THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Not Reportable

Case No: C232/2024

In the matter between:

MANGAUNG METROPOLITAN MUNICIPALITY	**Applicant**
and	
MOTLOHI TSHEDISO SAMUEL RAMOSHEBI	**First Respondent**
SOUTH AFRICAN LOCAL GOVERNMENT BARGAINING COUNCIL	**Second Respondent**
DAVID PIETERSEN N.O.	**Third Respondent**

Heard: **28 January 2026**

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 judgment is deemed to be 10h00 on 13 April 2026.

JUDGMENT

DE KOCK, AJ

Introduction

[1] This matter comes before the Labour Court as a review application in terms of section 145 of the Labour Relations Act 66 of 1995 ("the LRA"). The Applicant, Mangaung Metropolitan Municipality ("Mangaung"), seeks an order reviewing and setting aside the arbitration award issued by the Third Respondent, Advocate David Pietersen N.O. ("the Commissioner"), acting under the auspices of the South African Local Government Bargaining Council ("the SALGBC") on 15 May 2024 under case number FSD122305 ("the Award"). The arbitration award is dated 13 May 2024 but on the last page of the award it is stated that the award was signed on 15 May 2024. Nothing turns on this discrepancy, and this court accepts that the award was signed on 15 May 2024.

[2] In the Award, the Commissioner found that Mangaung committed an unfair labour practice against the First Respondent, Mr Motlohi Tshediso Samuel Ramoshebi ("Ramoshebi"), in contravention of section 186(2)(b) of the LRA by subjecting him to an unjustified and prolonged precautionary suspension. The Commissioner ordered the immediate upliftment of the suspension and awarded Ramoshebi compensation in the amount of R749,394.16 as *solatium* for the continued unfair suspension.

[3] The SALGBC filed a notice of filing of the record and has indicated it will abide by the decision of this Court. The Commissioner takes no active part in the proceedings, having been cited in his nominal capacity as the official who issued the Award.

[4] Before turning to the substance of the review, I deal briefly with a condonation application by Mangaung for the late filing of its Heads of Argument. The Heads were delivered thirteen days after the prescribed deadline of 6 January 2026. The delay is explained by the fact that the notice of set down was served on a municipal official at Mangaung's principal place of business and not on its attorneys of record, PH Attorneys, who had briefly withdrawn as attorneys of record in December 2024 before re-appointing themselves in February 2025. The attorneys became aware

of the set-down date only when Kramer Weihmann Incorporated, representing Ramoshebi, drew it to their attention on 26 November 2025. The First Respondent had consented to the receipt of the Heads in January 2026. I am satisfied that the explanation is adequate, the delay was not wilful, no prejudice accrues to Ramoshebi, and the interests of justice favour hearing the matter on its merits. Condonation is accordingly granted.

<u>Background</u>

[5] The relevant background facts are largely common cause. They are supported throughout by the documentary record, which this Court has read in its entirety, and by the common cause facts recorded in the pre-arbitration conference minutes signed by both parties' representatives.

[6] At all material times, Mangaung was under a National Cabinet Intervention proclaimed by Government Notice No. 2044, published in Government Gazette No. 46287 on 28 April 2022, signed by the then Minister of Finance, the Honourable Enoch Godongwana ("the Government Notice"). The intervention was effected in terms of sections 139(5)(a) and (c) of the Constitution of the Republic of South Africa, 1996, read with section 146(3)(b) of the Local Government: Municipal Finance Management Act 56 of 2003. In terms of the Government Notice, a National Cabinet Representative ("NCR") was installed with oversight authority over all decisions made by delegated authority within the Municipality. Clause 1.1(h) of the Government Notice requires all reports for decision-making by any delegated authority, including the Municipal Council and the Executive Mayor, to be processed by the Accounting Officer with the concurrence of the NCR. Clause 1.1(q) directs the NCR to ensure and oversee the execution by the Accounting Officer of functions under section 67(1)(h) of the Local Government: Municipal Systems Act 32 of 2000, which expressly includes disciplinary functions. Clause 1.1(r) requires the NCR to assist the Executive Mayor and the Accounting Officer in the development of human resource capacity. The NCR concurrence requirement therefore extends, on the plain wording of the Government Notice, to

all disciplinary decisions, including decisions to place an employee on precautionary suspension.

[7] Ramoshebi was employed by Mangaung as General Manager: Human Resources Management within the Directorate: Corporate Services since 1 September 2016. His gross annual remuneration was R1,798,546.00 (R149,878.83 per month). His employment was governed by, among other instruments, the Disciplinary Procedure Collective Agreement ("DPCA") concluded between the South African Local Government Association, the Independent Municipal and Allied Trade Union ("IMATU") and the South African Municipal Workers Union.

[8] On 19 April 2022, an incident occurred at the Municipality's offices. It is alleged that Ramoshebi conducted himself in a rude, abusive, intimidatory and aggressive manner towards the Head of Department of Metro Police, Commissioner K. Kgamanyane, in the course of preventing the former Acting City Manager, Mr Mzingisi Nkungwana, from entering the municipal offices, that being the instruction of the former Executive Mayor, Councillor Siyonzana. The incident was digitally recorded and broadcast on social and digital media.

[9] On 3 May 2022, Mangaung served Ramoshebi with a Notice of Intent: Suspension in respect of the April 2022 incident. He submitted written representations. Mangaung accepted those representations and took no further disciplinary steps. He was neither suspended nor charged. It is clear that Mangaung abandoned the April 2022 allegations entirely at that point.

[10] Approximately sixteen months later, on 4 September 2023, Mangaung served Ramoshebi with a fresh Notice of Intent: Pre-Cautionary Suspension. This notice bore no resemblance to its predecessor. The allegations were entirely different; they concerned his alleged failure to execute lawful administrative instructions relating to his day-to-day HR duties, including the review of human resource policies, employment contracts, staff establishment documents, audit reports, internal HR strategies, metro police application forms, and the Q-link contract.

Ramoshebi made oral representations on 11 September 2023 addressing the September 2023 administrative allegations and not the April 2022 conduct.

[11] On 13 September 2023, the Suspension Determination was issued and signed on behalf of the City Manager, witnessed by Mr Diratsagae Maoke. Ramoshebi was placed on precautionary suspension from 14 September 2023 to 12 December 2023. The Suspension Determination cited four grounds: the potential to jeopardise any investigation, to commit further acts of misconduct, to be detrimental to the stability of the Municipality, and to damage or tamper with evidence. The Suspension Determination bore no signature of, or concurrence from, the NCR.

[12] On 9 November 2023, Mangaung served Ramoshebi with a Notice of Misconduct: Charges containing four charges. Each charge related exclusively to the events of 19 April 2022: Gross Insubordination, Bringing the Municipality into Disrepute, Intimidation, and Insolence. Not a single charge concerned the administrative dereliction alleged in the September 2023 suspension notice. The presiding officer appointed was Mr Mbulelo Jafta. The hearing was postponed twice, on 16 and again on 20 November 2023, before commencing on 12 December 2023. On that same date, the suspension was extended to 13 March 2024, without NCR concurrence.

[13] At the 12 December 2023 sitting, IMATU raised a point *in limine* challenging the charges on the ground of undue delay. On 11 January 2024, Mr Jafta issued a written *in limine* ruling of six pages. Applying the principle established in *Bothma v Els*[1] that delay is not inherently unfair and must be assessed on a case-by-case basis, Mr Jafta had regard to the factors propounded in *Sanderson v Attorney-General, Eastern Cape*[2] and endorsed in *Bothma v Els*, considering holistically the length of the delay from April 2022 to November 2023, far exceeding the three-month limit in clause 7.4 of the DPCA, the employer's inadequate explanation, the

[1] [2009] ZACC 27; 2010 (2) SA 622 (CC); 2010 (1) SACR 184 (CC); (2010) (1) BCLR 1 (CC).
[2] [1997] ZACC 18; 1997 (12) BCLR 1675 (CC); 1998 (2) SA 38 (CC); 1998 (1) SACR 227 (CC).

absence of any dilatory conduct by Ramoshebi, the prejudice occasioned, and the nature of the alleged offences. The ruling, drawing on *Stokwe v Member of the Executive Council: Department of Education, Eastern Cape and Others*[3] and further authorities, ordered that the charges against Ramoshebi be dismissed and that his suspension be lifted immediately.

[14] Clause 8.5 of the DPCA provides, unambiguously, that the determination of the presiding officer is final and binding on the employer and the employee, subject only to remedies permitted in law and the DPCA. Mangaung neither complied with the ruling nor applied to review it. On 15 January 2024, a Labour Relations official emailed IMATU stating: “The Municipality is of the view that the Presiding Officer has made an error and has instructed their Lawyers to review the ruling on an urgent basis. The *status quo* therefore remains regarding the suspension of both your members, they are thus not to report for duty.” No review was ever launched.

[15] On 1 February 2024, Mangaung served Ramoshebi with a further Notice of Misconduct: Charges containing seven charges (with one alternative). The second charge sheet combined the same April 2022 conduct already dismissed by Mr Jafta with entirely new allegations dating to 3 June 2021, namely gross dishonesty, alternatively gross negligence, and financial misconduct under the Municipal Finance Management Act 56 of 2003, all relating to the authorisation of payments to 93 alleged ghost employees. A second presiding officer, Dr Molefinyane Phera, was appointed. A third suspension extension was issued on 15 March 2024, extending the suspension to 13 June 2024, again without NCR concurrence. Dr Phera was subsequently also removed by the City Manager, necessitating the appointment of yet a third presiding officer.

<u>The Arbitration Proceedings</u>

[16] Ramoshebi referred an unfair labour practice dispute to the SALGBC on 19 December 2023. Conciliation on 19 January 2024 failed and a certificate of non-

[3] [2019] ZACC 3; (2019) 40 ILJ 773 (CC); 2019 (4) BCLR 506 (CC); [2019] 6 BLLR 524 (CC).

resolution was issued. The arbitration was conducted in two sittings on 26 March and 6 May 2024 at IMATU's offices in Bloemfontein, with both parties legally represented throughout. Ramoshebi called three witnesses: himself, Mr Tankiso Mea (former City Manager) and Ms Denise Retsinas (IMATU's Senior Labour Relations Officer). Mangaung called one witness: Mr Diratsagae Maoke.

[17] On 2 May 2024, four days before the second sitting, Mangaung delivered a recusal application against the Commissioner. The basis was that the Commissioner had previously issued an award in a related matter (the "Motheke matter") involving Mangaung and IMATU on essentially the same DPCA issues, and that a reasonable objective person would apprehend that he might not bring an impartial mind to the present dispute. At the commencement of the second sitting, the Commissioner dealt with the condonation application for the late filing of the recusal application. Mangaung's representative confirmed the delay was caused by a "change in legal strategy," described it as "excessive" on the Municipality's own version, and conceded that the Commissioner "was never biased in this case." The Commissioner refused condonation and the arbitration proceeded. The Award was issued on 15 May 2024.

<u>The Award</u>

[18] The Commissioner identified three issues for determination: whether Mangaung had waived its right to institute disciplinary proceedings against Ramoshebi; whether Mangaung had contravened the DPCA; and whether Mangaung had committed an unfair labour practice within the meaning of section 186(2)(b) of the LRA.

[19] On waiver, the Commissioner found that Mangaung accepted Ramoshebi's May 2022 representations and abandoned the April 2022 allegations. The September 2023 suspension notice concerned entirely different administrative conduct and bore no connection to the subsequent charge sheet, which charged only the April 2022 conduct. The Commissioner found that Mangaung had fabricated the September 2023 allegations as a pretext to reopen the stale 2022

matter, conduct he characterised as *contra bonos mores* and an abuse of power and process.

[20] On the contraventions of the DPCA, the Commissioner made the following findings. First, no evidence was led to justify the suspension under clause 16.1 of the DPCA on the grounds of jeopardising an investigation, interfering with witnesses, or committing further misconduct; "nothing whatsoever" was presented in that regard. Second, the suspension notices were not signed with NCR concurrence as required by the Government Notice, rendering the suspension *void ab initio*. Third, Mangaung's failure to comply with the in limine ruling of 11 January 2024 violated clause 8.5 of the DPCA. Fourth, the re-charging of Ramoshebi on 1 February 2024 with the same charges dismissed by the chairperson violated clause 8.6, which prohibits re-charging for the same alleged misconduct. Fifth, the third suspension extension of 15 March 2024 violated clause 16.4 in the absence of any justification.

[21] The Commissioner ordered that Mangaung's conduct be declared an unfair labour practice, that the suspension be lifted with immediate effect, and that Mangaung pay Ramoshebi compensation of R749,394.16, being five months' remuneration at R149,878.83 per month, as *solatium* for the continued unfair suspension.

<u>Grounds of Review</u>

[22] Mangaung identifies four grounds of review:

22.1 The Commissioner committed a gross irregularity and misconceived the nature of the enquiry in that he determined the issue of waiver, a doctrine said to be applicable only to dismissal disputes, in the context of an unfair labour practice dispute concerning suspension.

22.2 The Commissioner committed a gross irregularity and/or material error of law in the determination of the recusal application, in that he refused to engage with the merits thereof and determined it solely on the basis of a condonation application, contrary to the principle that a recusal application may be brought at any stage.

22.3 The Commissioner erred in finding that Mangaung committed an unfair labour practice by ignoring relevant evidence, specifically the justification for the extension of the suspension under clause 16.4 of the DPCA and the relevance of the February 2024 charges to Ramoshebi's continued presence in the workplace.

22.4 The Commissioner erred in finding the suspension *void ab initio*, having misconstrued the Government Notice and conflated it with the *in limine* ruling on delay.

[23] Ramoshebi opposes the review application in its entirety. He contends that it is conceptually flawed as a disguised appeal, that all four grounds are without merit, and that the Award, viewed holistically, is one that a reasonable decision-maker could have reached on the evidence. He seeks dismissal with costs.

<u>Review Test</u>

[24] In *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others*[4], the Constitutional Court held that the reasonableness standard should suffuse section 145 of the LRA and that the threshold test is: "… Is the decision reached by the commissioner one that a reasonable decision maker could not reach?…" In *Herholdt v Nedbank Ltd*[5] the Court applied this reasonableness consideration as follows:

> *"In summary, the position regarding the review of CCMA awards is this: A review of a CCMA award is permissible if the defect in the proceedings falls within one of the grounds in s 145(2)(a) of the LRA. For a defect in the conduct of the proceedings to amount to a gross*

[4] [2007] ZACC 22; [2007] 12 BLLR 1097 (CC); 2008 (2) SA 24 (CC); (2007) 28 ILJ 2405 (CC); 2008 (2) BCLR 158 (CC) at para 110.
[5] [2013] ZASCA 97; 2013 (6) SA 224 (SCA); [2013] 11 BLLR 1074 (SCA); (2013) 34 ILJ 2795 (SCA) at para 25.

> *irregularity as contemplated by s 145(2)(a)(ii), the arbitrator must have misconceived the nature of the inquiry or arrived at an unreasonable result. A result will only be unreasonable if it is one that a reasonable arbitrator could not reach on all the material that was before the arbitrator. Material errors of fact, as well as the weight and relevance to be attached to particular facts, are not in and of themselves sufficient for an award to be set aside, but are only of any consequence if their effect is to render the outcome unreasonable."*

[25] This test has been applied as a two-stage review enquiry. First, the review applicant must establish that a failure or error on the part of the arbitrator exists. If this cannot be shown, that is the end of the matter. Second, if a failure or error is shown to exist, the applicant must further demonstrate that the outcome arrived at by the arbitrator was unreasonable. If the outcome is nonetheless reasonable, despite the error, that is equally the end of the review application. In short, the error or failure must affect the reasonableness of the outcome to the extent of rendering it unreasonable.

[26] In *Gold Fields Mining South Africa (Pty) Ltd (Kloof Gold Mine) v Commission for Conciliation, Mediation and Arbitration and Others*[6] (*Gold Fields*) the Labour Appeal Court ("LAC") explained that the review enquiry is holistic and result-based. A fragmented, piecemeal analysis of individual grounds of review defeats review as a process and assumes the character of an appeal. The failure to have regard to material facts must actually defeat the constitutional imperative that the award be rational and reasonable; there is no room for conjecture and guesswork.

[27] In *Head of the Department of Education v Mofokeng and Others*[7] (*Mofokeng*) the LAC provided the following exposition:

[6] [2013] ZALAC 28; [2014] 1 BLLR 20 (LAC); (2014) 35 ILJ 943 (LAC) at para 21.
[7] [2014] ZALAC 50; [2015] 1 BLLR 50 (LAC); (2015) 36 ILJ 2802 (LAC) at para 33.

> *"[33] Irregularities or errors in relation to the facts or issues, therefore, may or may not produce an unreasonable outcome or provide a compelling indication that the arbitrator misconceived the inquiry. In the final analysis, it will depend on the materiality of the error or irregularity and its relation to the result. Whether the irregularity or error is material must be assessed and determined with reference to the distorting effect it may or may not have had upon the arbitrator's conception of the inquiry, the delimitation of the issues to be determined and the ultimate outcome. If but for an error or irregularity a different outcome would have resulted, it will ex hypothesi be material to the determination of the dispute. A material error of this order would point to at least a prima facie unreasonable result… Provided the right question was asked and answered by the arbitrator, a wrong answer will not necessarily be unreasonable."*

[28] The court will now proceed to consider the review application against these principles.

<u>Evaluation of Grounds of Review</u>

[29] A preliminary observation is required. Mangaung invites this Court to dissect the Award into four discrete fragments and to evaluate each independently. This is precisely the piecemeal approach that *Gold Fields* identifies as impermissible. The question is not whether any isolated strand of the Commissioner's reasoning is contestable in the abstract. The question is whether the Award as a whole, read against the totality of the evidence and the documents in the record, is one that no reasonable decision-maker could have reached. This court must bear that overriding principle in mind throughout.

[30] The court turns to the first ground. Mangaung submits that the doctrine of waiver has no application in an unfair labour practice dispute concerning suspension. This proposition finds no support in the text of the LRA or in the authorities. The doctrine applies broadly across employment and contractual law: *National Union of Metal*

Workers of South Africa v Intervale (Pty) Ltd and Others[8] and *Moroenyane v Station Commander of the South African Police Services - Vanderbijlpark*[9]. There is no principled basis to confine it to dismissal proceedings.

[31] What is determinative on this ground is that waiver was an agreed dispute issue, expressly recorded in the pre-arbitration conference minutes signed by both parties' representatives. Mangaung placed the question before the Commissioner and invited him to determine it. It cannot now allege that he exceeded his jurisdiction by answering the question put to him. A commissioner does not exceed his powers by determining an issue expressly submitted to him by the parties.

[32] In any event, even if the Commissioner erred in his approach to waiver, which this court does not accept, Mangaung has not demonstrated that this error had any distorting effect on the outcome of the Award within the meaning of *Mofokeng*. The Award does not stand or fall on the waiver finding alone. The Commissioner's findings on the multiple independent DPCA breaches and the *void ab initio* determination each independently sustain the conclusion of unfairness. Even if the waiver finding were excised entirely from the Award, the DPCA violations, each independently dispositive, would sustain the unfair labour practice finding in full. The first ground fails.

[33] The second ground concerns the Commissioner's handling of the recusal application. Mangaung relies on *Bernert v ABSA Bank Ltd*[10] (*Bernert*) for the proposition that a delay in bringing a recusal application does not amount to acquiescence and that the controlling principle is the interests of justice. This court does not find that *Bernert* assists this ground of review. The Constitutional Court, at paragraph [71], found that it was not open to the applicant to wait for the outcome of the appeal before pursuing his complaint of bias. The Court held further that it is highly desirable, if extra costs, delay and inconvenience are to be avoided, that complaints of this nature be raised at the earliest possible stage. In essence, the

[8] [2014] ZACC 35; 2015 (2) BCLR 182 (CC); 2015 3 BLLR 205 (CC); (2015) 36 ILJ 363 (CC).
[9] [2016] ZALCJHB 330.
[10] [2010] ZACC 28; (2011) 4 BCLR 329 (CC); 2011 (3) SA 92 (CC).

Court found that the conduct of the applicant is simply inconsistent with a reasonable apprehension of bias.

[34] The late request for a recusal of the Commissioner was unacceptable. The Commissioner's characterisation of the fourteen-day rule in the SALGBC's rules as a jurisdictional bar was, with respect, imprecise. The better analysis is that lateness is a factor to be weighed in the interests of justice, not a jurisdictional terminus. That limited concession does not, however, take Mangaung's case further. Even on the assumption that the Commissioner erred in his procedural characterisation, his substantive conclusion that the recusal application had no prospects of success is amply supported by the record. Mangaung's representative described the delay as caused by a "change in legal strategy" and conceded that the Commissioner "was never biased in this case." These concessions are fatal to any genuine claim of apprehension of bias.

[35] The threshold for establishing a reasonable apprehension of bias is demanding, as confirmed in *President of the Republic of South Africa and Others v South African Rugby Football Union and Others*[11] and in *Bernert* itself. The mere fact that a commissioner has previously decided a similar dispute on comparable facts between the same parties does not, without more, ground a reasonable apprehension of bias. It is further well established that a flawed procedural handling of a recusal application does not in itself vitiate an award; the applicant must demonstrate that the alleged bias actually tainted the outcome. Mangaung has further failed to demonstrate that the Commissioner's handling of the recusal application had any distorting effect on the outcome of the Award. The second ground accordingly fails.

[36] The third ground alleges that the Commissioner ignored relevant evidence. This ground is not well taken. Mangaung has not identified, with any particularity, which specific evidence was ignored. The formulation is no more than a restatement of

[11] [1999] ZACC 11; 2000 (1) SA 1 (CC); 1999 (10) BCLR 1059 (CC).

its disagreement with the Commissioner's evaluation of the evidence, which is the hallmark of an appeal, not a review.

[37] The Commissioner's finding that "nothing whatsoever" was provided to justify the suspension under clause 16.1 of the DPCA is firmly supported by the record. A review court does not re-weigh evidence; the applicant must identify specific material evidence that was ignored and demonstrate its distorting effect on the outcome, as required by *Gold Fields*. Mangaung's own witness, Mr Maoke, conceded under cross-examination that no formal investigation was conducted; that he could not explain the basis for extending the suspension; and that the charges were unrelated to the suspension notice. An employer who dismantles the evidentiary foundation for its own conduct through its own witness cannot credibly allege on review that the commissioner ignored evidence. The third ground fails.

[38] In any event, even if Mangaung's interpretation of clause 16.4 that a suspension may be extended without limit once a disciplinary hearing has commenced were accepted, which this court does not find it necessary to determine, the clause 16.4 finding is one of five independent DPCA violations identified by the Commissioner. The remaining four, the absence of evidentiary justification under clause 16.1, the *void ab initio* suspension, the defiance of the binding ruling under clause 8.5, and the unlawful re-charging under clause 8.6 each independently sustain the unfair labour practice finding. The excision of the clause 16.4 finding would not affect the outcome.

[39] The fourth ground challenges the void ab initio finding. Mangaung contends that the Government Notice does not specifically require NCR concurrence for precautionary suspensions. This contention cannot withstand scrutiny of the Government Notice itself. Clauses 1.1(h), (q) and (r) read together expressly extend the NCR's oversight mandate to disciplinary functions under section 67(1)(h) of the Municipal Systems Act, which includes the suspension of employees. The suspension of Ramoshebi was a decision made by delegated authority within Mangaung. It required NCR concurrence. The NCR concurrence

requirement is not merely procedural in nature; it is jurisdictional, such that any suspension decision taken without it is void from the outset and incapable of subsequent ratification. No NCR signature appears on any of the suspension notices or on the Suspension Determination. The factual foundation for the *void ab initio* finding is unassailable.

[40] Mangaung's counter-interpretation that clause 1.1(q) is merely supervisory and that section 67(1)(h) concerns systems development rather than individual decisions does not survive scrutiny of clause 1.1(h), which Mangaung does not address. Clause 1.1(h) expressly requires all reports for decision-making by any delegated authority to be processed by the Accounting Officer with the concurrence of the NCR. A precautionary suspension of a senior municipal manager is precisely such a decision made by delegated authority. To read clause 1.1(q) in isolation, as Mangaung invites, would render clause 1.1(h) redundant, a result that no proper interpretation of the Government Notice can support. The clauses are complementary, not competing.

[41] The question whether a commissioner has jurisdiction to determine the validity of an employer decision incidental to a main unfair labour practice dispute is answered in the affirmative by *Cook4Life CC v Commission for Conciliation, Mediation and Arbitration and Others*[12]. The Commissioner was entitled to make this finding. Moreover, cross-examination of Mr Maoke established that the person who signed the original suspension notice was not the Acting City Manager as Mangaung claimed, but Advocate Mpangane, the Acting HOD who was an official who lacked the authority to sign suspension notices under any version of the applicable delegations. Mangaung tendered no delegation documents to rebut this. The *void ab initio* finding thus rests on two independent and converging foundations. The fourth ground fails.

[42] Having regard to the totality of the evidence, the Award is one that a reasonable decision-maker could have reached. On the evidence in this record, it is difficult to

[12] [2013] ZALCJHB 10; (2013) 34 ILJ 2018 (LC).

conceive of a different outcome. Mangaung abandoned disciplinary proceedings against Ramoshebi in 2022, resurrected them sixteen months later under different allegations, issued a suspension notice bearing no connection to the charges ultimately brought, allowed those charges to be dismissed by a binding ruling it then defied, issued further charges and extensions without NCR concurrence, and throughout could offer no coherent justification through its own witness. The Commissioner identified the right questions, addressed the substantial merits of the dispute, and arrived at an outcome rationally and firmly connected to the evidence before him. The review application is without merit.

<u>Conclusion</u>

[43] For the reasons set out above, all four grounds of review fail. The Award is reasonable and falls well within the band of decisions open to a reasonable decision-maker. The review application stands to be dismissed.

<u>Costs</u>

[44] This Court considered the provisions of section 162 of the LRA and finds that it is in the interests of law and fairness to make a costs order in favour of Ramoshebi. Both parties were legally represented. The primary documents in the record plainly supported the Commissioner's findings before this review was launched. Mangaung's own witness dismantled its case in cross-examination. The launching and prosecution of the review application, in the face of that record, constitutes an improvident use of public resources and has subjected Ramoshebi to the unnecessary expense of opposing proceedings that were, at best, fragile from the outset. The pattern of conduct observable throughout, i.e., the deliberate defiance of a binding ruling, the serial replacement of presiding officers, the recycling of previously abandoned and dismissed charges, and the repeated issuing of suspension notices without NCR authority, reflects an institutional disregard for lawful process that this Court is obliged to mark. This is not a case of mere legal error; it reflects a sustained institutional pattern of non-compliance that goes

beyond the bounds of legitimate review litigation. The Applicant is ordered to pay Ramoshebi's costs.

<u>Order</u>

[45] In the premises the following order is made:

1. Condonation for the late filing of the Applicant's Heads of Argument is granted.
2. The review application is dismissed.
3. The Applicant is ordered to comply with the Award within 14 days from the date of receipt of this judgment. The compensation of R749,394.16 attracts interest at the prescribed legal rate from 31 May 2024.
4. The Applicant is ordered to pay the First Respondent's costs.

[redacted]

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C. de Kock

Acting Judge of the Labour Court of South Africa

<u>Appearances:</u>

For the Applicant:	Adv Z Ngwenya
Instructed by:	PH Attorneys (T Mokwayi)
For the First Respondent:	Adv T du Preez
Instructed by:	Kramer Weihmann Incorporated (CA Kramer), Bloemfontein