



IN THE LABOUR COURT OF SOUTH AFRICA, GQEBERHA

Not Reportable

CASE NO: PR194/24

In the matter between:

BEWAMU obo HLUNIKAZI MOMANE AND 4 OTHERS

Applicants

and

COMMISSION FOR CONCILIATION,

MEDIATION AND ARBITRATION

First Respondent

JONATHAN GRUSS N.O (COMMISSIONER)

Second Respondent

SOUTH AFRICAN BROADCASTING CORPORATION SOC

Third Respondent

Heard: 26 November 2025

Delivered: This judgment was handed down electronically by circulation to the Applicants' representative and the Third Respondent's Legal Representative by email, publication on the Labour Court website and release to SAFLII. The date and time for handing - down is deemed to be 14h00 on 12 March 2026.

JUDGMENT

LALLIE J

- [1] The Commission for Conciliation, Mediation and Arbitration (the CCMA) was created by section 112 of the Labour Relations Act¹ (the LRA). Its main function is to resolve disputes between employers and employees through conciliation and through arbitration when conciliation has not yielded positive results. The jurisdiction of the CCMA is prescribed by legislation including the LRA. Section 191 of the LRA confers the jurisdiction to conciliate and arbitrate unfair dismissal disputes arising from misconduct. The applicants launched this application in terms of section 145 of the LRA seeking an order reviewing and setting aside a ruling of the second respondent in which he found that the CCMA lacked jurisdiction to arbitrate a consolidated dispute they had referred against the third respondent. The application is opposed by the third respondent.
- [2] The individual applicants were employed by the third respondent who will be referred to as the SABC in this judgment, as technical producers. They were dismissed on 31 October 2023 having collectively served the SABC for 84 years. In 2022 the individual applicants expressed their dissatisfaction with the way in which the SABC scheduled their work. Each party had a different view of how work should be scheduled. The parties could not reach a common understanding on the issue and each struck to its guns. As a result of the impasse the SABC instituted disciplinary enquiries against the individual applicants. They were all found guilty of absence without authorization/permission, gross insubordination, alternatively insolence, unprotected/unlawful strike/work to rule and non-compliance with their employment contracts and dismissed. They referred separate unfair dismissal

¹ Act 66 of 1995, as amended.

disputes to the CCMA. The SABC filed an application for consolidation of the disputes. The applicant trade union, BEMAWU, supported it. On 5 February 2024 commissioner Van der Walt issued a ruling consolidating all 5 disputes. The consolidated dispute was subsequently scheduled for arbitration by the second respondent, hereinafter referred to as the commissioner.

- [3] In the ruling under review the commissioner recorded that at the commencement of the arbitration the SABC raised a point *in limine* that the CCMA lacked jurisdiction to arbitrate the dispute before him because the applicants' reasons for dismissal included participation in an unprotected strike/work to rule. He noted that the charges which led to the dismissal of the individual applicants were based on the allegation that on different days in April 2023 each individual applicant failed to follow the approved shift roster/schedule despite numerous discussions with his/her line manager but continued to defy the manager's instructions by not offering his or her employment services and worked her preferred working hours and days. The conduct resulted in the Eastern Cape Radio Station combo potentially losing some audience and revenue in terms of adverts due to his or her misconduct.
- [4] Clarifying the point *in limine* the commissioner stated that he had to determine whether the applicant's conduct of not following the approved shift roster/schedule amounted to a strike as envisaged in section 213 of the LRA. The commissioner considered that it was not in dispute that the individual applicants refused to work according to the approved shift roster (the roster) in April 2023. Their justification was that the roster was published late, in contravention of the collective agreement regulating their basic conditions of employment in respect of working time and rendered compliance with it

unlawful. They further submitted that the collective agreement required the SABC to enter into an agreement with employees to be scheduled for overtime every year, which the SABC failed to do. The last agreement to work overtime lapsed on 31 March 2023. It was the applicants' case that as a result of the failures, they decided to revert to normal working hours which were 05h00 to 16h30 weekdays only.

- [5] The commissioner accepted Mr Makatesi's evidence that before being appointed to the positions they held on dismissal the individual applicants were working unsociable hours based on a schedule. The collective agreement defined the period from 17h00 to 07h00 on a weekday and 17h00 Friday to 07h00 on Monday as unsociable hours. He also considered a memorandum signed by the applicants dated 28 February 2023. It is addressed to the section leader of operations in the EC. The salient part of the memorandum reads:

"we regret to inform you that from 1 April 2023, we will no longer be available to work overtime. This collective decision comes after multiple attempts to try and mitigate issues facing the undersigned team members regarding the application of the TMP. There are promises made to try and resolve the issues surrounding the TMP and until such issues are resolved, the undersigned team members will not be signing the overtime agreement form for the next fiscal."

- [6] A further memorandum signed by the applicants was sent to the same recipient on 27 March 2023. It conveys the individual applicants' persistence with the position they took in the following words:

“morning shift, DS shift, afternoon shift and weekend schedule. The following message is conveyed therein “after the publication of the shift roster for the month of April 2023, we have noticed that you made a mistake of assigning the mentioned shift to us. We would like to bring to your attention that those three shifts M, A and DS carry overtime, with weekend also forming part of the overtime which we indicated on the document submitted to you on 28 February 2023 that we will not be available to work overtime until our issues regarding TMP are resolved. Morning shift carries 30 minutes overtime (Monday to Friday) DS shift carries 20 minutes overtime (Monday to Thursday) and night shift carries one hour overtime (Monday to Friday) weekend schedule falls outside the 40 hours per week, which is required from the employee by the employer”.

- [7] The last memorandum the commissioner relied on is dated 3 April 2023. It was signed by all the individual applicants and is also addressed to the leader of operations EC. It reads as follows:

“after the publication of the shift roster for the month of April 2023, we have indicated to you that you made a mistake of assigning us to work overtime though we indicated on the 28 February 2023 when we gave you are signed internal memorandum, that we will not be available to be scheduled to work overtime work till our unresolved issues of Time Managing Principal collective agreement are resolved. We would like to bring to your attention that your actions to forcefully assigning us to work overtime work are breaking the BCEA.”

- [8] The commissioner concluded that the individual applicants’ conduct constituted a strike within the meaning of section 213 of the LRA. He was not persuaded by their evidence that although they presented a joint grievance,

they individually took the decision whether to work in terms of the roster. He expressly added that his decision was limited to the issue of jurisdiction only and excluded the existence or otherwise of substantive grounds for dismissing the individual applicants for participating in an unprotected strike.

[9] The applicants' main grounds for review are that the commissioner committed several gross irregularities in the conduct of the arbitration which rendered the award unreasonable. They submitted that in the consolidation ruling commissioner Van der Walt made a finding that 'the CCMA has jurisdiction on all disputes sought to be consolidated'. They added that the commissioner overlooked their submission that commissioner Van der Walt had already made a finding on jurisdiction. Had he considered it he would have reached a different decision on jurisdiction. The SABC admitted that commissioner Van der Walt stated in paragraph 7 of his consolidation ruling that in the matter before him all the requirements listed in rule 28 of the Rules of Conduct of Proceedings before the CCMA (the CCMA Rules) were present. It, however, denied the consequences of the finding.

[10] It was argued on behalf of the SABC that the applicants adopted an incorrect approach in submitting that the consolidation ruling was valid until reviewed and set aside and that it clothed the CCMA with jurisdiction to arbitrate the dispute. It was further submitted that as a creature of statute the CCMA cannot make a determination on its own jurisdiction. It can merely express its view as it is the Labour Court that has jurisdiction to make a decision whether the CCMA has jurisdiction. It was argued that I must assess the correctness of the commissioner's ruling based on its objective assessment of the facts and evidence.

[11] A review application is determined on the totality of the evidence which was properly placed before the commissioner². In *Fidelity Cash Management Services v CCMA and Others*³ the court emphasized the need to consider all the evidence tendered at arbitration including reasons for a commissioner's decision that existed but not identified by the commissioner.

[12] In the consolidation ruling commissioner Van der Walt made the following finding:

- "6. Rule 28 of the Conduct of Proceeding before the CCMA provides that a commissioner may consolidate more than one dispute so that the disputes may be dealt with in the same proceedings.
7. The commissioner may order consolidation of separate disputes, where:
 - (a) the relief sought in each of the separate dispute to be consolidated, depends on the determination of similar or substantially the same questions of law and fact;
 - (b) there will be no substantial prejudice on the party or parties sought to be joined through a consolidation order;
 - (c) the balance of convenience favour[s] such consolidation;
 - (d) the CCMA has jurisdiction on all disputes sought to be consolidated"
8. In the present matter all the requirements listed are present and all the parties to the various disputes require a consolidation."

² Herholdt v Nedbank Ltd (Congress of South African Trade Unions as amicus cariae) [2013] 11 BLLR 1074 4 (SCA) at para 25.

³ [2008] 3 BLLR 197 (LAC) at para 103.

[13] When the SABC raised the point *in limine* that the CCMA lacked jurisdiction the applicant reminded it that in the consolidation application it was stated under oath on its behalf that the CCMA had the necessary jurisdiction. The applicants further submitted that the CCMA had already made a finding that it had the necessary jurisdiction which stands until set aside on review. It is common cause that the commissioner overlooked the applicants' submissions on the consequences of the consolidation ruling. In *Herholdt v Nedbank (supra)* the following was held:

“[25] In summary, the position regarding the review of CCMA awards is this: A review of a CCMA award is permissible if the defect in the proceedings falls within one of the grounds in s 145(2)(a) of the LRA. For a defect in the conduct of the proceedings to amount to a gross irregularity as contemplated by s 145(2)(a)(ii), the arbitrator must have misconceived the nature of the inquiry or arrived at an unreasonable result. A result will only be unreasonable if it is one that a reasonable arbitrator could not reach on all the material that was before the arbitrator. Material errors of fact, as well as the weight and relevance to be attached to particular facts, are not in and of themselves sufficient for an award to be set aside, but are only of any consequence if their effect is to render the outcome unreasonable.”

[14] The commissioner erred in disregarding the evidence that the issue of the CCMA's jurisdiction had already been pronounced upon by commissioner Van der Walt. The evidence is material in that after commissioner Van der Walt had made a pronouncement on the CCMA's jurisdiction over all the

consolidated cases, the CCMA became *functus officio* on the issue. It had made its finding. It therefore had no residual powers to reconsider it.

- [15] The doctrine of *functus officio* is clarified as follows by DM Pretorius in an article that was referred to with approval in *PT Operational Services (Pty) Ltd v Rawu obo L Ngwetshana* an unreported decision on the Labour Appeal Court handed down on 27 November 2012 under case number JA7/11⁴:

“The *functus officio* doctrine is one of the mechanisms by means of which the law gives expression to the principle of finality. According to this doctrine, a person who is vested with adjudicative or decision making powers may, as a general rule, exercise those powers only once in relation to the same matter. This rule applies with particular force, but not only, in circumstances where the exercise of such adjudicative or decision-making powers has the effect of determining a person’s legal rights or of conferring rights or benefits of a legally cognizable nature on a person. The result is that once such a decision has been given, it is (subject to any right of appeal to a superior body or functionary) final and conclusive. Such a decision cannot be revoked or varied by the decision-maker. However, this is not an absolute rule. The instrument from which the decision-maker derives his adjudicative powers may empower him to interfere with his own decision. Furthermore, it is permitted to make variations necessary to explain ambiguities or to correct errors of expression in an order, or to deal with accessory matters which were inadvertently overlooked when the order was made, or to correct costs orders made without having heard argument on costs. This list of exceptions might not be exhaustive and a court might have discretionary power to vary its orders in other cases. However, this power is exercised very sparingly, for

⁴ DM Pretorius: The Origin of the *functus officio* doctrine, with specific reference to its application in Administration Law 2005 SALJ vol 122 page 832 at 832-833.

public policy demands that the principle of finality in litigation should generally be preserved rather than eroded. The same considerations that require finality for the decisions of courts of law apply to the decisions of administrative authorities. Consequently, the *functus officio* doctrine applies in administrative law as it does in relation to curial proceedings. In elementary terms, the effect of the *functus officio* doctrine in administrative law is that an administrative agency which has finally performed all its statutory functions or duties in relation to a particular matter subject to its decision-making jurisdiction has exhausted its powers and has discharged its mandate in relation to that matter. Consequently, such an agency is without further authority as far as that matter is concerned because its duties and functions have been fully accomplished. Thus, an administrative agency which is *functus officio* is unable to retract or change its own earlier decision, unless it is authorised by its enabling legislation to do so.”

- [16] The commissioner’s error of overlooking the applicants’ submissions based on the consolidation ruling had a distorting effect on the decision he reached on jurisdiction. Had he considered the submissions he would have concluded that the CCMA, through commissioner Van der Walt, had already made a finding on jurisdiction and that it was *functus officio*. He would not have reconsidered the issue and overturned commissioner Van der Walt’s finding acting in excess of his powers. The CCMA, as a creature of statute, may only exercise powers vested in it by legislation. No legislation empowers a commissioner of the CCMA to consider an issue on which another has made a pronouncement and overturn a finding of a fellow commissioner. The decision under review has a defect as envisaged in section 145(1) of the LRA in that the commissioner committed a gross irregularity in conducting the

enquiry into the point *in limine* by disregarding material and relevant evidence. His conduct resulted in him reaching the incorrect decision that the CCMA lacked jurisdiction to arbitrate the consolidated dispute. A decision on jurisdiction must be correct. The correct decision was that the CCMA was *functus officio*. The significance of the need to issue the correct decision is that each decision has its own consequences. The finding that the CCMA is *functus officio* on the issue of jurisdiction permits it to arbitrate the dispute. However, the finding that the CCMA lacks jurisdiction because the consolidated dispute is justiciable at the Labour Court precludes the CCMA from arbitrating the dispute as it places it under the jurisdiction of the Labour Court.

[17] As the ruling under review has a defect it is reviewed and set aside.

[18] The SABC did not act unreasonably in opposing this application in defence of a ruling in its favour.

[19] The parties filed a full set of papers which placed me in a position to invoke the provisions of section 145(4)(a) of the LRA and determine the dispute. For the reasons already given in the judgment the CCMA lacked jurisdiction to determine the point in limine because it was *functus officio*.

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

1. The jurisdictional ruling issued by the second respondent on 23 August 2024 under case number ECGQ6674-23 is reviewed and set aside and substituted with the following:

1.1 The CCMA lacks jurisdiction to determine the point *in limine* on jurisdiction.

2. There is no order as to costs.

MZM Lallie

Judge of the Labour Cour of South Africa

Appearances:

For the Applicant: Mr H. du Buisson of BEMAWU

For the Third Respondent: Mr C de Heus of Masilo Attorneys

LABOUR COURT