



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

Signature

20 March 2026
Date

THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Case no: C633/2022

In the matter between:

MANDLA JULY MJEZU

Applicant

and

FIDELITY SECURITY SERVICES

First Respondent

NATIONAL BARGAINING COUNCIL FOR

THE ROAD FREIGHT AND LOGISTICS INDUSTRY

Second Respondent

DIPHOKO SAME NOMINE OFFICII

Third Respondent

Heard: 20 March 2026

Delivered: 20 March 2026

Summary: A review application to set aside an award which found that a dismissal was substantively and procedurally fair. Also, an application for condonation for the late filing of the review application, and the correction of the citation of the employer party.

JUDGMENT

GANDIDZE, J

Introduction

- [1] This is an application, brought in terms of section 145 of the Labour Relations Act¹ (LRA), to review and set aside an arbitration award that found the dismissal of Mr Mandla Mjezu, to be both substantively and procedurally fair.
- [2] The application was opposed by the first respondent, the applicant's former employer, which also filed heads of argument. No heads of argument were filed on behalf of the applicant.
- [3] The matter first came before the Court on 26 February 2026, and on that day, the applicant's attorneys of record informed the Court that they had filed a notice of withdrawal days before the hearing due to difficulties with legal fees. The matter was postponed to 20 March 2026 to allow the applicant to indicate how he wished to proceed. On 20 March 2026, the applicant informed the Court that he would represent himself, and the hearing proceeded accordingly.

Preliminary issues

- [4] After the applicant filed the review application in December 2022, the first respondent filed a Notice under Rule 30(1) of the Uniform Rules of Court, stating that the application was an irregular proceeding. The first ground was that the review application was filed late and was not accompanied by a condonation application. The second point raised was that the applicant's former employer was Fidelity Cash Solutions (Pty) Ltd (FSC), not Fidelity Security Services (Pty) Ltd (FSS). The third preliminary issue was that, given that the arbitration proceedings were held in Bloemfontein, the applicant ought

¹ Act 66 of 1995, as amended.

to have filed the review application in the Johannesburg Labour Court, and not the Cape Town Labour Court.

- [5] The applicant did not react to the above application, prompting FSC to file an application in January 2023 to strike out the review application.
- [6] On 31 January 2023, the applicant filed an application seeking condonation for the late filing of the review application. It was explained that the award was dated 7 October 2022, but it was only received on 20 October 2022. The review application was lodged on 7 December 2022, which was six days after the six-week deadline. The delay was caused by the applicant losing his employment and then securing a position in a rural area, where he had no access to email and faced communication difficulties with his attorneys. Ultimately, between 1 December and 6 December 2022, the applicant and his attorneys managed to communicate, and the signed affidavit was returned by the applicant on 6 December 2022. The current application was then filed on 7 December 2022. The applicant argued that he would be prejudiced if condonation was not granted, as review proceedings are his only way of challenging the award. He also stated that his prospects of success in the review application were favourable.
- [7] FSC filed a notice indicating that it does not oppose condonation and will abide by the Court's decision on the condonation application.
- [8] A six-day delay is not significant, and an acceptable explanation has been provided. It is in the best interests of the parties for the matter to be decided on its merits, which relates to the prospects of success—an issue that I will consider when examining the grounds of review. Therefore, condonation is granted for the late filing of the review application.
- [9] A second issue was that an order was sought to substitute FCS as the employer. FCS did not oppose the application. I am satisfied that the order sought should be granted. The error in citing FSS began when the matter was referred to the Commission for Conciliation, Mediation, and Arbitration (CCMA). When the CCMA was alerted that the employer was, in fact, FCS and not FSS, it referred the matter to the National Bargaining Council for the

Road Freight and Logistics Industry (the Bargaining Council), under whose auspices the award sought to be set aside was issued. The correction of the error in the citation should have occurred at the Bargaining Council. FCS participated in the arbitration proceedings as it knew that it was the correct employer. The substitution does not prejudice FCS, and an order as sought will be granted.

- [10] Regarding the Court where the review application should have been instituted, this was raised for the first time during oral argument. In any event, the review application was submitted in December 2022, prior to the Rules Regulating the Conduct of the Proceedings of the Labour Court² (Labour Court Rules) coming into effect. Rule 3 of the Labour Court Rules, which states that *‘Unless the Judge President directs otherwise, proceedings must be initiated at the seat of the court nearest the place where the dispute that is the subject of the proceedings arose’*, only became effective on 17 July 2024. Before that, parties could file proceedings in any Labour Court, although in practice they were usually instituted in the Court closest to where the dispute arose or where the parties were located.
- [11] Returning then to the review application, I will briefly outline some background facts relevant to the dispute.

Facts

- [12] At the time of his dismissal in January 2022, the applicant had been employed by FCS since 2001. He worked as a Crewman in the Cash-in-Transit (CIT) division, but occasionally, when there was a shortage of drivers, he was assigned driving duties. The incident that led to his dismissal happened when he was driving a CIT vehicle. He was charged and dismissed for deviating from a designated route by stopping at Ultra Liquor (Ultra) to buy alcohol while on duty and/or ‘deselecting duties’.³

² GN 4775, G. 50608 of 3 May 2024.

³ In oral argument Mr Atcheson for the first respondent confirmed that this must be a typing error and that the correct word should have been ‘neglecting or dereliction of duties’.

- [13] He referred an alleged unfair dismissal dispute to the National Bargaining Council for the Road Freight and Logistics Industry (Bargaining Council).
- [14] During the arbitration proceedings, it was established as common cause that the applicant was travelling with two colleagues. He admitted to stopping at Ultra, claiming he urgently needed to use the toilet. While the applicant was in the toilet, one of his two colleagues also left the vehicle to buy liquor. The third colleague remained in the vehicle. When the colleague returning with the liquor arrived, he knocked on the CIT vehicle window, and the applicant received the liquor and placed it inside the vehicle. According to the applicant, he did not question bringing liquor into the vehicle because the colleague was more senior than he was. FCS relied on undisputed video footage of the CIT vehicle at Ultra.
- [15] When the applicant returned to 'base', he was observed parked in the area designated for regular cars, not in the parking area reserved for CIT vehicles. It appears they were transferring the liquor from the CIT vehicle into a private vehicle.
- [16] The applicant and the colleague who purchased liquor at Ultra were charged. The same colleague, who bought the liquor, testified at the applicant's hearing that the applicant had given him the money to do so.
- [17] The commissioner at the Bargaining Council ruled that the applicant's dismissal was both procedurally and substantively fair, and it is this decision that is now being challenged on review.

Applicant's case on review

- [18] On review, the applicant argues that the stop at Ultra did not constitute a deviation from the route because no policy defined a specific route. He also admits he should have notified the control room about the stop but maintains that stopping was not a risk since there was no cash in the CIT vehicle, which had been dropped off at SBV, another client.

- [19] The applicant also states that at Ultra, he stopped at a secure location with gates that automatically close behind the vehicle.
- [20] In his submission, he argued that a dismissal for failing to report the stop to the control room was harsh, especially since there was no cash in the CIT vehicle and it was never left unattended. He also highlights his long service and his clean disciplinary record.
- [21] He concludes by arguing that the Commissioner failed to identify the disputes he was meant to resolve, failed to properly evaluate and consider the evidence before him, and failed to apply his mind to whether the sanction of dismissal was justified. For these reasons, he contends that the award is unreasonable.
- [22] In the supplementary affidavit filed nearly two years later, and in October 2024,⁴ the applicant supplemented his grounds of review.
- [23] He argued that Henning Venter (Venter), who testified about the rule on no deviation from the route, did not work in operations and was therefore not qualified to testify on the matter. He also highlights that Rudolf Delport (Delport) and Wyne Blignaut (Blignaut), who were familiar with the operations, confirmed that there were no designated routes. Furthermore, the submission was that, despite the commissioner having found that there were no designated routes, he still found him guilty based on unsupported assumptions.
- [24] The applicant also argues that there was no evidence that he purchased alcohol or that he gave his colleague money to buy it. Regarding the fact that the colleague gave this version during the disciplinary hearing, the applicant contended that FCS could not rely on the evidence presented at the disciplinary hearing, which was not testified to during the arbitration proceedings.

⁴ It is unclear whether by the time the supplementary affidavit was filed, the review application was deemed to have been withdrawn in terms of the Practice Manual of the Labour Court, April 2013, which applied at the time. As the first respondent did not raise the point, the Court did not investigate this any further.

[25] He also contends that no evidence was presented to the commissioner showing that the trust relationship had been broken.

FCS's opposition to the review application

[26] FCS raised concern that the record filed only includes the transcript of the arbitration proceedings and excludes documents and video footage. The argument is that, unless a complete record is provided, the Court cannot properly assess whether the award is one that a reasonable decision-maker could not have reached.

[27] The second issue raised is that no grounds of review were pleaded, yet it was argued that three grounds of review exist, but no context for them had been provided.

[28] A further point raised was that new grounds of review were introduced in the supplementary affidavit, which is not permitted under the Labour Court Rules.

[29] On the merits, it was submitted that the evidence demonstrated there were no designated routes for drivers, but that Ultra was not an authorised stop. It was noted that the applicant accepted that the schedule of stops complied with management's instructions, and that he should have used the ablution facilities at SBV, where he dropped off the cash.

[30] The further submission was that the absence of cash in the CIT vehicle was irrelevant, as CIT vehicles are always targeted by people who would not know whether they have cash. It was also argued that even if the third colleague remained in the CIT vehicle, the rule was always to have someone in the driver's compartment, and that no one was in the driver's compartment when the applicant was using the toilet facilities.

[31] Regarding the liquor, it was submitted that the commissioner's finding that the colleague bought alcohol for '*them*' was reasonable.

[32] Finally, it was submitted that the applicant sought to appeal the award he was dissatisfied with.

Analysis

[33] In review applications where the award is challenged on the grounds that the outcome is one no reasonable decision-maker could have reached, a complete record must be presented to the Court. A complete record includes the transcript and all evidence given to the commissioner, in any form. The reasonableness of the award can only be assessed by considering all the material that was before the commissioner.

[34] Rule 37(12) of the Labour Court Rules provides as follows:

‘...If the applicant contends that the decision under review should be set aside because it is unreasonable or irrational in relation to the evidence that served before the decision-maker, the complete record must be transcribed.’

[35] In the present case, a complete transcript was filed, but neither the documents nor the video footage were filed. This issue was raised in FCS’s answering affidavit, and one might have expected that the oversight in not filing the documents and video footage would be corrected. It was not suggested that the Bargaining Council failed to file a complete record. At the relevant time, the applicant was legally represented, and therefore, his attorneys would have known that a complete record needed to be filed. This was not done, and it remains unclear why. It would have been pointless to raise this issue with the applicant during oral argument, as he would not have been able to respond.

[36] The applicant denied any involvement in purchasing the alcohol. The video footage was crucial for the review because FCS relied on it to demonstrate that the applicant did not appear upset or concerned when his colleague returned to the vehicle with the alcohol and asked the applicant to keep it. The commissioner who viewed the footage agreed with FCS’s observations.

[37] In *Baloyi v Member of the Executive Committee for Health & Social Development, Limpopo & others*⁵⁶ (*Baloyi*), the Constitutional Court stated this:

[1] ... The applicant also complains that he has been unjustly dismissed and that the arbitrator's decision confirming his dismissal should in any event be reviewed and set aside on the merits. But, logically, that assertion can only be determined if an accurate record of the arbitration proceedings is available.'

[38] Similarly, in *Francis Baard District Municipality v Rex NO & others*⁷, the Court stated:

[24] The grounds of review are inter alia that the factual findings of the commissioner did not correspond with the evidence and documents placed before the commissioner, and that he did not apply his mind properly and rationally to the facts and the law.

[25] The court should ideally see all the material that was before the decision maker so that it can fully and fairly deal with the grounds of review especially when the grounds of review are dependent on the factual findings of the commissioner. It goes without saying that there can, in some cases, be no full and fair review if all the evidence is not before the court. In this matter, two witnesses' testimonies were not available. One witness's re-examination and the employee's re-examination were also not transcribed. Although a lot of documents were placed before the commissioner, these documents are of no assistance because their status is uncertain. The appellant alleges that they were admitted whilst the third respondent points out — correctly based on the pre-arbitration minute — that the agreement was just that they are what they purport to be. Most of the documents were not proven. The documents are also not helpful without the testimony of the witnesses who testified with regard thereto. It would have been very difficult, if not impossible, for the court a quo to

⁵ GN 4775, G. 50608 of 3 May 2024.

⁶ (2016) 37 ILJ 549 (CC).

⁷ (2016) 37 ILJ 2560 (LAC).

determine whether a reasonable decision maker could have reached the conclusion that the commissioner reached. The missing parts were material.

...

[29] The appellant challenged the factual findings of the commissioner; as such it ought to have been aware that the devil would be in the detail in this review. Those details could only be in the complete record containing the testimonies of all witnesses. The significant parts of this review are definitely in the missing part.'

[39] In the absence of a complete record in this matter, this Court cannot determine the applicant's grounds of review that the Commissioner failed to resolve the disputes he was required to address, failed to properly assess and consider the evidence before him, failed to apply his mind to the appropriateness of the sanction of dismissal, and that the outcome is unreasonable.

[40] The grounds of review were pleaded vaguely, but they were nonetheless pleaded, contrary to FCS's submission that no grounds of review were pleaded.

[41] I reject the submission that the applicant pleaded new grounds of review in the supplementary affidavit. The supplementary affidavit merely expanded upon the grounds already pleaded in the founding affidavit, specifically the ground that the outcome is not reasonable.

[42] The founding affidavit contended that the dismissal sanction was excessively harsh, and the supplementary affidavit added that there was no evidence of a broken trust relationship to justify dismissal. Therefore, the case authorities relied upon in FCS's heads of argument, some of which address new grounds of review raised for the first time in legal argument, are not applicable to this case.

[43] But even if the supplementary affidavit raised new grounds of review, this is permissible. Rule 38(20) of Labour Court Rules provides as follows;

‘(20) The applicant must within 5 days after the transcribed record has been filed either:

(a) by delivery of a notice of amendment and supplementary affidavit, amend, add to or vary the terms of the notice of motion and supplement the supporting affidavit; or

(b) deliver a notice that the applicant stands by its notice of motion.’
(My underlining)

[44] Therefore, a supplementary affidavit can amend, add, or vary what is contained in the founding affidavit. Consequently, Rule 38(21) of the Labour Court Rules cannot be interpreted to mean that a supplementary affidavit cannot include new grounds of review, as argued by Mr Atcherson. The Rule states as follows:

‘(21) A supplementary affidavit filed in terms of subrule (20) may do no more than supplement the grounds for review recorded in the founding affidavit or abandon any one or more of them. An applicant who abuses this subrule by including irrelevant or repetitive material in a supplementary affidavit risks an adverse order as to costs.’

[45] To the extent that there is a conflict between subsections 20 and 21, then subsection 20 must take precedence. Subsection 21 cannot revoke a right that subsection 20 has already granted.

[46] Even though the findings about the absence of a complete record are dispositive of the matter, I nonetheless proceed to address the specific issues raised by the applicant, in case it is found that the transcript was sufficient to determine the review application.

[47] Even if the evidence established that there were no designated routes, a fact accepted by the commissioner, the evidence also showed that stops were determined by management. The applicant admitted that he should have informed the control room of the stop. The reason for informing the control room about a stop was not contested. It was not for the applicant, an experienced employee, to decide not to inform the control room of the stop

because there was no cash in the CIT vehicle, the vehicle was not left unattended, and he believed the stop was safe.

- [48] In oral argument, the applicant argued that he was employed as a Crewman rather than as a driver. He contended that, due to his lack of experience as a driver, he had not been trained on the rules relevant to drivers. He also claimed that it appeared he had been trapped on the day in question. Unfortunately, these submissions, which were raised for the first time during oral argument and not before the commissioner, could not be considered on review. In any event, during the Court's engagement with the applicant during oral argument, he admitted that he had been utilised as a driver from time to time.
- [49] Contrary to his claim, the applicant was not found guilty of deviating from a route. He was found guilty of stopping at Ultra without informing the control room, purchasing alcohol whilst on duty, and neglecting his duties. It was not disputed that he stopped at Ultra, left the driver's compartment, liquor was bought during that stop, and he transported the liquor in the CIT vehicle. Whether he gave the colleague the money to buy the liquor was irrelevant.
- [50] Based on the video footage, the commissioner concluded that the applicant and the colleague agreed to buy alcohol at Ultra. The commissioner also decided that, from the gestures in the video, the applicant went to Ultra solely to purchase alcohol. This finding cannot be considered unreasonable for a decision maker, especially because the footage was not included in the review record.
- [51] The applicant also argued that no evidence was provided regarding the breakdown of the trust relationship. This is incorrect. From the award, it is clear that Delport testified that CIT's business depended on trust and that he could no longer trust the applicant. An award is not reviewable simply because a commissioner did not explicitly mention evidence relevant to the issues they were asked to decide.
- [52] The applicant also takes issue with the dismissal sanction imposed, considering his lengthy service and clean disciplinary record. Delport testified

that he could no longer trust the applicant. The commissioner found that the misconduct was serious, as it posed a threat to people; that the applicant showed no remorse; that he acted irresponsibly; and that this was unforgivable. Against those findings, it cannot be said that long service and a clean disciplinary record should have saved the applicant. The outcome that a dismissal was fair cannot be said to be one that no reasonable decision maker could have arrived at, as per *Sidumo & another v Rustenburg Platinum Mines Ltd & others*⁸.

- [53] The review application must be dismissed, as no valid grounds of review were raised.

Costs

- [54] FCS sought costs regarding the application to strike out. I doubt such an application was necessary simply to highlight that the review application was filed late and that the incorrect employer had been cited. These issues could have been addressed in correspondence with the applicant's attorneys. I also doubt that Rule 30 of the Uniform Rules of Court could be relied upon to bring such an application, given that when the review application was filed, and currently, this Court has its own rules governing litigation. Resorting to the Uniform Rules of Court was unnecessary, if not incompetent. Therefore, FCS is not entitled to costs for the application to strike out the review application.
- [55] In oral argument, Mr. Atcheson submitted that he had been instructed to argue for a costs order against the applicant, while conceding that the rule that costs do not follow the result does not apply in this Court. After the Court engaged him further on the matter, he contended that if the applicant's previous attorneys of record had not withdrawn from the case, he would have sought a *de bonis propriis* costs order on the basis that they should have known the review application would never succeed. The argument was of only academic interest, as they had withdrawn as the applicant's attorneys of record. Additionally, the papers did not warn them that a costs order would be

⁸ (2007) 28 ILJ 2405 (CC) at para 110.

sought against them, which would have been a reason to refuse the request for a costs order against the applicant's former attorneys.

[56] The applicant pursued the review application based on the advice of his attorneys at the time. It cannot be argued that he should have known better than to pursue a review that was destined to fail. The first respondents raised unnecessary preliminary points, which have been found to be without merit. An appropriate costs order is one where each party bears its own costs.

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

Order

1. Fidelity Cash Solutions (Pty) Ltd is substituted as the first respondent.
2. Condonation for the late filing of the review application is granted.
3. The review application is dismissed.
4. Each party pays its own costs.

T Gandidze
Judge of the Labour Court of South Africa

Appearances:

For the Applicant : In person

For the First Respondent : Mr Atcheson of Hinrichsen Attorneys