



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

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: JR1774/2023

In the matter between:

LAWRENCE SIPHIWE MASUKU

Applicant

and

GENERAL PUBLIC SERVICES SECTORAL

BARGAINING COUNCIL (GPSSBC)

Applicant Respondent

COMMISSIONER RG PIETERSE N.O.

Second Respondent

GAUTENG DEPARTMENT OF SPORTS, ARTS

CULTURE AND RECREATION

Third Respondent

Heard: 17 February 2026

Delivered: 11 March 2026

JUDGMENT

PHAKEDI, AJ

Introduction

- [1] The applicant approached the Court in terms of section 145 of the Labour Relations Act¹ (the LRA), seeking to review and set aside the arbitration award (the award) issued by the second respondent under case number GPBC1874/2022 issued on 26 June 2023. The review application was only filed with the registrar on 20 September 2023 and it was not accompanied by any condonation application.
- [2] The third respondent filed its answering affidavit and did not take any issue with the status of the review application. Furthermore, its answering affidavit was filed out of time without any accompanying condonation application. The applicant raised this non-compliance in his replying affidavit but did not serve and file the notice of objection calling upon the third respondent to file a substantive application to condone the late filing of the answering affidavit. In the absence of the formal notice of objection the answering affidavit was considered in determining this review application.

Background facts

- [3] The applicant was employed by the former Member of Executive Council (MEC) Mbali Hlophe to serve as a Parliamentary Liaison Officer from 1 June 2019. In terms of the offer of employment signed by both the MEC and the applicant, it is recorded that the nature of his appointment is contract (term of office) and the date of effect is recorded as 01 June 2019 until 31 May 2024. The applicant resumed his duties on the same day and he rendered his services to the third respondent until his contract was terminated.
- [4] On or about 28 October 2022 he received a letter from the Acting Head of Department, Mr Vuyani Mpofu who informed him that his contract will expire on 30 November 2022. In the said letter, he was informed that his contract was linked to the term of office of the former MEC as envisaged in Regulation 66 (1) (a) of the Public Service Regulations of 2016.
- [5] On or about 8 November 2022 the applicant wrote a letter to Mr Mpofu and insisted that his contract of employment is only terminating on 31 May 2024

¹ Act 66 of 1995, as amended.

and the intended premature termination amounts to a dismissal and he required to be remunerated for the balance of the contract. Eventually his contract was terminated on 30 November 2022. The applicant then referred an unfair dismissal dispute to the GPSSBC and his application was dismissed on the basis that his employment was terminated by operation of Regulation 66(a) of the Public Service Regulations.

Arbitration proceedings and the award

- [6] The second respondent was appointed to preside over the proceedings and her award is the subject of these proceedings. The issue to be decided was whether the applicant's dismissal was procedurally and substantively fair. The applicant testified in his own defence and reiterated that he was dismissed on 30 November 2022. In response, the third respondent argued that the GPSSBC did not have jurisdiction to entertain the matter on the basis that the termination of the applicant's contract was by operation of Regulation 66(1)(a) of the Public Service Regulations. However, this point *in limine* was dismissed by a Commissioner during conciliation.
- [7] The Applicant testified that he was recruited by the former MEC, Ms Mbali Hlophe to fill the position of Parliamentary Liaison Officer on 01 June 2019. His contract of employment specifically stated that it was a fixed term contract expiring on 31 May 2024. He was unfairly dismissed on 30 November 2022. He reiterated that his contract of employment was not linked to the term of the MEC as it had a specific termination date. He emphasized that his contract was different to that of Ms Letswalo in that her contract merely stated 'term of office' as an end date but his had a specific date of 31 May 2024.
- [8] Under cross examination he conceded that he was appointed in accordance with the provisions of section 9 of the Public Service Act² (PSA). He further conceded that all other staff members in the office of the MEC had received termination notices as envisaged in the Regulations.

² Act 103 of 1994.

- [9] The third respondent called Mr Soli Ledwaba as its first witness and he confirmed that the Applicant was appointed by Ms Hlophe in terms of section 12A(1) of the PSA read with the Regulations. She submitted a list of individuals she wished to appoint to Human Resources officials who prepared appointment letters for her signature and acceptance by appointed officials. He testified that Ms Hlophe resumed her duties as the MEC on or during May 2019 until she was moved to the Department of Social Development in October 2022 following a change in provincial leadership which deployed a new MEC to head the Department of Sports, Arts, Culture and Recreation.
- [10] He stated that generally the term of office for political leaders would be five years. However, if there is any change in leadership, the term does come to an end as a result of reshuffling. He confirmed that the applicant was employed on contract and his contract was linked to term of office. He testified further that all the employees who were employed by the former MEC including the applicant were served with notices of expiry of contract of employment on 28 October 2022 with a 30 days' notice period.
- [11] Under cross examination he stated that the applicant could not be transferred to any other department as his position was not on the structure of the third respondent and it was never advertised in line with recruitment policies applicable in public service. He refuted allegations that the applicant was dismissed and instead testified that his contract of employment terminated by operation of Regulation 66 of the Public Service Regulations.
- [12] The second witness for the third respondent was Mr Honey Makgalemele who testified that the applicant's appointment was linked to the term of office of the former MEC Hlophe. He further confirmed that the appointment of the applicant was not done in line with normal recruitment processes in the public service but was done in terms of Public Service Regulations. He confirmed further that other officials who were appointed by the former MEC were also given a 30 days' notice period informing them that their employment was being terminated as envisaged in the Public Service Regulations.

- [13] At the close of proceedings, the Commissioner found that the applicant was not employed on a fixed-term contract and his appointment was linked to the term of office of the former MEC, Ms Hlophe. The applicant is not happy with the findings of the Commissioner and is challenging the award on the grounds stated hereunder.

Applicant's grounds for review

- [14] The Applicant contended that the Commissioner committed a gross irregularity in the conduct of the arbitration by ignoring the main thrust of his case that he had negotiated a variation of his contract with the third respondent to ensure that his contract is for a fixed-term as opposed to the one linked to the term of office of the MEC. He is aggrieved that the Commissioner ought not to have confined his unfair dismissal claim to the rigid application of section 9 of the PSA read with the Public Service Regulations. Furthermore, the Commissioner committed a gross irregularity by failing to appreciate that the termination of his contract amounted to a dismissal as envisaged in section 186 of the LRA.
- [15] He further contended that the Commissioner acted unreasonably when he failed to consider the entirety of the factual backdrop leading up to his appointment on a fixed-term contract. Instead, the commissioner confined the enquiry firstly, to the legislative framework and secondly, to whether or not MEC Hlope had extended or allowed Masuku to continue with the remainder of his employment contract.
- [15] It is further stated that the Commissioner reached a decision which a reasonable decision-maker properly apprised of the facts and the law could not have reached.
- [16] The applicant further alleges that the decision of the Commissioner is flawed in that he relied on a non-existent authority when he relied on the case of

*Melony Van Eck v MEC for the Department of Co-operative Governance and Traditional Affairs and Human Settlement, Gauteng Provincial Government.*³

Principles applicable in review applications

- [17] The debate on the right to review an arbitration award on process-related grounds as opposed to result-related grounds was finally settled by the Labour Appeal Court (LAC) in *Gold Fields Mining South Africa (Pty) Ltd (Kloof Gold Mine) v Commission for Conciliation, Mediation and Arbitration and Others*⁴. The applicant in this matter is seeking to review and set aside the award on result-related grounds.
- [18] In a review of an arbitration award the Labour Court is required to apply the test “*is the decision reached by the commissioner one that a reasonable decision-maker could not reach?*”⁵ In determining whether the result of an arbitrator’s award is unreasonable, the Labour Court must broadly evaluate the merits of the dispute and consider whether, if the Arbitrator’s reasoning is found to be unreasonable, the result is nevertheless capable of justification for reasons other than those given by the arbitrator.⁶ The result will, however, be unreasonable if it is entirely disconnected with the evidence, unsupported by any evidence and involves speculation by the arbitrator.⁷
- [19] The Supreme Court of Appeal in *Herholdt v Nedbank Ltd and Another (Congress of SA Trade Unions as Amicus Curiae)*⁸ held as follows:
- ‘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.’

³ Unreported decision. Case number: J1542/18.

⁴ [2014] 1 BLLR 20 (LAC) at paras 13 to 18.

⁵ See: *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others* [2007] 12 BLLR 1097 (CC).

⁶ See: *National Union of Mineworkers and Another v Samancor Ltd (Tubatse Ferrochrome) and Others* [2011] 11 BLLR 1041 (SCA).

⁷ *Herholdt v Nedbank Ltd* [2013] 11 BLLR 1074 (SCA).

⁸ (2013) 34 ILJ 2795 (SCA) at para 25.

- [20] In *Head of the Department of Education v Mofokeng and Others*⁹ the LAC held that the failure by the arbitrator to apply her mind to the issues which are relevant would ordinarily constitute an irregularity but for an award to be susceptible to being set aside, it must in addition to the irregularity, result in the misconception of the real inquiry to be determined or the ultimate outcome must be unreasonable.
- [21] In *CUSA v Tao Ying Metal Industries and others*¹⁰ the Constitutional Court held that it is now axiomatic that a commissioner of the CCMA (or an arbitrator of a bargaining council) is required to apply his or her mind to the issues before him or her and that failure to do so may result in the ensuing award being reviewed and set aside. The irregularity must however result in an unreasonable outcome or misconception of the true enquiry resulting in no fair trial of the issues.

Summary and conclusions

- [22] The third respondent's point in limine in these proceedings is meritless in the absence of a review application seeking to review and set aside the ruling which granted the GPSSBC jurisdiction to entertain the dispute. The third respondent ought to have raised its objection through a review application. As opposed to the Labour Court, the bargaining council is not clothed with powers to review any exercise of statutory powers. In *MEC for Health Eastern Cape and Another v Kirkland Investments (Pty) Ltd*¹¹ it was held that '*the absence of a jurisdictional fact does not make the action a nullity, it simply means that the action is reviewable on the grounds of lawfulness.*' The application before this Court is the one filed by the applicant challenging the reasonableness of the award not the correctness of the finding that the Commissioner had jurisdiction to entertain the matter as one of unfair dismissal as envisaged in section 186(1)(a) of the LRA.

⁹ (2015) 36 ILJ 2802 (LAC) at para 30 to 33.

¹⁰ [2009] 1 BLLR 1 (CC) at paras 76 and 134

¹¹ 2014 (5) BCLR 547 (CC) at para 99.

- [23] Section 186 (1) (a) of the LRA¹² provides that *dismissal means that an employer terminated employment with or without notice.*
- [24] In this case, the applicant stated that he received a notice of termination on or about 28 October 2022 informing him that his employment was going to be terminated on 30 November 2022. His argument as outlined above was that his contract was not linked to the term of office of the former MEC, Ms Mbali Hlophe but a fixed-term contract with a clear commencement and termination date. He argued that the third respondent unfairly dismissed him despite the fact that he had negotiated a fixed-term contract as opposed to the one linked to the term of office.
- [25] The Employer denied that the applicant was dismissed as envisaged in section 186(1)(a) of the LRA but his employment was terminated by operation of the law. It was argued that this position is supported by the undisputed evidence that the applicant's employment was not preceded by any recruitment process but it was done in terms of the provisions of section 9 of the PSA read with Regulation 66 (1) of the Public Service Regulations, 2016.¹³
- [26] Section 9 of the PSA provides that '*an executive authority may appoint any person in his or her department in accordance with this Act and in such manner and on such conditions as may be prescribed.*'
- [27] Regulation 66 prescribes the procedure for the filling of posts in Offices of executive authorities, the Deputy President and Deputy Ministers and provides that:
- '(1) An executive authority may only fill vacancies in the Office of an executive authority, Deputy President, or a Deputy Minister by means of an appointment in terms of section 9 of the Act for the term of office of the incumbent executive authority, Deputy President or Deputy Minister which will terminate at the end of the month after the month in

¹² Ibid

¹³ GNR.877 of 29 July 2016: Public Service Regulations, 2016 (Government Gazette No. 40167).

which the term of that executive authority, Deputy President or Deputy Minister terminates for any reason.’

[28] As stated above, the offer of employment signed by both the MEC and the applicant recorded that the nature of his appointment is ‘*contract (term of office)*’ and the date of effect is recorded as *01 June 2019 until 31 May 2024*. The same contract further makes it clear under remuneration, transfer / secondment and leave that the Public Service legislation is applicable to the employment relationship. What then is required in order to test whether the award is reasonable is whether the applicant succeeded in proving that he was dismissed as envisaged in section 186 (1) (a) of the LRA?

[29] The answer to this question is found in the letter dated 28 October 2022 which reads as follows:

‘Dear Mr Masuku

NOTICE OF EXPIRY OF CONTRACT 30 NOVEMBER 2022

This is indeed a matter of huge sadness that we remind you of the expiry of your contract linked term of office of the former MEC on 30 November 2022. With reference to the amended paragraph 66 (a), we will not be renewing your employment.

Your invaluable service that you have provided to the Department and to the Government of South Africa is appreciated and acknowledged.

We would also like to wish you all the very best in your future endeavours.

[30] The Supreme Court of Appeal (SCA) in *Natal Joint Municipal Pension Fund v Endumeni Municipality*¹⁴, affirmed the principles applicable to the interpretation of legislation and contracts as follows:

‘[18] The present state of the law can be expressed as follows: interpretation is the process of attributing meaning to the words used

¹⁴ 2012 (4) SA 593 (SCA) at para 18 and 26.

in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective, not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document... The *"inevitable point of departure is the language of the provision itself"*, read in context and having regard to the purpose of the provision and the background to the preparation and production of the document...'

[26] 'In between these two extremes, in most cases the court is faced with two or more possible meanings that are to a greater or lesser degree available on the language used. Here it is usually said that the language is ambiguous, although the only ambiguity lies in selecting the proper meaning (on which views may legitimately differ). In resolving the problem, the apparent purpose of the provision and the context in which it occurs will be important guides to the correct interpretation. An interpretation will not be given that leads to impractical, unbusinesslike or oppressive consequences or that will stultify the broader operation of the legislation or contract under consideration.'

[31] From the plain reading of the aforementioned notice dated 28 October 2022, it is clear that the notice was not issued to terminate his employment. The notice merely informed him that the law was coming into operation as such the last day at work is 30 November 2022. His employment with the third respondent was regulated in terms of section 9 of the PSA read with regulation 66 (1) of the Public Service Regulations, 2016. The sensible

conclusion is therefore that the applicant was not dismissed but his employment terminated by operation of the law.

- [32] The letter informing an employee that the law is in operation is not an act of dismissal as envisaged in section 186 (1)(a) of the LRA. Termination by operation of law does not require a decision by the employer, what is prescribed in the Regulations is that the employment will terminate '*at the end of the month after the month in which the term of that executive authority expired or came to an end*'. The applicant was not dismissed and the commissioner's arbitration award cannot be interfered with.
- [33] Finally, both parties submitted that the Commissioner relied on a non-existent authority of *Melony Van Eck v MEC for the Department of Co-operative Governance and Traditional Affairs and Human Settlement, Gauteng Provincial Government*. However, it does exist and was decided by Moshwana J on 25 October 2018. The dispute related to an unlawful transfer of an employee whose contract had terminated in terms of regulation 66 (1) of the Public Service Regulations since the term of the Executive Authority had come to an end. The learned Judge reviewed and set aside the decision to transfer Ms van Eck on the basis that the transfer was meant to circumvent the recruitment processes within the public sector where no employment relationship existed between the parties.

Costs

- [34] The first respondent sought costs in the event that the application is dismissed. It is trite that the awarding of costs in the Labour Court is discretionary as envisaged in section 162 of the LRA. The Constitutional Court in *Long v SA Breweries (Pty) Ltd and Others*¹⁵ held as follows:

[27] It is well accepted that in labour matters, the general principle that costs follow the result does not apply. This principle is based on s 162 of the LRA, which reads:

¹⁵ (2019) 40 ILJ 965 (CC).

- “(1) The Labour Court may make an order for the payment of costs, according to the requirements of the law and fairness.
- (2) When deciding whether or not to order the payment of costs, the Labour Court may take into account —
 - (a) whether the matter referred to the Court ought to have been referred to arbitration in terms of this Act and, if so, the extra costs incurred in referring the matter to the Court; and
 - (b) the conduct of the parties —
 - (i) in proceeding with or defending the matter before the Court; and
 - (ii) during the proceedings before the Court.”

[28] The relationship between the general principle of costs and section 162 was considered and settled by this Court in *Zungu*:

“In this matter, there is nothing on the record indicating why the Labour Court and Labour Appeal Court awarded costs against the applicant. Neither court gave reasons for doing so. It seems that both courts simply followed the rule that costs follow the result. This is not correct.

[35] Based on the above authority, this court comes to the conclusion that it is in the interests of the law and fairness that each party be burdened with its own costs. In the result, the following order is made:

Order

1. The review application is dismissed.

2. There is no order as to costs.

G. C. Phakedi

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: In person.

For the Respondent: Adv N Mncube

Instructed by: State Attorneys, Johannesburg

LABOUR COURT