



- (1) Reportable: No
(2) Of interest to other Judges: No

Signature

11 March 2026
Date

THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Case no: C337/2023

In the matter between:

MARCEL PHARMACY (PTY) LTD
t/a GRABOUW APTEEK

Applicant

and

JUSTINE AFRIKA

First Respondent

**COMMISSION FOR CONCILIATION
MEDIATION AND ARBITRATION**

Second Respondent

I DE VLIAGER-SEYNHAEVE N.O

Third Respondent

Heard : 8 October 2025

Delivered : 11 March 2026

Summary : A review application to set aside an arbitration award on the main ground that the CCMA lacked jurisdiction to arbitrate a matter where an employee was not dismissed but was told to leave. Contentions that the employee was told to leave in anger and that the employer sought to rectify a mistake it made by recalling the employee not evidence before the commissioner.

JUDGMENT

GANDIDZE, JIntroduction

- [1] This is an application under section 145, read together with section 158 of the Labour Relations Act¹ (LRA), to review and set aside an arbitration award issued under case number WECT503-23 dated 21 May 2023. If the award is set aside, the applicant, Marcel Pharmacy (Pty) Ltd (the employer), seeks an order substituting it with one that declares that the Commission for Conciliation, Mediation and Arbitration (CCMA) lacked jurisdiction to arbitrate the dispute, as the first respondent, Justine Afrika (Afrika), was not dismissed. Alternatively, the employer seeks an order remitting the matter to the CCMA for a fresh hearing before a different arbitrator.
- [2] The award under review found that Afrika was dismissed and that the dismissal was both substantively and procedurally unfair. Since Afrika did not wish to be reinstated, considering the circumstances of the dismissal, the Commissioner awarded her five months' compensation.

Background and the arbitration proceedings

- [3] Afrika was employed by the Pharmacy as a Pharmacy Assistant since September 2019.
- [4] She testified that on 12 January 2023, the pharmacy was very hot. As they were not allowed to turn on the air conditioning, she opened the windows and switched off the lights. Later in the day, the owner of the pharmacy, Mr Marcel Snyman (Snyman), entered the pharmacy and shouted at her, asking who had given her permission to switch off the lights, and remarked that "*it looks like shit in here*". He was very rude and aggressive towards her. The day ended without any further incident.
- [5] Afrika did not attend work on Friday, 13 January 2023, because she was unwell.

¹ Act 66 of 1995.

- [6] She returned to work on Saturday, 14 January 2023, and Snyman instructed her to write a statement stating she had switched off the lights on 12 January 2023. After some reflection, she decided not to do so, as she saw no necessity. On her way out for tea, she informed Snyman that she would not write the statement, would not allow him to speak to her that way, and would not accept any further abuse. Snyman followed her, spoke over her, and shouted in front of the customers. He told her that if she left the pharmacy, she must not return. She said she would retrieve her bag and leave. Snyman changed his mind and told her not to leave, suggesting she go out for tea and return when she had calmed down. She denied needing to calm down, stating she was already calm, and that Snyman needed to calm down.
- [7] When she returned from tea, the Pharmacy Manager, Ms Andra Moolman, and Snyman's fiancée called Afrika to the office. Snyman was also present. Once inside, Moolman told Afrika to write a statement or leave. She did not allow her to explain what had happened. Afrika told Moolman she would not leave because she works at the pharmacy. She returned to her station, and Moolman telephoned the security company to have her removed. Initially, she thought Moolman had called the police. Snyman came to Afrika's station, pointed at her, and told her to leave immediately. She asked him what would happen, and Snyman said they would phone her. She went to pack her bags and left before the security arrived. She left because she did not know what else to do. It was unbelievable.
- [8] She could not return to work on Monday, 16 January 2023, because she had been told to leave. No one contacted her, and she decided to refer a dispute to the CCMA on that day. The CCMA responded with a date for the conciliation meeting.
- [9] Then, around 16h55 that day, she received an email from the employer indicating, among other things, that she had not been dismissed. She visited the pharmacy the following day to discuss the possible settlement of the matter she had referred to the CCMA, and was told that the matter would be discussed, and they would get back to her.

- [10] Further correspondence ensued, including a notice to attend a disciplinary hearing.
- [11] During cross-examination, Afrika was asked whether she had been told she was fired, dismissed, or simply told to go home. She replied that Snyman instructed her to leave immediately and never return. This was heard by the entire pharmacy. She requested a meeting with the pharmacy, hoping to resolve the matter, in which case she would have withdrawn the dispute referred to the CCMA. At the meeting, she asked for six months' compensation. The request to meet was based on legal advice. She insisted that she was dismissed and stated that *"I was chased away like a dog whether you have used the word dismiss or not"*.
- [12] Moolman testified on behalf of the Pharmacy, but prior to that, she gave an opening statement. She was employed as the Manager. Afrika refused to obey the reasonable instruction to explain why she turned off the lights on 12 January 2023. Afrika concluded that she had been dismissed. She was informed, through several correspondences, that she had not been dismissed and was requested to return to work, but she did not do so. At the meeting on Tuesday, 17 January 2023, Afrika requested six months' compensation to withdraw her dispute at the CCMA, in which she had claimed twenty-four months' compensation. The employer regarded Afrika's request as blackmail and intimidation. Subsequently, Afrika was dismissed, and unlike Afrika, the Pharmacy was cooperative during the conciliation process of that dispute.
- [13] In evidence, Moolman testified that on 12 January 2023, she and Snyman attended an off-site planning session. When Snyman visited the pharmacy later that day, the lights were switched off, to which Afrika responded, *"Ons het warm gekry"*. Afrika was off sick on 13 January 2023. When she returned to work on Saturday, 14 January 2023, Snyman asked her to write a statement explaining why she had switched the lights off on 12 January 2023. This is company procedure. Afrika questioned Snyman why this was necessary, to which he replied that it was an instruction. At tea time, Afrika approached Snyman and told him she would not write the statement, that she would not be bullied any longer, and that everyone gets so hot in here and is

sweaty, contrary to Pharmacy Regulations. Moolman stated that the temperature in Grabouw that day was 26 degrees, and therefore Afrika's complaint was unfounded, and that if Afrika was unhappy about the continuous heat in the pharmacy, she could have followed the grievance policy.

- [14] Snyman called her to the pharmacy on her weekend off to diffuse the situation. Upon arrival, she questioned Afrika why she would not follow an instruction from her employer, to which she responded that she could not be forced. The employer regarded switching off the lights as sabotage because, with the lights off, it appeared as if the pharmacy was closed, even though the employees had been told that the business was struggling. The lead lights did not generate heat.
- [15] The refusal to follow the instruction led to a hostile situation. The situation was absurd. Afrika began attacking them and making wild, unfounded accusations. This is why she was asked to go home to de-escalate the situation and prevent it from worsening. She was asked to leave several times, and she refused. She returned to her station and continued serving customers despite a reasonable instruction to leave. Moolman telephoned security to remove Afrika. Snyman also approached Afrika at her workstation and asked her again to go home, to which she replied that she would not leave because it was her job. She was told that *"we will be in contact"*. By the time security arrived, Afrika had left.
- [16] Afrika did not attend work on 16 January 2024, despite multiple communications requesting her presence. They received the CCMA referral forms, and she emailed Afrika to say she had not been dismissed but had been sent home to ease the tension. She also stated that submitting a dispute to the CCMA was completely inappropriate and that she must return to work since her absence was unauthorised.
- [17] Afrika reported to the pharmacy on the morning of 17 January 2023. Snyman instructed her to start counting stock, but she refused and chose to wait in the car for Moolman. When Moolman arrived, she and Afrika met, and Afrika

stated that the matter could be resolved if she could be paid six months' compensation. The pharmacy viewed this as a threat and almost as blackmail. She responded that they would discuss it and get back to her. She also told Afrika that she was not dismissed, that it was business as usual, to which Afrika replied "*Mm-hmm*" before she left.

[18] On 18 January 2023, the following day, Moolman sent Afrika another email stating that she had left work without permission the previous day and had not reported for duty. Afrika responded on 19 January 2023, making "*allegations and slander*". Moolman sent another email with the same instruction on 20 January 2023, stating that this would be the final instruction for Afrika to return to work. There were further communications between the parties after that, including a notice to attend a disciplinary hearing for desertion and for the events of 14 January 2023, when she was grossly insubordinate. Afrika did not attend the hearing, and she was dismissed on 30 January 2023.

[19] During cross-examination, it was put to Moolman that Snyman instructed Afrika to write a statement stating that she switched off the lights, not the reason she did so. It was also put to her that a dark pharmacy did not necessarily mean the business was closed, given load shedding and the open door, to which Moolman responded, "*Okay*". When asked why the environment was hostile, Moolman explained it was because Afrika attacked them, refused to obey a lawful instruction, and declined to go home when asked. Explaining the attack, Moolman stated that Afrika insisted she would not follow the instruction, would no longer work under such conditions, and claimed she was being bullied. Afrika admitted that she had made those remarks because she was not given a chance to explain, only to write the statement or leave.

[20] It was also put to Moolman that her reason for visiting the pharmacy on 14 January 2023 was to chase Afrika away, to which Moolman responded that it was her weekend off. Concerning Afrika's claim that she had been chased away, the following exchange took place:

Ms Moolman: Do you have evidence that you had to run away with your bag, or did you walk freely, unattended?

Ms Afrika: 'You called the security on me, ja'.

Ms Moolman: But did they arrive? Did they escort you off the premises?

Ms Afrika: And then Marcel came and pointed at me and said I must leave right now, in front of the customer.

Ms Moolman: And why were you serving customers when you were told not to. Any other question for me?

[21] Regarding the meeting of 17 January 2023, it was put to Moolman that Afrika did not say she was returning to work, as she stopped working at the pharmacy on 14 January 2023, but was coming for a meeting to see how the matter could be resolved. Moolman responded: *"In your mind"*, and Afrika's further statement was:

'In fact. You cannot chase somebody away and then a couple of days later say no, come back, I did not mean it. It does not work like that. There is rules in place.'

[22] The cross-examination ended on that note.

[23] Snyman also testified. On 14 January 2026, he asked Afrika to prepare an incident report regarding the lights she had switched off, and she responded that she would not be bullied like that and would not submit the report. Moolman arrived and asked Afrika the same thing. Regarding hostility, Snyman stated that this was not the case, but Afrika returned to her workstation and continued working rather than going home as instructed. He approached Afrika and told her to go home as directed by the employer, and that *"we will be in contact"*.

[24] During cross-examination, Afrika accused Snyman of interrupting her, claiming Moolman had only come to tell her to leave, and that Moolman and Snyman had repeatedly instructed her to do so, after which she departed under the impression that it was *"finished"*. Snyman denied this, asserting that

Afrika had quietly walked out of the pharmacy, engaging in conversation with others as she left. Afrika agreed, noting that she did not want to cause a scene but felt humiliated and embarrassed when told to leave. She denied that the discussion about leaving took place in the office, stating it began long before Moolman arrived and in front of customers. Afrika did not think it was necessary to file an incident report, stating that Snyman had previously torn up one she had written.

The award

- [25] The third respondent commissioner noted that the issue for determination was whether Afrika was dismissed as contemplated in section 186 of the LRA, and if so, whether the dismissal was fair.
- [26] The commissioner found that Afrika claimed she had been dismissed during her tea break, but she could not have been dismissed on this occasion because Snyman changed his mind and asked her not to leave, and she returned to her workstation.
- [27] Concerning the second instance of dismissal, the Commissioner found that it happened during a meeting with Moolman, who instructed Afrika to write the incident report or leave the pharmacy, or the police would be called. The Commissioner noted that telling Afrika she would be contacted could mean anything and did not help determine whether a dismissal took place. The Commissioner reasoned that, although Afrika was not explicitly told she was dismissed, she was not advised she was suspended, nor was she told she needed to leave for the day and could return on Monday. The Commissioner also reasoned that calling the police to forcibly remove her, if she did not leave, would not have created the impression that Afrika was being sent home temporarily. Additionally, when Afrika did not report for duty on Monday, no one telephoned to find out her whereabouts, which, according to the Commissioner, showed that the intention was to dismiss her and that the pharmacy only contacted her after she referred the dispute to the CCMA. The Commissioner concluded that Afrika was dismissed.

- [28] Regarding the fairness of the dismissal, the Commissioner concluded that Afrika had been insubordinate or insolent by refusing to write the incident report. However, according to the Commissioner, this did not mean that dismissal was a fair sanction. The Commissioner found that the misconduct was worsened by the employer's failure to explain why Afrika needed to write the statement and by not allowing her to explain her reasons for not wanting to do so. The Commissioner found that if Moolman and Snyman had engaged Afrika constructively, the situation that developed could have been avoided. The Commissioner also noted that Afrika had been employed since 2019 and had an expired warning for unrelated misconduct.
- [29] On procedural fairness, the Commissioner found that Afrika was dismissed on 14 January 2023 without a disciplinary hearing, and that the subsequent disciplinary hearing did not rectify the unfairness because the chairperson was chosen by the employer, who also refused to supply the chairperson's details when Afrika requested the information.
- [30] As he found the dismissal to be both substantively and procedurally unfair, the Commissioner decided that five months' compensation of R92,750.00 was fair, considering Afrika's years of service and that she had not secured alternative employment.

Grounds for review

- [31] In the pleadings, the award was challenged on the grounds that it was one no reasonable decision-maker could have reached, that the Commissioner committed irregularities and made errors in law, and that the CCMA lacked jurisdiction to arbitrate the dispute. In the heads of argument and oral submissions, the ground of review persisted with was that there was no dismissal, and therefore, the CCMA lacked jurisdiction to arbitrate the matter.
- [32] In support of the argument that Afrika was not dismissed, it was submitted that on 14 January 2023, Afrika was instructed to leave and informed that she would be telephoned. On 16 January 2023, she was reminded via email that she had not been dismissed and was instructed to report for duty the following day. She complied with this instruction and reported to the pharmacy on 17

January 2023, but maintained that she had already been dismissed. Subsequently, she left the Pharmacy.

[33] According to the employer, under cross-examination, Afrika was unable to confirm that she had been told she was dismissed. The submission was also that even if she had been told to leave on 14 January 2023, the employer was entitled to reconsider and call her back to work, which clarified any confusion that might have been caused.

[34] During oral argument, Mr Du Preez submitted that the test used to determine if an employee resigned also applies to whether an employee was dismissed. He referred to this Court's decision in *Sihlali v Broadcasting Corporation Ltd*² (*Sihlali*), and argued that an employer who tells an employee to leave in anger should have the same rights as the employee who resigns in anger. He also asserted that the Court should focus on the words used to decide whether there was clear communication that the contract would be terminated, and that the context of the altercation is irrelevant to whether Afrika was dismissed on 14 January 2023. However, he also submitted that the instruction to leave was given in anger and could be rectified. Furthermore, he argued that the instruction to write the statement was part of Afrika's duties, and that she was hot-headed when she responded that she would fetch her things and leave.

[35] Before analysing these grounds of review, the relevant legal principles are briefly outlined.

The Legal Principles

[36] Section 186(1)(a) of the LRA provides:

"Dismissal" means that —

- (a) an employer has terminated a contract of employment with or without notice...'

[37] Where section 186(1)(a) is relied upon, the burden is on the employee claiming to have been dismissed to prove that the employer terminated a

² (2010) 31 ILJ 1477 (LC); [2010] ZALC 1.

contract of employment with or without notice. If an employee cannot discharge that burden, then there was no dismissal, and the CCMA would lack jurisdiction to arbitrate the matter.

- [38] When the CCMA is asked to issue a jurisdictional ruling, this Court is not bound by that decision on review. Instead, it will determine whether a dismissal occurred *de novo*. (See *Fidelity Cash Management Service v Commission for Conciliation, Mediation & Arbitration & others*)³. Therefore, this Court will not be limited to the Commissioner's reasoning. Instead, it will consider all the evidence presented to the Commissioner and determine whether the employee has discharged the burden of proving they were dismissed. If the Court finds that there was no dismissal, that ends the inquiry, and the review application must succeed.
- [39] If a Commissioner accepted that there was a dismissal, and this Court finds that the decision was correct, then the Court must determine whether the Commissioner's findings that the dismissal was substantively and procedurally unfair are reasonable. The onus of proving that the dismissal was substantively and procedurally fair lies with the employer.
- [40] It is now to be decided, against these principles, whether the award is reviewable.

Analysis

- [41] The high watermark of the employer's case, both in the arbitration proceedings and in the review application, is that Afrika was never told she had been dismissed, and that she was only told to leave. The commissioner dealt with that contention. He accepted that Afrika was not explicitly told she was dismissed, but found that she was dismissed for the reasons he set out in the award, which I summarised above. The Commissioner's approach cannot be faulted.
- [42] The commissioner was correct that Afrika was dismissed on 14 January 2023 for the further reason that, according to Moolman, Afrika was attacking them

³ (2008) 29 ILJ 964 (LAC); [2007] ZALAC 12.

and making wild allegations against them. The intention was not for Afrika to return on another day, because on Moolman's version, she had attacked and made wild allegations against them.

[43] The submission that Afrika did not return to work on Monday, 16 January 2023, despite being reminded that she had not been dismissed, was unsupported by any evidence presented to the Commissioner. The evidence indicated that it was only after 16h00 that day, when Afrika had already referred the matter to the CCMA, and after the CCMA had responded with a notice of a conciliation meeting, that the employer contacted Afrika. In fact, the Commissioner pointed out that no one had bothered to look for Afrika when she did not arrive at work on the morning of 16 January 2023, suggesting that no one expected her to return to work after her dismissal on Saturday, 14 January 2023.

[44] In *Sihlali*, the Court stated that a resignation is established by a subjective intention to terminate the employment relationship, and words or conduct by the employee that, when objectively viewed, clearly and unambiguously evince that intention. The Court went on to state the following:

[14] The requirement of a clear and unambiguous intention to terminate the contract may often be more easily stated than applied. As Mark Freedland observes, if a worker utters words seeming to indicate an intention to leave employment, the utterance may be unclear, the product of uncertainty, or a manifestation of anger rather than an expression of a definite intention to terminate the employment relationship. When it is claimed that an employee has decided to terminate his or her employment of his or her own volition, it may be necessary to scrutinize the genuineness of that volition to determine, for example, whether the employee's action is the result of an unacceptable degree of pressure by the employer, or whether the employer has been over-eager to treat an impulsive decision as a settled one.'

[45] On the facts of the matter before it, the Court concluded that the employee resigned via an SMS and that, weeks later, he had a change of heart and

wished to withdraw his resignation. The Court determined that he was not entitled to the remuneration for the period after he had resigned.

- [46] In distinguishing some of the case authorities that the employee in *Sihlali* sought to rely upon, the Court stated this:

[20] *Glass & Aluminium* concerned a statutory claim of unfair dismissal and the interpretation of s 186(1) of the LRA rather than a contractual claim such as the present; *Uthingo* was a review of an arbitration award in an unfair dismissal dispute, an element of which concerned the application of a notice clause in an employment contract and the definition of 'dismissal' in s 186. I see no reason to depart from the long line of authorities referred to in para 11 above, all of which directly concern themselves, as does this case, with contractual disputes.'

- [47] Assuming that the principle that an employee who resigns in anger should be allowed to retract a resignation must also be applied where an employer dismisses an employee in anger, in the present matter, it was never the employer's case before the Commissioner that Afrika was dismissed in anger, and that the employer was entitled to rectify its actions.
- [48] According to Afrika, Snyman was angry the first time he told her to leave, but then he changed his mind and asked her not to go. The Commissioner concluded that Afrika was not dismissed on this first occasion, but on the second.
- [49] In that instance, Moolman instructed Afrika to write the statement or leave. When Afrika refused and returned to her workstation, Moolman telephoned the security company to have her removed. Snyman followed Afrika to her workstation and, while pointing at her, ordered her to leave. This was done in front of the customers and other colleagues, causing Afrika humiliation and embarrassment. Neither Moolman nor Snyman testified that they told Afrika to leave in anger. Moolman's version was that she told Afrika to leave to diffuse the situation, which was becoming hostile. Interestingly, Snyman denied that the situation was hostile, stating that Afrika went back to her station and

continued serving customers. Therefore, the submission by Mr Du Preez that because employees who resign in anger have been allowed to retract their resignations, employers in similar circumstances must be given the same latitude finds no application, on the facts of this matter.

- [50] The submission that the employer erred and attempted to rectify its mistake by recalling Afrika to work is also unsupported by evidence. This version is not reflected in any of the letters sent to Afrika between 16 January and her dismissal on 30 January 2023. Nor was this version presented by Moolman or Snyman during the arbitration proceedings. The employer consistently maintained that Afrika was never dismissed on 14 January 2023, but was asked to leave, and that there is a distinction between the two. The employer cannot, for the first time in the review proceedings, introduce a defence that was not raised before the commissioner.
- [51] I might also add that, despite admitting that Afrika was asked to leave, in their evidence, both Moolman and Snyman attempted to depict her as freely walking out of the pharmacy and chatting with people as she did so. If that evidence was presented to suggest that Afrika had not been asked to leave, then both Moolman and Snyman were not credible witnesses.
- [52] Mr Du Preez submitted that he was unable to find a case dealing with an instance where an employee claimed he had been dismissed based on the employer's conduct.
- [53] In *Kukard v GKD Delkor (Pty) Ltd*⁴, an employee had resigned and, contrary to the restraint-of-trade clause in place, joined a competitor of his former employer. The parties resolved the matter on the basis that the employee would not work for the competitor but would be re-employed by his former employer on the same terms, conditions, and benefits as he enjoyed prior to his resignation. When the employee returned to the former employer, he was presented with a document offering him a different position than the one he previously held, and the document stated that it was a three-month contract, whereas he had previously been permanently employed. When the employee

⁴ (2015) 36 ILJ 640 (LAC); [2014] ZALAC 52.

refused to sign the document, he was told that the offer of employment was withdrawn, that he must hand in the cell phone given to him, and that he must leave. He claimed that he had been dismissed and referred the matter to the CCMA. The employer disputed that there had been a dismissal.

[54] When the matter came before the Labour Appeal Court, it held, *inter alia*, as follows.

[19] Whitford admitted handing the appellant the letter of 4 November 2008, withdrawing the offer of employment of 3 November 2008. He also admitted instructing the appellant to return the cellphone, but denied dismissing the appellant by instructing him to leave the premises. He testified in this regard that he had instructed the appellant to go to his attorney with the intention of speeding up negotiations to finalise his employment contract. Whitford's testimony on this crucial aspect of the dispute is, in my view, completely implausible and contrary to the contents of the letter of 4 November 2008 withdrawing the offer of employment of 3 November 2008, since that letter does not suggest that the offer of employment was being withdrawn until such time that the parties could reach a different and further agreement.

[20] After handing the appellant the 4 November 2008 letter withdrawing the offer of employment of 3 November 2008, Whitford instructed the appellant to hand his cellphone back and leave the premises. Whitford's conduct, in my view, leaves no doubt in the mind of a reasonable person that he was terminating Delkor's employment relationship with the appellant such as to constitute a dismissal as defined in s 186(1)(a) of the LRA. Although Whitford disputed in his testimony at the arbitration hearing that he instructed the appellant to leave the company premises, he failed to provide an explanation for why he instructed the appellant to hand back his cellphone if, as explained by him, the purpose of the letter of the 4th and his discussion with the appellant was for the appellant to discuss the terms of the offer with his lawyers and revert with a proposal. The absence of an explanation by Whitford on this crucial aspect which counsel for Delkor conceded during argument called for an

explanation, compels me to the conclusion that Whitford instructed the appellant to return the company cellphone because he was terminating the employment relationship with the appellant. In the circumstances, I consider the appellant's version that Whitford instructed him to return the company cellphone and leave the premises to be plausible. If as explained by Whitford, the purpose of the letter of the 4th and his discussion with the appellant, was for the appellant to discuss the terms of the offer with his lawyer and revert with a proposal, then there would have been no reason, on the probabilities, to instruct the appellant to return the company cellphone.'

[55] Regarding the fact that afterwards the employer wrote to the employee that he had not been dismissed, the Court stated as follows:

'[24] The Labour Court also placed much emphasis on the letter of response from Delkor's attorneys to the appellant's attorneys, dated 4 November 2008, in which it is denied that Delkor dismissed the appellant on that day. The contents of this letter must be judged against the background of all the facts and events that took place on 3 and 4 November 2008. Notwithstanding the categorical denial that the appellant was not dismissed, this letter came a tad too late as Whitford had by this stage made it abundantly clear that the appellant was dismissed by *inter alia* presenting him with the withdrawal letter of the 4th instance, instructing him to return the company cellphone and to leave the premises. Needless to say, the letter of 4 November 2008 is completely irreconcilable with the conduct of Whitford on that day, and it certainly does not sway the general probabilities in favour of Delkor insofar as the appellant's dismissal is concerned. The Labour Court accordingly erred in finding that the appellant was not dismissed by Delkor as defined s 186(1)(a) of the LRA.'

[56] Therefore, where an employer tells an employee to leave the work premises, the context of that exchange needs to be analysed to determine if the employer was dismissing an employee. In such a case, context is everything, contrary to what Mr Du Preez submitted. The fact that an employer did not use the word dismissed is not decisive.

- [57] Additionally, the fact that an employer later told an employee they were not dismissed does not mean the employee was not dismissed. All the facts and events must be considered.
- [58] Afrika was told to leave on 14 January 2023, and the employer did not communicate with her until after she referred a dispute to the CCMA. The emails claiming there had been no dismissal were only written because Afrika had referred the matter to the CCMA. These communications were not meant to clarify any confusion, as submitted on behalf of the employer. Afrika was firm in her belief that when she left on 14 January 2023, she understood it to be final. That version was more probable than the versions offered by Moolman and Snyman.
- [59] In *Le Grange v Visser t/a Skukuza Medical Practice & Another*⁵, the Court made it clear that an employer who dismisses an employee cannot unilaterally undismiss the employee. The employer's e-mails to Afrika that she was not dismissed were an attempt to undo her dismissal, which it could not do.
- [60] Afrika did not attend the employer's premises on 17 January 2023 to work. She went there for a meeting to discuss a possible settlement of the matter following her dismissal on 14 January 2023.
- [61] Something also needs to be said about the employer's version that on 17 January 2023, Afrika sought to blackmail it by asking for six months' compensation in settlement of the dispute. Discussions about settlement are often without prejudice, and therefore, placing that evidence before the Commissioner was mischievous. If indeed the employer regarded the proposed settlement as an attempt to blackmail it, it begs the question why Afrika was informed that the proposal would be discussed and that they would revert to her, rather than being told that the proposal was seen as blackmail.
- [62] The Commissioner was correct in finding that Afrika was dismissed on 14 January 2023.

⁵ (2025) 46 ILJ 947 (LAC) para 21.

[63] The employer did not argue that if the Court finds there was a dismissal, then such dismissal was, in any event, fair, both substantively and procedurally. On the facts, the finding that the dismissal was both substantively and procedurally unfair was reasonable. The award of five months' compensation was fair. The award will not be interfered with on review.

Costs

[64] The employer sought costs in the event of opposition. In other words, the employer genuinely believed that opposing such a review application would be frivolous. Alternatively, the prayer for costs was kept in the notice of motion as is customary. The employer's heads of argument wisely did not persist with the prayer that costs be awarded against Afrika.

[65] Afrika prepared the pleadings with the help of a legal representative and attended the hearing in person. If she had formally engaged this legal representative, I would have been inclined to award her costs. The employer treated her poorly and believed they could use legal manoeuvres by claiming she had not been dismissed, aiming to dismiss her on false charges. The review application was frivolous, and with legal advice, the employer would have been told that an application to review the award had no chance of success. Recognising the weaknesses in the employer's case, the legal representatives sought to build a new case on review, claiming Afrika was dismissed in anger and that the employer had a right to correct its mistakes. The Court views such conduct very unfavourably.

[66] In the result, the following order is made:

Order

1. The review application is dismissed.
2. The interest on the compensation amount is to be calculated from the date specified in the arbitration award to the date of payment.
3. There is no order as to costs.

T. Gandidze

Judge of the Labour Court of South Africa

LABOUR COURT

Appearances:

For the applicant : Advocate T Du Preez
Instructed by : Vos Maree Attorneys
For the first respondent : In person

LABOUR COURT