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

Signature Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case No: JR1132/23

In the matter between:

PROPERTY PRACTITIONERS REGULATORY AUTHORITY **Applicant**

and

J.K.M MOSIME N.O **First Respondent**

LEBOGANG MOGOTSI **Second Respondent**

NATIONAL EDUCATION, HEALTH, AND ALLIED WORKERS UNION(“NEHAWU”) **Third Respondent**

Heard: **27 June 2025**

Date Delivered: **25 March 2026**

Summary: Review in terms of section 158(1)(h) of the LRA. Applicant is Statutory body and exercises public power even though it does not derive its powers directly from the Constitution of South Africa. Accordingly, the Labour Court has jurisdiction.

JUDGMENT

BALOYI, AJ

Introduction

[1] This is an application brought in terms of section 158(1)(h) of the Labour Relations Act (LRA),[1] in terms of which the applicant seeks an order to review and set aside the findings of a disciplinary hearing made by the first respondent. The first respondent acted as the chairperson of the disciplinary hearing wherein the second respondent was found not guilty of the charges levelled against her by the applicant.

[2] In its amended notice of motion, the applicant seeks an order in the following terms:

2.1 Review and set aside the decision by the first respondent dated 8 May 2023 in the disciplinary hearing between the applicant and the second respondent.

2.2 An order remitting the matter back to the applicant to be heard *de novo* by a chairperson other than the first respondent.

2.3 Alternatively, to substitute the first respondent's decision that the second respondent is not guilty with a finding that the second respondent is guilty as charged and a finding that the appropriate sanction is the summary dismissal of the second respondent

2.4 Any opposing party to pay the costs.

[3] The second respondent in the heads of argument contends that this Court does not have jurisdiction. The argument is that the applicant is not a State Organ as contemplated in section 158(1)(h).

The facts

[4] The facts in this matter are largely common cause. The second respondent is employed by the applicant in the position of Registration Manager, Enforcement and Compliance Department. She was appointed to this post on 27 September 2021.

[1] Act 66 of 1995, as amended.

[5] During August 2021, the applicant appointed a company called Rural Brand Technologies (Pty) Ltd for the development of a digital application intended to digitise the regulatory process service of the applicant's clientele at a cost of R 3 600 000.00. The second respondent's department was the end user for this digitisation, and she was the relevant or responsible manager.

[6] Rural Brand Technologies submitted an invoice in the total amount of R 1 875 000.00. The invoice is dated 17 November 2021. It appears on the stamp that the invoice was received by the applicant on 10 February 2022.

[7] Following receipt of the invoice, a memorandum was prepared by Supply Chain Management (SCM), which was submitted to the office of the Chief Executive Officer (CEO). The memorandum recommended that an amount of R 505 000,00 be paid to Rural Brand Technologies.

[8] On 14 February 2022, the second respondent apparently signed the invoice confirming that the goods or services supplied by Rural Brand Technologies were satisfactorily delivered and in good condition. This aspect is disputed by the second respondent.

[9] On 15 February 2022, Rural Brand Technologies was paid an amount of R 505 000.00.

[10] On or about 29 September 2022, the second applicant was invited to make submissions on why she should not be suspended pending disciplinary action against her. On 30 September 2022, the second respondent was placed on precautionary suspension pending a disciplinary hearing. On 13 December 2022, the second respondent was served with a disciplinary notice and a charge sheet. The charge against the second respondent read as follows:

> '6 CHARGE *1*
>
> *(re: Rural Brand Technologies)*
>
> The employee is guilty of misconduct by breaching clause 7.2.7 of the PPRA Code of Conduct Policy.
>
> IN THAT:

6.1 On or about 11 August 2021, a service provider named Rural Brand Technologies was ostensibly appointed by the PPRA for the development of a digital application. The application was intended to digitalise the regulatory process to service PPRA's clientele

The appointment was to the value of R 3 600 000.00 (three million, six hundred thousand rands)

6.2 Pursuant to the appointment as aforementioned Rural Brand Technologies issued an invoice dated 11 November 2021 in the amount of R 1 875 000.00(0ne million eight hundred thousand seventy-five thousand rands) for services described as follows:

6.2.1 EAAB at your FingerTips App Project – Progress Report Testing, Guides and Design.

6.2.2 System Architectural Design – BluePrint – XD Link Shared.

6.2.3 System Design – User interface & Prototype.

6.2.4 App Development and Testing (Google Play)- Milestone 2.

6.3 On or about 14 February 2022, the Employee signed and approved the aforementioned tax invoice confirming delivery of the aforementioned services as "satisfactory and in good condition".

6.4 On 15 February 2022, the PPRA paid Rural Brand Technologies an amount of R 505 000.00(five hundred and five thousand rands) based on the approval of the aforementioned tax invoice by the Employee.

6.5 The Employee's conduct in approving the aforementioned tax invoice is irregular for following reasons:

6.5.1 The service as described in the tax invoice had not been completed and /or submitted at. Alternatively.

6.5.2 The services as described in the tax invoice were not submitted in a satisfactory and good condition;

6.5.3 The Employee failed to take reasonable steps to ensure that the services as described in the tax invoice were completed and/or satisfactory completed.

6.6 The above detailed conduct of the Employee constitutes:

6.6.1 Gross misconduct; and/or

6.6.2 Dereliction of duties; and/or

6.6.3 Gross negligence; and /or

6.6.4 Breach of trust.'

[11] The second respondent pleaded not guilty to the charge. The issue that was in dispute before the first respondent in relation to the charge was paragraphs 6.3,6.4 and 6.5.

[12] In the disciplinary hearing, the applicant called one witness Ms Thalitha Shongwe. Who testified that she is employed by the applicant in the position of a Finance Manager. With reference to the invoice from Rural Brand Technologies, she confirmed that the items set out in the invoice are the items that have been charged by Rural Brand Technologies in the amount of R1 875 000.00.

[13] The witness testified with reference to the invoice that the stamp marked *"received*" is the date on which the invoice was received by the applicant and the other stamp is a confirmation that the goods or services set out in the invoice are in order or were received in good order. The witness testified that the signature on the invoice is that of the second respondent and that the invoice was signed on 14 February 2022. The witness testified that before payment is made to a service provider in this case, Rural Brand Technologies, Supply Chain Management must prepare a memorandum, and the end user department must confirm that the goods or services have been received in good order or satisfactorily. The end user department in this case is the department of the second respondent (Licensing and Registration). The CEO will then approve the payment.

[14] The amount of R505 000.00 was paid to Rural Brand Technologies as part payment. It was SCM's decision to pay an amount of R 505 000.00 as set out in the memorandum. The amount of R 505 000,00 was paid on 15 February 2022.

[15] It was put to the witness in cross-examination that the second respondent's version is that, if she is accused of authorizing the payment of R505 000.00 is not what she authorised and that she was made to sign an invoice just to confirm that it has been received.[2] The witness could not comment on the version of the second respondent.[3] The witness confirmed that the memorandum from SCM does not state that the R505 000.00 is part payment and that the second respondent did not sign the memorandum. The witness testified that payment is informed by the Purchase Order (PO), the signed invoice, and the signed memorandum.

[16] It was put to the witness that the second respondent signed the invoice to confirm its receipt because, already on 10 December 2021, there was a purchase order in the amount of R505 000.00 and that the purchase order informs the memorandum. The witness could not comment.

[17] The second respondent testified that she occupies the position of Registration Manager. She testified that the reason she is pleading not guilty to the charge is that she was called by the PA of the CEO to attend to the office of the CEO. At the office of the CEO, she was instructed to sign the invoice (Rural Brand Technologies' invoice in the sum of R 1 875 000.00). She was told that she was signing for the receipt of the invoice. She could not remember the date she was called, but it was after the invoice was paid. In fact, her signature on the invoice is backdated. She testified that it was the first time she had to sign for an invoice and that she did not know about the R 505 000.00.

[18] The second respondent testified that she was not responsible for the payment or authorisation of payment. Her understanding of the part payment is that

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[2] Transcribed record, page 110, line 16 – 26.
[3] Transcribed record, page 111, line 5-14.

there would have been a milestone whereby Rural Brand Technologies would be paid based on the work done.

[19] With reference to the invoice, she testified that it will be the user department (her department) that receives the invoice. The invoice, as per the stamp, was received on 10 February 2022, and the memorandum was prepared on 28 January 2022. So, the memorandum was prepared before the invoice was received.

[20] In cross-examination, the second respondent testified that she reports to the Executive Manager: Enforcement and Registration. The executive manager reports to the CEO. She testified that the instruction for her to sign the invoice came from the CEO via her PA.

[21] The witness was referred to an email sent to her from Pamela Ngobeni dated 10 December 2021. In this email, the invoice for Rural Brand Technologies was attached. The email reads as follows:[4]

> 'Good day
>
> The CEO has asked that I confirm with you the services rendered by Rural Brand Technologies, so that they may proceed with the payment.
>
> Under normal circumstances in the office, we would stamp the invoice where you the responsible department acknowledges that services rendered were delivered satisfactorily and that payments may proceed.
>
> Kindly acknowledge via email, and when we get back to the office we will proceed with the normal process.
>
> Pamela Ngobeni'

[22] With reference to the content of the email, it was put to the second respondent that her version is contradicted by the email in that she had received the email and the invoice. The second respondent disputed that it contradicts her version but admits that payment of the invoice is depended on her department acknowledging that the goods were satisfactory delivered.

[4] Record of proceedings page 136.

[23] It was put to the second respondent that it was irregular of her to put her signature to acknowledge that goods were received in order whilst they were not in order. The witness agreed.[5]

[24] On the question why she did not approach the SCM or the CEO before signing the invoice, she testified that the instruction of the CEO had to be done. That if she did not sign, she would either be sidelined or suspended.

The grounds for review

[25] The ground for review is that the first respondent's ruling that the second respondent had not committed any misconduct is objectively irrational and unreasonable, a decision which a reasonable decision maker would not have made.

Jurisdiction

[26] The second respondent in the heads of argument contends that the Court has no jurisdiction to hear this matter. The Court allowed the parties to advance their arguments in relation to the issue of jurisdiction.

[27] The second respondent relies on the judgment of this court in the matter of *South African Broadcasting Corporation SOC Ltd v Keevy*[6]in which Moshoana J said the following:

> '[41] It is crystal clear to me that the applicant is established as a company by incorporation within the contemplation of the Companies Act and is not a state. How can a state official – the Minister - apply to establish, through incorporation, a state? And, how can a state, through its own official act on behalf of the state? Just to digress a bit and move to the Companies Act. Section 8 thereof suggests that there are two types of companies, a profit and a non-profit company. The section contemplates a state-owned company. Section 19 (1) (a) of the Companies Act provides that from the date of incorporation; the company becomes a juristic person. Back to the BA, in terms of section 7 (8), the State upon incorporation holds 100% of the shares of the

[5] Index to pleadings record, page 190.
[6] (J1652/19)[2020] ZALCJHB 31, [2020] 6 BLLR 607(LC) (7 February 2020).

corporation. Section 13 of the BA deals with the members of the Board. In terms of subsection 13 (11), the Board controls the affairs of the corporation. In terms of section 14, the Executive Committee administers the affairs of the corporation as appointed and accountable to the Board. On the other hand, section 83 (1) of the Constitution tells us that the President is the Head of State. As Head of State, the President's function is amongst others to make appointments within the contemplation of section 84 (1) (e) of the Constitution.

[42] The Companies Act defines the board to be board of directors of a company. In terms of section 19 (1) of the BA shareholding in the applicant is subject to the provisions of section 32 of the Companies Act.

[43] In light of the above provisions, I take a view that the applicant is a separate and distinct legal entity from the state. That being the case, section 158 (1) (h) does not have the likes of the applicant in mind when it empowers the Labour Court to review decisions or acts performed by the state in its capacity as an employer. In this regard, the applicant is in the same position as any other employer registered as a company in terms of the Companies Act. Private companies do not have a right to approach this Court to review their own decisions to appoint, promote and or transfer employees.'

[28] In my view there is a distinction between the applicant before me and the SABC and that distinction lies simply on the fact that the SABC is state owned company that is meant to make profit. The SABC as Moshoana J found is a company. The applicant before me is statutory body (state entity) established in terms of an act of parliament, it is not a company as contemplated by the Companies Act.

[29] The applicant is a regulatory body that is overseen by the department of Human Settlements. It exercises public power even though it does not derive its powers directly from the Constitution.[7]

[7] *Johannesburg Water (SOC) Ltd v Dark Fibre Africa Pty Ltd* 2025 (5) SA 452(GJ) (14 May 2025).

[30] It is trite that this court is vested with the jurisdiction to review decisions or actions performed by the State, as the employer, on any grounds permissible in law, in accordance with section 158(1)(h) of the LRA.[8]

[31] Accordingly, this Court has jurisdiction to hear this matter.

<u>Analysis</u>

[32] In this matter, it is common cause that Rural Brand Technologies was appointed by the applicant to provide services as described in the invoice. It is further common cause that Rural Brand Technologies was paid an amount of R505 000.00 on 15 February 2022.

[33] It is also not disputed, even though no evidence was led, that the service provided by Rural Brand Technologies was not satisfactory. It was accepted in terms of the second respondent's reply to the questions posed by the investigator, wherein she answered the question in the negative (that the service was not satisfactory).[9]

[34] As set out in the summary of evidence, the applicant called one witness, and the second respondent testified in her defence. The issue in this matter is the signing of the invoice by the second respondent and what her signature entails.

[35] The applicant's witness testified that the second respondent signed the invoice on 14 February 2022 to confirm or to certify that the services rendered by Rural Brand Technologies were satisfactory. The second respondent testified that she signed the invoice in March 2022 on the instruction of the

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[8] See *Hendricks v Overstrand Municipality & another* (2015) 36 ILJ 163 (LAC) at para 29 where Murphy AJA (as he then was) stated: *"In sum therefore, the Labour Court has the power under s 158(1)(h) to review the decision taken by a presiding officer of a disciplinary hearing on (i) the grounds listed in PAJA, provided the decision constitutes administrative action; (ii) in terms of the common law in relation to domestic or contractual disciplinary proceedings; or (iii) in accordance with the requirements of the constitutional principle of legality, such being grounds permissible in law"*. It is trite that administrative action must be lawful, reasonable, and procedurally fair. Legality permits the review of public power, including executive action, on the grounds of irrationality and on the basis that the decision-maker did not act in accordance with the empowering statute. Rationality requires that the exercise of public power must not be arbitrary, but must be rationally related to the purpose for which the power was given.

[9] Record of proceedings, page 323.

CEO. She signed the invoice to acknowledge receipt and not to certify that the goods or services were satisfactory.

[36] It is clear from the facts that the first respondent was faced with two conflicting versions. In the *National Union of Mineworkers and Others*[10]. The LAC was faced with a matter where the arbitrator did not apply the appropriate test to evaluate the probabilities of the two irreconcilable versions before him, in the manner detailed in *SFW Group Limited and Another v Martel Et Cie and Others* (*SFW)*[11]. The LAC held that:

> 'To come to a conclusion on the disputed issues a court must make findings on (a) the credibility of the various factual witnesses; (b) their reliability; and (c) the probabilities. As to (a), the court's finding on the credibility of a particular witness will depend on its impression about the veracity of the witness. That in turn will depend on a variety of subsidiary factors, not necessarily in order of importance, such as (i) the witness' candour and demeanour in the witness-box, (ii) his bias, latent and blatant, (iii) internal contradictions in his evidence, (iv) external contradictions with what was pleaded or put on his behalf, (v) the probability or improbability of particular aspects of his version, (vi) the calibre and cogency of his performance compared to that of other witnesses testifying about the same incident or events. As to (b), a witness' reliability will depend, apart from the other factors mentioned under (a) (ii), (iv) and (v) above, on (i) the opportunities she had to experience or observe the event in question and (ii) the quality, integrity and independence of his recall thereof. As to (c), this necessitates an analysis and evaluation of the probability or improbability of each party's version on each of the disputed issues. In the light of the assessment of (a), (b) and (c) the court will then, as a final step, determine whether the party burdened with the onus of proof has succeeded in discharging it."

[37] The approach to be adopted by the chairperson of a disciplinary hearing or an arbitrator to decide the balance of probabilities in respect of disputing versions presented was set out in *Sasol Mining (Pty)Ltd v Ngeleni NO and Others*[12]

[10] [2018] 3 BLLR 267(LAC) at para 12.
[11] 2003(1) SA 11 SCA.
[12](JR1595/08) [2010] ZALCJHB 3 (1 October 2010).

where the Court held that it was one of an arbitrator's function to ascertain the truth as to the conflicting versions before him:

> 'What he manifestly lacked was any sense of how to accomplish this task, or which tools were at his disposal to do so. The commissioner was obliged at least to make some attempt to assess the credibility of each of the witnesses and to make some observation on their demeanour. He ought also to have considered the prospects of any partiality, prejudice or self-interest on their part, and determined the credit to be given to the testimony of each witness by reason of its inherent probability or improbability. He ought then to have considered the probability or improbability of each party's version. The commissioner manifestly failed to resolve the factual dispute before him on this basis. Instead, he summarily rejected the evidence of each of the applicant's witnesses on grounds that defy comprehension.'

[38] What is also clear from the findings of the first respondent is the failure or absent of an assessment of the conflicting versions, of the credibility of the two witnesses and the probabilities of the versions presented.

[39] It seems the first respondent placed emphasis on the fact that the memorandum and the purchase order were all done on 14 February 2022 and concluded that it was all done on an urgent basis, and thus it is probable that the employee (second respondent) signed the invoice only as an acknowledgement.

[40] This court agrees with the applicant's submission regarding the credibility and reliability of the second respondent's evidence.[13] What is further striking in this matter is that the second respondent received an email from Ngobeni on 10 December 2010. In that email, she is specifically asked to confirm whether the services rendered were satisfactory and to sign the invoice; the second respondent did not acknowledge the email and did nothing. In cross-examination in relation to the email, the second respondent offered no explanation of her conduct. In my view, the failure to answer questions in relation to the email has a heavy impact on the credibility and reliability of the second respondent.

[13] Applicant's heads of argument page 22 to 24.

[41] It is my considered view that the finding of the first respondent is reviewable for the reasons set out above. I am of the view that it would be in the interest of the parties and justice to remit the matter for a hearing *de novo*.

Costs

[42] The Court has a wide discretion in respect of costs. In my view, this is a matter where the interest of justice will be best served by making no order as to cost. The second respondent has the findings in her favour and had the right to defend the review application and should not be punished for doing so.

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

Order

1. The findings or the outcome of the disciplinary hearing made by the first respondent in this matter is reviewed and set aside.

2. The dispute is remitted for hearing *de novo* before a different chairperson or presiding officer other than the first respondent.

3. There is no order as to costs.

FI Baloyi

Acting Judge of the Labour Court of South Africa

<u>Appearances:</u>

For the Applicant: ESV Van Graan SC

Instructed by: De Swart Myabo Hlahla Attorneys

For the Respondent: Adv N Nxumalo

Instructed by: Mametja and Associates Inc