



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

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, GQEBERHA

Not Reportable

CASE NO: PR 90/24

In the matter between:

MNQUMA LOCAL MUNICIPALITY

Applicant

And

MANDLENKOSI MINI N.O.

First Respondent

SOUTH AFRICAN LOCAL GOVERNMENT

BARGAINING COUNCIL

Second Respondent

NONTATHU PRETTY MNINI

Third Respondent

Heard: 29 January 2026

Delivered: This judgment was handed down electronically by circulation to the parties' Legal Representatives by email, publication on the Labour Court website and release to SAFLII. The date and time for handing - down is deemed to be 12h00 on 27 March 2026.

JUDGMENT

LALLIE J

- [1] Section 151 of the Constitution of the Republic of South Africa, 1996 (the Constitution) provides that the local sphere of government consists of municipalities. The objects of local government are set out in section 152 of the Constitution. They include the provision of accountable government for local communities and the provision of services in a sustainable manner. Municipalities discharge their constitutional mandate in various ways including through its employees. The applicant employed the individual applicant Ms Mnini (Mnini) in 2015. It dismissed her for misconduct on 17 October 2023 at a time she was its Supply Chain Manager. The third respondent exercised the right to challenge the fairness of Mnini's dismissal by referring an unfair dismissal dispute to the second respondent (the bargaining council). In an attempt to resolve the dispute the bargaining council appointed the first respondent (the arbitrator) to arbitrate it. In an arbitration award dated 19 March 2024 the arbitrator found Mnini's dismissal substantively unfair and ordered the applicant to reinstate her. In this application the applicant seeks

an order reviewing and setting aside the arbitration award on the grounds that it has a defect as envisaged in section 145 (1) of the Labour Relations Act¹ (the LRA). The application is opposed by the third respondent.

- [2] The third respondent delayed in filing the answering affidavit and sought condonation for the lateness. The condonation application is opposed by the applicant. The extent of the delay is about a year. The reason her attorney proffered for the delay is that the answering affidavit was due within 10 days of the filing of the supplementary affidavit. Upon receipt of the supplementary affidavit he took the applicant's file home with the intention of working on it over the weekend. He then forgot about it and his attention was brought to it when he received the notice of set down 17 August 2025. He worked on the answering affidavit, delivered it and the application for condonation of its late filing. The applicant submitted that the excessive delay and its explanation which it viewed as unreasonable justified the dismissal of the condonation application. It was further argued that the third respondent should not be permitted to rely on her attorney's negligence. The applicant relied on the following dictum in *Saloojee and Another NNO v Minister of Community Development*²:

"...I should point out, however, that it has not at any time been held that condonation will not in any circumstance be withheld if the blame lies with the attorney. There is a limit beyond which a litigant cannot escape the result of his attorney's lack of diligence or the insufficiency of the explanation tendered. To hold otherwise might have a disastrous effect upon the observance of the Rules of this Court. Considerations ad/and misericordiam

¹ Act 66 of 1995, as amended.

² 1965 (2) SA 135 A at para 141 B – H.

should not be allowed to become an invitation to laxity. In fact, this Court has lately been burdened with an undue and increasing number of applications for condonation in which the failure to comply with the Rules of this Court was due to neglect on the part of the attorney. The attorney, after all, is the representative whom the litigant has chosen for himself, and there is little reason why, in regard to condonation of a failure to comply with a Rule of Court, the litigant should be absolved from the normal consequences of such a relationship, no matter what the circumstances of the failure are...”

- [3] The third respondent submitted that she has good prospects of success in that the decision reached by the arbitrator falls within bounds of reasonableness. She further submitted that she will suffer serious prejudice should condonation be refused while the applicant was not prejudiced by the delay and would also not be prejudiced by the success of her condonation application. It was argued on her behalf that the interests of justice require that her application should succeed. She relied on the following *dictum* in *Grootboom v National Prosecuting Authority and Another*³:

“[23] It is now trite that condonation cannot be had for the mere asking. A party seeking condonation must make out a case entitling it to the court’s indulgence. It must show sufficient cause. This requires a party to give a full explanation for the non-compliance with the rules or court’s directions. Of great significance, the explanation must be reasonable enough to excuse the default”.

- [4] I have considered the submissions made on behalf of the parties before me on condonation and the authorities they referred to. Some judgments the parties sought to rely on were handed down before the promulgation of the

³ [2014] 1 BLLR 1 (CC) at para 23.

LRA. There is therefore a material factor that could not have been taken into account when the decisions were taken. That factor is provided for in section 3 (a) and (b) of the LRA which enjoins a person applying the LRA to interpret its provisions to give effect to its objectives and in compliance with the Constitution. The purpose of the LRA as stated in its section 1 includes the effective resolution of labour disputes. In *Grootboom v NPA*⁴ (*supra*) the Constitutional Court reaffirmed the factors that must be taken into account when condonation applications are determined. It also added that 'The particular circumstances of each case will determine which of these factors are relevant'.

- [5] I agree with the applicant that a year's delay is excessive and the explanation given supports the conclusion that the third respondent's attorney was at fault. Having considered all the submissions on condonation I am of the view that the circumstances of this case require that more weight be given to the nature of the relief sought, the respondent's prospects of success, prejudice, the right to be heard and the effective resolution of labour disputes. In filing the condonation application the third respondent seeks the relief of being granted leave to oppose the review. She therefore wishes to assert the right to access to courts that is entrenched in section 34 of the Constitution. The Constitutional Court has highlighted the importance of the other party's right to have a case finalised without undue delay. The applicant conceded that it suffered no prejudice as a result of the third respondent's delay in filing the answering affidavit. Further, the third respondent showed her prospects of success in the review application. The effective resolution of the dispute

⁴ at para 22

between the parties requires that each party be afforded an opportunity to present its case. The delay and its consequences on the applicant does not justify denying the third respondent the right to be heard. The totality of the submissions on condonation point to the conclusion that it is in the interests of justice that the applicant's non-compliance with Rule 7A(9) be condoned as she has shown good cause. The late filing of the answering affidavit is therefore condoned.

[6] The applicant's main grounds for review are that in the course of conducting the arbitration the arbitrator committed gross irregularities which resulted in him reaching an unreasonable decision. The irregularities included errors of fact and law and overlooking admissible evidence the applicant tendered in proving the substantive fairness of the third respondent's dismissal. It was the applicant's case that had the gross irregularities not been committed the arbitrator would have reached the reasonable decision that Mnini's dismissal was substantively fair.

[7] The test for review in cases based on gross irregularities committed by an arbitrator in the conduct of an arbitration is reaffirmed as follows in *Head of Department of Education v Mofokeng and Others*⁵:

"...Mere errors of fact or law may not be enough to vitiate the award. Something more is required. To repeat: flaws in the reasoning of the arbitrator, evidenced in the failure to apply the mind, reliance on irrelevant considerations or the ignoring of material factors etc. must be assessed with the purpose of establishing whether the arbitrator has undertaken the wrong enquiry, undertaken the enquiry in the wrong manner or arrived at an

⁵ [2015] 1 BLLR 50 (LAC) at para 32.

unreasonable result. Lapses in lawfulness, latent or patent irregularities and instances of dialectical unreasonableness should be of such an order (singularly or cumulatively) as to result in a misconceived inquiry or a decision which no reasonable decision-maker could reach on all the material that was before him or her.”

[8] In the reasons the arbitrator provided for his decision he noted that the disciplinary enquiry that culminated in Mnini’s dismissal was triggered by an instruction she received from Mr Motamane (Matomane), the applicant’s Municipal Manager. The evidence tendered at arbitration was that in February 2022 the Constitutional Court issued its judgment in *Minister of Finance v Afribusiness NPC*⁶. In the judgment it declared the preferential procurement regulations promulgated in terms of the Preferential Procurement Policy Framework Act 5 of 2000 invalid. The declaration of invalidity was suspended until 16 January 2023 in order to afford the Minister an opportunity to introduce new regulations consistent with the judgment. The effect of the judgment on municipalities was that they had to amend their Supply Chain Management (SCM) policies which were based on the regulations that had been declared invalid. On 4 November 2022 the Minister of Finance (the Minister) promulgated new regulations which were consistent with the judgment. The new regulations had, in compliance with the judgment, to come into effect on 16 January 2023.

[9] To ensure proper implementation of the new regulations Mnini and other staff members in her section attended 2 training sessions conducted by treasury and the Department of Cooperative Governance and Traditional Affairs

⁶ 2022 (4) SA 362.

(COGTA). The arbitrator noted Matomane's evidence that on 30 November 2022 the employees that had attended the training gave him feedback. They discussed the new regulations and realized that they needed clarity from treasury on their functionality. Matomane asked Mnini to request the clarity from treasury. On 1 December 2022 the clarity was provided via email. Matomane then asked Minini to effect the necessary changes to the SCM policies and do gap analysis which had to be presented to the Mayoral committee and council for approval on 9 December 2022. He also asked her to send him the revised supply chain management policy and the gap analysis indicating which parts were added and those that had been removed.

[10] As Mnini had expressed an intention to take leave on 2 December 2022 Matomane told her that her leave depended on her finishing the task he had given her. He further requested her to send him the updated SCM policy and gap analysis by 2 December 2022 so that he could review it. It was the applicant's case at arbitration that Mnini failed to carryout Matomane's instructions. She was then charged with and dismissed for gross negligence for her failure to carryout the instructions and failure to submit the correct updated SCM policy conduct which, in the applicant's view, was wrongful, unlawful and intended to undermine and disrespect the applicant's authority. It is the fairness of Mnini's dismissal for committing those acts of misconduct the arbitrator had to determine.

[11] The arbitrator found that the document Mini failed to submit would not have been the final one to be present to council as Matomane had to first review it. He expressed the view that Mnini was of the view that she had to obtain input from her team before presenting the documents to Matomane while the latter

held the opposite view. The arbitrator noted Mnini's evidence that she did not submit the reviewed policy on 2 December 2022 and conceded that she did not request an extension to submit it on 6 December 2022. He found that the late submission of the reviewed policy without prior communication did not amount to gross negligence considering that Mnini was still seeking input from her team. He rejected Matomane's evidence that the input was unnecessary because the applicant had failed to lead evidence from Mnini's team members corroborating his version. He concluded that Mnini's conduct did not constitute gross negligence as he did not believe that it was inexcusable. A further reason for the conclusion was that the arbitrator accepted Mnini's version of what she did after the session of 30 November 2022.

- [12] The arbitrator found that Mnini did not make herself guilty of the second charge. The finding is based on his rejection of the applicant's evidence owing to the inconsistency, *inter alia*, of the date on which Matomane and Mr Magadla (Magadla), a senior accountant, effected the amendments on the policy. One said it was on 6 December 2022 and the other said it was a day later. Another reason the arbitrator gave for rejecting the applicant's version was that it led no evidence to prove that it had taken disciplinary action or corrective measures when Mnini had submitted substandard work in the past. He rejected Matomane's evidence of the actual instructions he gave Mnini because it was uncorroborated and inconsistent with Magadla's evidence on when the rework on the document Mnini had submitted was done. It is mainly for these reasons that the arbitrator found Mnini's dismissal substantively unfair and ordered the applicant to reinstate her.

[13] Ms Ah Shene, counsel for the third respondent, submitted that the applicant's arguments were inconsistent with its pleaded case and argued that they should be disregarded. Kroon SC for the applicant denied and submitted that the arguments were permissible. I have considered the submission tendered on the issue and agree with the third respondent that the correct legal position is that argument must be foreshadowed in the papers. Argument must therefore be based on the pleaded case. I noted some arguments whose basis could not be found in the applicant's papers. In determining this review application I will consider those arguments that are based on the applicant's pleaded case. The applicant's pleaded case is premised on the grounds that the arbitrator committed gross irregularities and errors that resulted in him reaching an unreasonable decision which stands to be reviewed and set aside. In *Mofekeng (supra)* it was held that in making the determination whether errors constitute valid grounds from review 'they must be assessed with the purpose of establishing whether the arbitrator has undertaken the wrong enquiry, undertaken the enquiry in the wrong manner or arrived at an unreasonable result'. It is common cause that the arbitrator conducted the correct enquiry in that he enquired into the substantive and procedural fairness of Mnini's dismissal for the acts of misconduct which formed the basis of the charges against her. What needs to be determined therefore is whether he undertook the enquiry in the wrong manner.

[14] The guidelines for the enquiry the arbitrator was required to undertake are contained in item 7 of schedule 8 to the LRA which was in operation when the impugned arbitration award was issued. The guidelines require any person determining whether a dismissal for misconduct is fair to consider whether an

employee has contravened a workplace rule of conduct, if the rule was contravened to consider whether the rule was valid or reasonable. The person is further required to consider whether the employee was aware of the rule, whether the rule has been applied consistently and whether dismissal was an appropriate sanction for the contravention. Section 138(1) of the LRA requires arbitrators to determine disputes fairly. Fairness must therefore permeate the entire arbitration proceedings including its outcome. The arbitrator's obligation to apply the guidelines in item 7 of schedule 8 to the LRA requires the arbitrator to apply his or her mind in determining whether an employee has contravened a rule of conduct. It is the applicant's case that the arbitrator erred and acted irregularly in determining whether Mnini contravened the workplace rules on which the charges which resulted in her dismissal were based. In respect of charge 1, the arbitrator found that Mnini's conduct fell short of the gross negligence the applicant had found her guilty of.

- [15] In substantiating its submission that the arbitrator erred in finding that Mnini's negligence was not gross the applicant submitted that it led admissible evidence proving that the negligence was gross but the arbitrator misconstrued and disregarded admissible evidence. The applicant submitted that the arbitrator disregarded the common cause evidence that Mnini and a few other employees had undergone training by treasury and COGTA on the new regulations. After she had briefed Matomane on the training the only outstanding problem was functionality which the treasury solved in an email on 1 December 2022. In light of that common cause evidence the arbitrator had no legal basis for preferring Mnini version on the instructions Matomane gave her. The instructions on the applicant's version were for Mnini to submit

the updated SCM policy and the gap analysis to Matomane before going on leave. Further material evidence that the arbitrator disregarded was that Mnini failed to do the gap analysis. At arbitration the parties testified that the gap analysis is the document that explains the changes which had been effected to the new SCM policy to make it compliant with the new regulations. Mnini therefore had to complete effecting the amendments on the SCM policy before she could prepare the gap analysis. According to common cause evidence presented at arbitration the document Mnini submitted to Matomane late was incomplete in that it was not a reviewed SCM policy and it contained notes based on the input of her juniors on the amendments that had to be effected. The infrastructure and roads policy was not reviewed and the gap analysis report was not submitted.

- [16] I have considered the argument on behalf of the third respondent that the reasonableness of the arbitrator's finding that Matomane and Mnini were not on the same page of what needed to be done on 2 December 2022. It was further argued that the arbitrator reasonably preferred Mnini's version in the absence of evidence of the other employees who were present when the instruction was given. The argument overlooks the arbitrator's omission to give reasons for the need to have Matomane's evidence corroborated. It also fails to consider other relevant evidence. The argument in support of the arbitrator's finding that Mnini complied with the instructions Matomane gave her overlooks the arbitrator's omission to consider all the relevant evidence which includes Mnini's failure to submit the reviewed policy on infrastructure and roads and the gap analysis document. The argument that the arbitrator did not err in accepting that Mnini did not deliberately exclude Matomane from

the addressees of the email of 2 December 2022 in which she sought input from her juniors. It was also argued that the arbitrator reasonably accepted Mnini's evidence that she handed over to Ms Vava (Vava) as she had to attend to a family crisis.

[17] Mnini's conduct supports the applicant's version in that it proves that she had reason to hide from Matomane her invitation for input from her juniors. The reason is that the input was not necessary. By her own admission, Minin did not tell Vava of her obligation to submit the reviewed SCM policy and the gap analysis document when she handed over to her. She therefore retained the obligation to carryout the instructions Matomane gave her. The purpose of reviewing the SCM policy and the procedural step that it had to be presented to the last council meeting scheduled for 8 December 2022 before it come into effect does not support the third respondent's argument that the arbitrator reasonably preferred Mnini's version. The applicant's version is supported by the totality of the evidence and the inherent probabilities. The absence of corroborating evidence was not fatal.

[18] I have considered the authorities the third respondent relied on in support of the arbitrator's finding that the negligence was not gross. Mnini's conduct is similar to the conduct which falls within the definition of gross negligence in *Transnet Ltd t/a Postnet v Owners of the MV Stella Tingas*⁷. In that case the court pointed out that serious errors, poor judgment or incompetence do not automatically constitute gross negligence unless accompanied by recklessness, indifference or a conscious disregard of duty. Mnini was aware that she had to send the reviewed SCM policy and the gap analysis to

⁷ 2003 (2) SA 473 (SCA).

Matomane for him to consider it and ensure that it was ready for presentation to the council at its last meeting before the implementation date of the new SCM policy. Her failure to perform her duties exposed the applicant to the risk of being unable to procure goods and services. When she decided to go on leave disregarding the undertaking that she would go on leave after presenting the documents to Matomane she did not ask Vava to ensure that Matomane's instructions were complied with. She further did not tell Magadla who was acting for Matomane of the undertaking when requesting leave. Even the incomplete document she submitted excluded the review in respect of infrastructure and roads. Evidence properly placed before the arbitrator proved that her failure to present the documents was accompanied by recklessness and disregard for duty. Her negligence was, in terms of the evidence, gross.

- [19] It is common case that Mnini apologized for submitting the review of the SCM policy late. The arbitrator's view that Mnini needed input from her team whose members did not attend training on the new regulations is inconsistent with the evidence placed before him particularly because treasury had already solved the only problem that had been identified. The reason the arbitrator found that Mnini's negligence was not gross was that the late submission of the document without prior communication does not amount to gross negligence. The finding and his view that the applicant had failed to prove that the input of Mnini's juniors was unnecessary influenced the arbitrator's decision on charge 1. They also prove that the arbitrator had no understanding of the misconduct charge 1 entailed. He found that Mnini had committed negligence. Had the arbitrator considered all the evidence led in

respect of charge 1 he would have accepted the applicant's version that Mnini had made herself guilty of the charge. By disregarding relevant and material evidence the arbitrator conducted the enquiry into the fairness of the applicant's conduct in respect of charge 1 in the wrong manner. The result of his error was that his finding on charge 1 is unreasonable.

- [20] The main reason the arbitrator found that Mnini did not make herself guilty of the second charge was that no specific standard of the expected standard of performance was placed before him to compare. He also rejected the applicant's version that Matomane and Magadla had to re do and complete the work Mnini had submitted because they contradicted themselves on the date on which they did the remedial work. The third respondent's efforts to disprove the applicant's contention that the finding is unreasonable cannot succeed. The evidence that the arbitrator erred in reaching the finding is overwhelming. Mnini conceded that she failed to submit the correct updated SCM policy as she testified that she did not submit the reviewed SCM policy on infrastructure and roads. As the arbitrator had to determine the fairness of Mnini's dismissal for misconduct, her record of not performing her duties properly should not have formed a vital part of her enquiry. He erred in rejecting the applicant's evidence that Matomane and Magadla had to do remedial work only because they gave different dates on which the work was done. He had no reasons for rejecting their unrefuted evidence that they had to complete the document particularly in view of Mnini's evidence that she did not review the portion on infrastructure and roads. A decision that is disconnected from the evidence tendered at arbitration is unreasonable. The applicant proved at arbitration that Mnini had made herself guilty of charge 2.

The arbitrator's finding that she was not guilty of the charge is therefore unreasonable.

[21] The validity of the rule of conduct Mnini breached was not in dispute. So was her knowledge of the rule. The consistent application of the rule was not challenged. In support of the submission that the award is unreasonable the applicant submitted that the arbitrator erred in finding that the sanction of dismissal was inappropriate. The arbitrator's finding is based on his rejection of the applicant's submission that the employment relationship had broken down irretrievably. I have considered the argument on behalf of the third respondent that the arbitrator did not commit any error in respect of the finding on sanction. It was argued that the finding is correct and based on evidence the applicant tendered at arbitration. The evidence in the third respondent's view, was based on dishonesty, insubordination and dereliction of duty. The evidence is relevant when regard is had to the nature of the applicant and the position Mnini held. I accept the applicant's submission that the arbitrator failed to consider that Mnini was the Head of Supply Chain Management. The significance of her duties is aptly put as follows in *Buffalo City Metro Municipality v Tembani Sali & Others*⁸:

[15] The Supply Chain Management Policy of a Municipality is an important policy within the overall financial management scheme of the applicant. It finds its genesis in the constitution which provides that:

⁸ an unreported judgment of this court delivered on 26 August 2024 under case number PR159/22 at para [15]

[N]ational, provincial and municipal budgets and budgetary processes must promote transparency, accountability and the effective financial management of the economy, debt and the public sector”.

- [22] The arbitrator failed to consider that the applicant is a municipality which has a sphere of government that is required in section 195 of the Constitution to be accountable. The gravity of the misconduct Mnini made herself guilty of was unreasonably downplayed by the arbitrator. She took leave in breach of an undertaking she had made and left the applicant open to the risk of being without an SCM policy. The inability of a municipality to procure goods and services lawfully or at all has dire consequences on service delivery. Mnini showed no remorse for her misconduct. It is trite that lack of remorse is an indicator that the employment relationship has irretrievably broken down. Had the arbitrator conducted the enquiry in the correct manner he would have concluded that the applicant had proved that the sanction of dismissal was appropriate.
- [23] The gross irregularities the arbitrator committed resulted in the unreasonable decision that Mnini's dismissal was substantively unfair. The arbitration award is reviewed and set aside as it has a defect as envisaged in section 145(1) of the LRA.
- [24] The parties filed a complete set of papers which placed me in a position to invoke the provisions of section 145(4) of the LRA and determine the dispute. For the reasons already given, Mnini made herself guilty of the charges which had been preferred against her. The applicant's decision to dismiss her for the misconduct is fair.

[25] I could find no reason in fairness to grant a costs order against the third respondent.

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

1. The application for condonation of the late filing of the answering affidavit is granted.
2. The arbitration award issued by the first respondent under case number ECD112302 dated 19 March 2024 is reviewed and set aside and substituted with the following:
 - 2.1 The dismissal of Nontathu Mnini by the Mhquma Local Municipality was substantively fair.
3. There is no order as to costs.

MZN Lallie

Judge of the Labour Court of South Africa

Appearances

For the Applicant: Advocate P. Kroon SC

Instructed by Wesley Pretorius & Associates Inc

For the Third Respondent: Advocate Ah Shene

Instructed by Kaplan Blumberg Attorneys

LABOUR COURT