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

21 April 2026
Signature Date

IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case No: JR 1666/21

In the matter between:

LEKA MONAMA **Applicant**

and

COMMISSION FOR CONCILIATION, MEDIATION AND ARBITRATION **First Respondent**

COMMISSIONER FOSTER MALULEKE N.O. **Second Respondent**

ROYAL BAFOKENG PLATINUM (PTY) LTD **Third Respondent**

Heard: **12 February 2026**

Delivered: **21 April 2026**

JUDGMENT

VAN NIEUWENHUIZEN, AJ:

Introduction

[1] This is an application in terms of section 145 (1)(a) of the Labour Relations Act[1] (the LRA) to review and set aside an arbitration award issued by the Second Respondent (the Commissioner) under the auspices of the First Respondent, the Commission for Conciliation, Mediation and Arbitration (CCMA) on 30 June 2021.

[2] In his award, the Commissioner found that the dismissal of the Applicant, Mr. Leka Monama, by the Third Respondent, Royal Bafokeng Platinum (Pty) Ltd (the Company), was both procedurally and substantively fair. The Applicant seeks an order substituting the award with a finding that his dismissal was unfair, alongside a prayer for retrospective reinstatement or maximum compensation.

[3] The Third Respondent robustly opposes the application and seeks its dismissal.

<u>Factual Background</u>

[4] The Applicant was employed as a mine manager at the Company's Styldrift Mine. He was employed by the Company for approximately 16 years, possessing a previously clean disciplinary record and a history of high-performance ratings.

[5] On 13 July 2017, the Company issued a Request for Proposals (RFP) for board and pillar mining at its Styldrift operation to three companies, one of which was Bambatha Engineering and Mining Services (Pty) Ltd (Bambatha). On 1 September 2017 the contract was subsequently awarded to Bambatha. Following concerns regarding the awarding of this contract, an investigation was initiated. The investigation revealed overlapping interests involving another contractor, Poogi Consultants (Pty) Ltd (Poogi), and a mutual director, Dr. Rudolph Phyllis.

[6] On 7 March 2019, the Applicant was interviewed by Reginald Haman (Haman), Zelda Brink (Brink) (both employed by the Company) and Pieter Steyn (Steyn) (employed by the Company's erstwhile attorneys) as part of the

[1] Act 66 of 1995, as amended.

investigation. During the interview, the Applicant was questioned about the Company's contracts with Bambatha and Poogi. On 15 March 2019, the Applicant was suspended. His notice of suspension was signed by Glen Harris (Harris) who was the operations manager at the time and to whom he reported.

[7] On 13 May 2019 the Applicant was issued with a charge sheet of the same date (the first charge sheet). The first charge sheet was signed by Harris and emailed to the Applicant's work address. In terms of the first charge sheet the Applicant was called to a disciplinary hearing scheduled for 20 May 2019 to be chaired by Adv Greg Fourie SC (Fourie SC). The first charge sheet gave the Applicant an election to proceed by way of written representations or an oral hearing. The Applicant elected to have an oral hearing. The first charge sheet contained seven allegations. All the allegations alleged that the Applicant had committed misconduct in relation to the contracts which were awarded to Bambatha and/or Poogi.

[8] Before the hearing commenced, it was agreed that the Applicant would bring an application for legal representation. The Applicant brought same which the Company opposed. Fourie SC granted the application. The disciplinary hearing was scheduled to proceed before Fourie SC from 9 to 11 July 2019.

[9] On 3 July 2019, the Applicant's former attorneys received correspondence from the Company's newly appointed legal representatives, being its attorneys in this application, in which they stated *inter alia* that the disciplinary hearing would commence *de novo* before Adv Martin Brassey SC (Brassey SC) who would reconsider the issue of legal representation. No reasons have been provided as to why the disciplinary proceedings had to start anew.

[10] On 17 July 2019, the Applicant's former attorneys received correspondence from the Company's attorneys which recorded *inter alia* that:

10.1 the Applicant had allegedly breached the conditions of his suspension by emailing work related documents to a former employee, Hannes Prinsloo (Prinsloo);

10.2 the Company had decided not to hold a disciplinary enquiry because the Applicant had breached the terms of his suspension. The Applicant would be given an opportunity to provide written representations why he should not be found guilty of the various charges and dismissed; and

10.3 provided a second charge sheet (the second charge sheet) which added a further complaint that the Applicant had breached the terms of his suspension conditions.

[11] On 31 July 2019, the Applicant provided written representations in response to the correspondence from the Company's attorneys dated 17 July 2019. In these representations, the Applicant, *inter alia,* denied that he had committed any misconduct and denied that he had breached the terms of his suspension conditions.

[12] On 2 August 2019 the Company provided its response to the Applicant's written representations (the disciplinary outcome). The disciplinary outcome was authored by Neil Carr (Carr) who is the Company's Chief Operations Officer. Carr found, *inter alia,* that: (i) a fair procedure was followed; (ii) the Applicant was guilty of all the complaints which were made against him; and (iii) the Applicant was required to furnish written representations by 17:00 on 7 August 2019 as to a fair and appropriate sanction. The Applicant obliged the following day. On 4 August 2019 Carr sent correspondence to the Applicant recording that the Company rejected his representations and that he was summarily dismissed. The Applicant subsequently referred an unfair dismissal dispute to the CCMA which challenged the procedural and substantive fairness of his dismissal. After the dispute was not resolved during conciliation, the Applicant requested an arbitration.

[13] The Commissioner found that the Applicant was (i) not guilty of charges 1, 2 and 4; (ii) guilty of charges 3, 5, 6 and 7; and (iii) fairly dismissed, both procedurally and substantively.

[14] Charge 3 pertained to a conflict of interest in that the Applicant: (i) failed to recognise that there existed a conflict of interest between Bambatha and

Poogi (arising from the Applicant's prior knowledge of and dealings with contractors, notably concerning Dr. Phyllis and the intersection between Bambatha and Poogi); and (ii) failed to take necessary steps to remove this conflict of interest after he became aware of it.

[15] Charge 5 related to gross dishonesty stemming from evidence, including a spreadsheet detailing payments next to the Applicant's initials, suggesting the receipt of illicit financial benefits or bribes.

[16] Charge 6 arose from the approval of inflated monthly contractor fees (specifically at an excessive rate of R350.00 per ton), leading to substantial financial prejudice.

[17] Charge 7 concerned the Applicant breaching the conditions of his suspension by having communication with another (now former) employee of the Company, Prinsloo and his personal assistant.

<u>Grounds of review</u>

[18] In respect of Charge 3, the Applicant argues that the Commissioner failed:

18.1 to apply his mind to the totality of the evidence regarding the contracts with Bambatha and Poogi and whether there did, in fact, exist any conflict of interest;

18.2 to consider or apply his mind to common cause facts;

18.3 to apply his mind to the evidence of the Applicant which further established there was no conflict of interest;

18.4 to consider or apply his mind to Brink's concession that the Bambatha and Poogi contracts dealt with different issues.

[19] With regards to Charge 5, the Applicant argues that the Commissioner's finding was unreasonable as it was based solely on circumstantial facts and was not the most probable inference to be drawn. It was also argued that the Commissioner allowed hearsay evidence in the form of the schedule which

contained the initials that the Company contended corroborated that the Applicant was paid illicit amounts of money.

[20] Insofar as Charge 6 is concerned, the Applicant contends that the Commissioner failed to consider the totality of the evidence regarding the rates that Bambatha was charging and how the invoices were approved. Had the Commissioner properly considered and applied his mind to the totality of the evidence before him, the only reasonable conclusion he could have reached was that the Applicant took all reasonable steps to query the rates which were being paid to Bambatha, and that it was not unreasonable for the Applicant to approve the invoices.

[21] Pertaining to Charge 7, the Applicant submitted that the Commissioner failed to provide reasons for his conclusion that the Applicant had breached his suspension conditions and in what respect the Applicant had breached his suspension conditions, and failed to consider that the Applicant was given permission to communicate with Prinsloo, culminating in the assertion that the Commissioner failed to apply his mind.

[22] The gist of the procedural unfairness complaint is that the Company did not follow the Company's disciplinary procedure (contained in what is called the Company's Behaviour Management Procedure) and that Carr was not a neutral chairperson.

The applicable legal principles

[23] The test for reviewing arbitration awards under section 145 of the LRA is well-established, as articulated by the Constitutional Court in *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others*[2]. The paramount question is whether the decision reached by the Commissioner is one that a reasonable decision-maker could not reach.

[24] As reinforced by the Supreme Court of Appeal in *Herholdt v Nedbank Ltd*[3], a review is not an appeal. The distinction must be maintained. A flaw in the

[2] (2007) 28 ILJ 2405 (CC).
[3] 2013 (6) SA 224 (SCA).

Commissioner's reasoning or the adducing of evidence will only result in the setting aside of the award if it leads to an unreasonable outcome. The reviewing court must consider the totality of the evidence and not merely perform a piecemeal analysis of the Commissioner's logic.

[25] I can do no better than refer to *Gold Fields Mining South Africa (Pty) Ltd (Kloof Gold Mine) v CCMA and Others* [4], where Waglay JP said the following:

> "[16] In short: A review court must ascertain whether the arbitrator considered the principal issue before him/her; evaluated the facts presented at the hearing and came to a conclusion which was reasonable to justify the decisions he or she arrived at.
>
> [17] The fact that an arbitrator committed a process-related irregularity is not in itself a sufficient ground for interference by the reviewing court. The fact that an arbitrator commits a process-related irregularity does not mean that the decision reached is necessarily one that a reasonable commissioner in the place of the arbitrator could not reach.
>
> [18] In a review conducted under s145(2)(a)(c) (ii) of the LRA, the review court is not required to take into account every factor individually, consider how the arbitrator treated and dealt with each of those factors and then determine whether a failure by the arbitrator to deal with one or some of the factors amounts to process-related irregularity sufficient to set aside the award. This piecemeal approach of dealing with the arbitrator's award is improper as the review court must necessarily consider the totality of the evidence and then decide whether the decision made by the arbitrator is one that a reasonable decision-maker could make.
>
> [19] To do it differently or to evaluate every factor individually and independently is to defeat the very requirement set out in section 138 of the LRA which requires the arbitrator to deal with the substantial merits of the dispute between the parties with the minimum of legal formalities and do so expeditiously and fairly. This is also confirmed in the decision of CUSA v Tao Ying Metal Industries.

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[4] [2014] 1 BLLR 20 (LAC) at paragraphs 16 to 20

[20] Failing to consider a gross irregularity in the above context would mean that an award is open to be set aside where an arbitrator (i) fails to mention a material fact in his award; or (ii) fails to deal in his/her award in some way with an issue which has some material bearing on the issue in dispute; and/or (iii) commits an error in respect of the evaluation or considerations of facts presented at the arbitration. The questions to ask are these: (i) In terms of his or her duty to deal with the matter with the minimum of legal formalities, did the process that the arbitrator employed give the parties a full opportunity to have their say in respect of the dispute? (ii) Did the arbitrator identify the dispute he was required to arbitrate (this may in certain cases only become clear after both parties have led their evidence)? (iii) Did the arbitrator understand the nature of the dispute he or she was required to arbitrate? (iv) Did he or she deal with the substantial merits of the dispute? and (v) Is the arbitrator's decision one that another decision-maker could reasonably have arrived at based on the evidence?"

(Footnotes omitted).

Application of the legal principles to the facts

[26] Having carefully considered the expansive record and the written and oral arguments, I come to the conclusion that in the present matter the Commissioner has clearly:

26.1 employed a process giving the parties a full opportunity to have their say in respect of the dispute;

26.2 identified the dispute he was required to arbitrate;

26.3 understood the nature of the dispute he was required to arbitrate;

26.4 dealt with the substantial merits of the dispute;

26.5 made a decision that another decision-maker could reasonably have arrived at based on the evidence.

[27] In respect of Charge 3, the objective timeline regarding the appointment of Bambatha and the involvement of Dr. Phyllis was before the Commissioner.

The evidence demonstrated that Poogi was already operating on the mine, and the Applicant, sitting on the Bid Adjudication Committee, was aware of these intersections at that time. The duty of good faith owed by senior management is denuded when they conduct themselves in a manner whereby a conflict of interest arises with their employer.[5] The Commissioner was not unreasonable in assessing that the Applicant's failure to act appropriately breached this fiduciary duty. The conflict of interest was blatant in my view, and the Commissioner cannot be faulted for his resultant finding. The complaints of the Applicant seek to elevate individual factors to the totality of the evidence, ignoring the very evidence that was taken into account and seemingly justifying such an approach by arguing that the Commissioner didn't apply his mind.

[28] Regarding Charge 5, the Applicant argues the spreadsheet evidence was speculative hearsay evidence that should not have been permitted. However, there had been no objection to the evidence being introduced, and the Applicant cannot after the fact want to complain that he had not objected thereto.[6] The Commissioner assessed the totality of the circumstantial and documentary evidence encompassing the inflated invoicing, the Applicant's senior position, and the highly irregular payment markers mapping to the Applicant. The inference drawn by the Commissioner was one that another decision-maker could reasonably have arrived at based on the evidence; it constituted an acceptable inference.

[29] Insofar as Charge 6 is concerned, the Commissioner's decision is one that another decision-maker could reasonably have arrived at based on the evidence. The prices were objectively inflated considering the reduced rate that Bambatha later yielded after the Meeting of 23 August 2018.

[30] In respect of Charge 7, the Commissioner's finding is again based on objective evidence and sound reasoning. The rationality of the decision is

[5] See: *Bakenrug Meat (Pty) Limited t/a Joostenburg Meat v CCMA and Others* [2022] 4 BLLR 319 (LAC) at para 16.
[6] *EC Chenia and Sons v Lame and van Blerk* 2006 (4) SA 574 (SCA) at para 15.

underscored by the fact that the Commissioner held that an adverse finding in this respect would not be a dismissible offence.

[31] I do not find that there had been any procedural unfairness to have occurred either. In this case, the very disciplinary code allows for a deviation at the employer's election. Section 8.3.4.11 of the Company's Behaviour Management Procedure provides that:

> "It should be emphasized that the Code of Good Conduct in the LRA sets out the basic requirements for a hearing. The emphasis is that the hearing need not be so adversarial or rigidly structured. Accordingly, the Employer may depart from what is contained herein where the circumstances require that, provided that the hearing is conducted in a fair manner."

[32] The Applicant called no witnesses at the arbitration, and the gravamen of his complaint seems to be that he wanted an opportunity to cross-examine witnesses. I do not believe, where a fair opportunity is given to be heard through the making of written representations, the absence of cross-examination equates to unfairness *per se*. It would depend on the circumstances; however, I do not see what difference the Applicant has been able to show it would have made in this instance. No explanation is provided by the Applicant in his papers on how Carr's involvement in Prinsloo's disciplinary hearing and why Carr being aware of the investigation into Bambatha would result in him having a bias against the Applicant and that him chairing the disciplinary enquiry would be procedurally unfair towards the Applicant. The high-water mark of the Applicant's case is that Carr testified against Prinsloo and was involved in dismissing Prinsloo, and the Applicant's charges and Prinsloo's charges were by and large the same. But I am not told what Carr's testimony was and how that would translate into bias, nor am I told what Carr's role was in Prinsloo's dismissal.

<u>Costs</u>

[33] It is a well-established principle in the Labour Court that costs do not simply follow the result. The court has a broad discretion to make orders for costs according to the requirements of the law and fairness. Given the complexity of

the matter and that the Applicant was exercising his right to review a weighty decision affecting his livelihood, I deem it fair that no order as to costs should be made.

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

<u>Order</u>

1. The application to review and set aside the arbitration award issued by the Second Respondent on 30 June 2021 under case number NWRB 2508-19, is dismissed.

2. There is no order as to costs.

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H P Van Nieuwenhuizen

Acting Judge of the Labour Court of South Africa

<u>Appearances:</u>

For the Applicant : Mr. Geoffrey Allsop

(Pinsent Masons South Africa Inc)

For the Third Respondent : Adv. M van As

Instructed by : Webber Wentzel