



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

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case No: JR 1747/16

In the matter between:

THATO GLADWIN MAJAKI

Applicant

and

**GENERAL PUBLIC SERVICES SECTORAL
BARGINING COUNCIL**

First Respondent

ANNELIE BEVAN N.O.

Second Respondent

**DEPARTMENT OF LOCAL GOVERNMENT
AND HUMAN SETTLEMENT**

Third Respondent

Heard: 26 February 2026

Delivered: 30 March 2026

JUDGMENT

NAIDOO, AJ

Introduction

[1] The applicant, Mr Thato Gladwin Mojaki (Mojaki), seeks to review and set aside an award dated 5 May 2016, wherein the second respondent (arbitrator)

found that the non-renewal of his fixed-term contract did not constitute a dismissal for purposes of s186(1)(b) of the Labour Relations Act¹ (LRA).

- [2] Mojaki's review application was filed 70 days late. Explaining this delay, Mojaki submits that he was a member of Scorpion Legal Protection (Scorpion Legal) and, due to their internal measures, had to wait until Scorpion Legal first conducted an assessment on the merits of his review application before assigning him an attorney to pursue his review application.
- [3] Mojaki has offered a reasonable explanation for the full period of his delay, and although lengthy, it is in the interest of justice to grant condonation, as will become apparent when addressing the merits of his review application.

Background

- [4] Mojaki and the third respondent, the Department of Human Settlement: North West Province (the Department), entered into a 6-month fixed-term contract commencing 1 July 2014, in terms of which Mojaki was appointed as a driver reporting to the Department's Accounting Officer.
- [5] At the time, the Department placed a moratorium on filling vacant posts; however, because Mojaki's position was considered a 'critical post', his recruitment and subsequent appointment had been approved, independent of the Department's recruitment policy.
- [6] The Department renewed Mojaki's contract for a further 6 months from 1 January 2015 to 30 June 2015.
- [7] Sometime in May 2015, and as a result of the Department's operational needs, Mojaki was transferred to the Department's Supply Chain Management Centre, where he continued to tender his services as a driver. Mojaki's contract was not renewed after the expiry of his second fixed-term contract.
- [8] Mojaki referred a dismissal dispute to the first respondent, claiming he had a

¹ Act 66 of 1995, as amended.

reasonable expectation that he would be offered a permanent position.

- [9] At arbitration, the arbitrator accepted an agreement reached between Mojaki, who represented himself, and the Department's Labour Relations Official, that the parties would dispense with a hearing and instead submit written representations after which the arbitrator would deliver her award.
- [10] Having conducted the process in this manner, the arbitrator found that Mojaki has failed to establish a reasonable expectation for a permanent post.

Grounds on Review

- [11] Mojaki submits that the arbitrator committed gross misconduct by allowing the parties to dispense with a hearing and instead file written submissions. In doing so, and according to Mojaki, the arbitrator breached the *audi alteram partem* principle.
- [12] The second ground on review is that the arbitrator failed to have regard to clause 9 of his fixed-term contract, which made it mandatory for disputes between the parties to be referred to private arbitration. Continuing the attack on the first respondent's jurisdiction, Mojaki further submits that because he was employed outside the prescripts of the Department's recruitment policy, it was the CCMA, and not the first respondent, who had jurisdiction to entertain his dispute.

Analysis

- [13] There is merit to Mojaki's first ground on review.
- [14] In *SA Social Security Agency v National Education Health & Allied Workers Union on behalf of Punzi & Others*², addressing the very same argument, the Court held;

'In the absence of such a stated case, oral evidence should be led on the material facts in dispute at arbitrations in terms of the LRA. Commissioners and arbitrators should not condone an agreement between parties that no

² (2015) 36 ILJ 2345 (LC) at para 8.

oral evidence be led unless such a stated case has been agreed, and on which they may draw legal conclusions. Although parties may regard submitting documents and argument as a fast way of resolving a dispute on the day of arbitration, it in fact renders the award issued susceptible to review. In the result, the principle of speedy resolution of disputes is ultimately sacrificed.'

- [15] Confirming this standpoint, the LAC in *Arends & others v SA Local Government Bargaining Council & others*³:

'When parties desire to proceed without oral evidence in the form of a special case, it is imperative that there should be a written statement of the facts agreed by the parties, akin to a pleading. Otherwise, the presiding officer may not be in a position to answer the legal question put to him. Alternatively, without such a statement, the question put is in danger of being abstract or academic. Courts of law and arbitration tribunals dealing with disputes of right exist for the settlement of concrete controversies and not to pronounce upon abstract questions or to give advice upon differing contentions about the meaning of an agreement. Where a question of legal interpretation is submitted to an arbitrator, the parties must set out in the stated case a factual substratum which shows what has arisen and how it has arisen. The stated case must set out agreed facts, not assumptions. The purpose of the rule is to enable a case to be determined without the necessity of hearing the evidence.'

- [16] It is common cause that the arbitrator in *casu* determined the dispute on the written submissions only and in the absence of a stated case. The parties did not place before the arbitrator a signed pre-trial minute, which could have served the purpose of a stated case. From her award, it is clear that the arbitrator had regard to documents included in the Department's bundle as well as documents Mojaki attached to his written submission, without first questioning the status of the parties' respective documents. Were the documents admitted into evidence, or were they in dispute? These are questions the arbitrator ought to have asked the parties.

- [17] The facts herein materially differ from the facts in *Mashigo v Safety and*

³ (2015) 36 ILJ 1200 (LAC) at para 15.

*Security Sectoral Bargaining Council and Others*⁴, for the above reasons.

- [18] I am therefore persuaded that Mojaki's right to a fair hearing had been breached. The arbitrator ought not to have allowed the parties to conduct the arbitration in the manner agreed upon.
- [19] Whether the first respondent had jurisdiction to hear Mojaki's dispute is a question best left for an arbitrator appointed by the first respondent to address. Although both parties took opposing views on this issue, neither party placed nor referred the Court to the first respondent's main collective agreement in support of their respective stance.
- [20] Similarly, concerning the private arbitration clause, this Court is in the dark when assessing whether the private arbitration clause is less favourable or as favourable as the dispute resolution recorded in the first respondent's main agreement (assuming it applies), to Mojaki.⁵ As such, this question ought likewise to be addressed by an arbitrator.

Order

1. The late filing of the applicant's review application is condoned.
2. The second respondent's award is set aside, and the dispute is remitted to the first respondent to be heard *de novo* by an arbitrator other than the second respondent.
3. There is no order as to costs.

M Naidoo

Acting Judge of the Labour Court of South Africa

⁴(JR 269/2020) [2022] ZALCJHB 141; (2022) 43 ILJ 2042 (LC) (1 June 2022).

⁵See *Carlbank Mining Contracts (Pty) Ltd v National Bargaining Council for the Road Freight Industry and Others* (JR1592/07) [2010] ZALCJHB 5 (21 July 2010) at paras 16 to 17.

Appearances

For the Applicant: Mr C.G. Grove, *per* CGG INC Attorneys

For the Third Respondent: Ms M. Majoko

Instructed by: Leepile Attorneys Inc.

LABOUR COURT