [43] Mashego called Watt as a witness in an attempt to strengthen his defence. Watt testified that after his arrest in December 2017 for suspected stock theft, the criminal case against him was provisionally withdrawn. He speculated that the withdrawal was due to his providing proof that he owned the cattle. Watt also contradicted Mashego's earlier statement, which suggested that he told Mashego on the day of the incident that the cattle belonged to Mhlongo. Watt said that he never said the cattle were not his; rather, he merely suggested they go to his uncle Mhlongo's farm when stopped. He confirmed that the cattle had brand marks, even if they were not very clear, and he was unsure whether he had ever been to Hartswater, despite Mashego's version that Watt had travelled there to collect documents.

### The arbitration award

[44] The commissioner found that Pietersen played no role in the investigation and therefore could not be held responsible for failing to trace the rightful owner of the cattle. He also did not release the cattle to Watt. Regarding the second charge, the commissioner held that the applicant failed to prove that Pietersen attempted to sell a cow that belonged to Fourie.

[45] With respect to Mashego, the commissioner found that Mashego had:

‘established in his investigations that the lawful owner of the cows was Mr Watt and he lawfully handed the cows back to the rightful owner.

The evidence is uncontested and there is evidence of a witness, Mr Bafana Watt, who testified that the cows were bought by him from a Mr Van Zyl, and that he sold a cow, with the assistance of the Applicant, so that he can recoup the loss he suffered due to the cows being impounded...

There is also uncontested evidence that of the cows that were being sold at the auction one belonged to the Applicants’ daughter and one belonged to Mr Watt. The real owners of the cows were therefore known and the Applicant did not therefore attempt to sell a cow that belonged to a Mr Fourie.

Mr Watt submitted uncontested evidence that he was arrested, presumably after the Private Investigators of Mr Fourie came to see the Applicant in his offices, however the case was withdrawn because he produced uncontested evidence that he bought the cows from Mr Van Zyl.

There was no evidence by a Mr Fourie that he lost a cow/cows and that these cows were found in the possession of Mr Bafana Watt. The only reasonable conclusion therefore is that Mr Watt was the lawful owner and that the applicant had established this fact and when he bought the cow he was in a lawful transaction.’

- [46] The commissioner concluded that both Pietersen's and Mashego's dismissals were substantively unfair, and ordered their retrospective reinstatement with full backpay.

### Analysis

- [47] Section 205 of the Constitution<sup>5</sup> provides that:

'The objects of the police service are to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law.'

- [48] Therefore, the SAPS's mandate is crime prevention. Members of the SAPS must prevent, combat, and investigate crime, maintain public order, protect citizens and their property, uphold and enforce the law. Effective crime prevention and public trust require police officials to respond promptly to suspected criminal activity and to conduct proper investigations. Police officers must not neglect or outsource these constitutional responsibilities.

- [49] Section 6 of the Stock Theft Act<sup>6</sup> requires anyone in possession of livestock to be able to prove ownership, while section 8 prohibits transporting livestock without the proper documentation issued by the owner. A person found with suspected stolen stock must provide a satisfactory explanation for such possession, failing which he shall be guilty of an offence.<sup>7</sup>

### *Pietersen*

- [50] The applicant argued that the commissioner erred in finding Pietersen's dismissal substantively unfair because he supposedly overlooked Labuschagne's evidence. That evidence indicated that Lourens transported both cows to the auction at Pietersen's instruction, that Pietersen and Mashego paid R400 for the transport, and that one of the cows bore the SF Smiley brand. It is, however,

---

<sup>5</sup> Constitution of the Republic of South Africa, 1996.

<sup>6</sup> Act 57 of 1959.

<sup>7</sup> See sections 2 and 3 of the Stock Theft Act.



common cause that the cow that bore the mark SF Smiley was allegedly bought by Mashego, not Pietersen. Pietersen testified that he was informed by Mashego about this transaction on 3 November 2017.

- [51] It is common cause that Pietersen's involvement ended when the operation on 31 October 2017 concluded with the decision from Greyling that Mashego must open the docket and investigate the matter. Pietersen's subsequent actions related solely to helping his daughter manage the sale of her cow. While Pietersen's deep involvement in his daughter's livestock business, especially given his placement and position in the stock-theft unit, may raise concerns, the court is required to evaluate the review strictly on the basis of the grounds raised, taking into account that the dismissal of the employee must be determined based on the reason provided by the employer for the dismissal.
- [52] Considering the charges against Pietersen and the evidence presented, there was no basis to find that he committed serious misconduct or any misconduct at all. The commissioner's finding that his dismissal was unfair is therefore reasonable. There was no evidence of improper conduct to deny him reinstatement or limit his back-pay.

### *Mashego*

- [53] It is common cause that the cattle impounded on 31 October 2017 had visible brand marks. The commissioner completely ignores this important fact. Further, Mashego was assigned as an investigating officer to trace the lawful owner of the cattle, using the said brand marks and all available resources within the SAPS. It is safe to say that he conducted no investigation. His statements were inconsistent, saying in a written statement that van Zyl phoned him and sent him the section 6 and 8 documents, and at arbitration claiming he had phoned van Zyl after receiving his contact details from Watt. Whichever version is true, Mashego accepted a single telephone conversation with an unknown person as sufficient proof of ownership and released the cattle without proper verification.

- [54] Mashego's version was littered with contradictions and improbable coincidences. His own statements indicated that Watt had initially told him the cattle belonged to Mhlongo, and even suggested that Mhlongo confirmed this. Later, he accepted a completely different narrative involving van Zyl from Hartswater. Watt denied knowing Hartswater, contradicting Mashego's claim that Watt had travelled there to obtain the ownership and/or transportation documents from van Zyl, the seller. Mashego's explanations for the purchase of the cow, the cost-recovery motive, and the events between 1 and 2 November 2017 were inconsistent and lacked credibility.
- [55] The evidence showed that Mashego did not properly investigate the matter or verify key information. He ignored the brand marks, relied solely on untested statements, and accepted documents without confirmation. His purchase of the cow left behind by Watt was highly suspicious and poorly explained, and his refusal to assist Fourie and the private investigator on 7 November 2017 further demonstrated that he likely knew Watt was not the lawful owner. His conduct throughout the arbitration showed evasiveness and an outright intention to distort the facts.
- [56] The commissioner did not engage with or analyse any of the evidence demonstrating that the cattle actually belonged to Fourie, as shown by their brand marks. Even if ownership by Fourie were not accepted, there was still no reliable evidence proving that Watt was the lawful owner. Mashego relied on a document allegedly sent by van Zyl, without verifying its authenticity, van Zyl's farm, or his ownership of the cattle. The mere fact that Watt's criminal case was provisionally withdrawn did not establish lawful ownership. Such a withdrawal is not a finding of innocence, nor does it prove that the cattle were legitimately his.
- [57] These failures form the basis of the review grounds. The commissioner misconstrued the evidence, failed to properly assess the facts, misconceived the nature of the enquiry, and made errors of law. As a result, his findings regarding Mashego were unreasonable and cannot stand.

[58] The record of proceedings is before this Court, and there is no need to remit the Mashego's dispute. The Court can substitute the award. The conduct of Mashego constitutes serious misconduct. His behaviour showed that he either knew or ought to have known that Watt was not the lawful owner, and that his purchase of the cow was part of an improper scheme. His actions undermined his duties, the true owner of the cattle, and the Constitution. The trust relationship was destroyed, and dismissal was the only appropriate outcome.

#### The section 158(1)(c) application

[59] Pietersen has applied to make the award an order of the Court. The award has been validly or properly issued, and the review application against it, insofar as Pietersen is concerned, has failed. To the extent that the award applies to Pietersen, there is nothing preventing this Court from making it an order of the court. Accordingly, Pietersen's application must succeed.

#### Conclusion

[60] Both the applicant and the respondents requested costs orders against each other. Apart from the costs already awarded against the applicant in the condonation application, I am not persuaded that fairness and law justify granting any further costs.

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

#### Order

1. Condonation is granted for both the late delivery of the review application and the late delivery of the third respondent's answering affidavit.
2. The applicant is ordered to pay the costs related to its application for condonation.
3. The review application succeeds in part, only in relation to the fourth respondent.

4. The arbitration award, insofar as it relates to the fourth respondent and specifically paragraphs 191 to 194, is reviewed and set aside, and substituted with the following order:

‘The dismissal of the fourth respondent is substantively fair and his unfair dismissal claim is dismissed.’

5. Save as aforesaid, the review application is dismissed.
6. The arbitration award, insofar as it relates to the third respondent and specifically paragraphs 187 to 190, is made an order of the court.
7. There is no order as to costs.

---

M. Makhura

Judge of the Labour Court of South Africa

Appearances:

For the Applicants: Ms N. Kekana

Instructed by: The State Attorney, Johannesburg

For the 3<sup>rd</sup> Respondent: Mr I. Hlalethoa

Instructed by: Mphela & Associates

For the 4<sup>th</sup> Respondent: Mr G.K. Ramaru

Instructed by: Netshilaphala Attorneys