



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

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: JR 2294/19

In the matter between:

INNOCENTIA DUDZILE NKAMBULE

Applicant

and

SOUTH AFRICAN LOCAL GOVERNMENT

BARGAINING COUNCIL

First Respondent

MOHAU NTAOPANE N.O.

Second Respondent

CITY OF MBOMBELA

LOCAL MUNICIPALITY

Third Respondent

Heard: 13 June 2025

Delivered: 24 April 2026 (This judgment was handed down electronically by emailing a copy to the parties. The 24 April 2026 is deemed to be the date of delivery of this judgment).

JUDGMENT

NHLAPO, AJ

Introduction

- [1] This is an application for the review and setting aside of an arbitration award issued by the Second Respondent, Commissioner Mohau Ntaopane (the Commissioner), under the auspices of the South African Local Government Bargaining Council (the Council), under case number MPD051909, dated 21 August 2019. The Commissioner dismissed the Applicant's claim that the Third Respondent, the City of Mbombela Local Municipality (the Municipality), had committed an unfair labour practice relating to demotion.
- [2] The Applicant, Ms Innocentia Duduzile Nkambule, a Senior Clerk employed by the Municipality, seeks an order reviewing and setting aside the award and substituting it with a finding that an unfair labour practice was committed, together with appropriate relief. The Municipality opposes the application, contending that the award is correct in both fact and law.

Factual Background

- [3] The Applicant commenced employment with the former Umjindi Municipality on 2 May 1997, initially as a service centre assistant and subsequently as a cashier, before being appointed as a Senior Operator in Data Processing in 2002.
- [4] At Umjindi Municipality, this position was classified at Post Level 9, with a salary notch of R173,615.66 per annum. Her duties included collecting information from meter readers, merging data into systems to generate consumer accounts, ordering of data, data capturing relating to meter readings, opening of consumer accounts, income and expenditure processing, month-end procedures, printing of financial reports, and control of daily receipts.
- [5] On 10 August 2016, the former Umjindi Municipality amalgamated with the former Mbombela Local Municipality to form the City of Mbombela Local Municipality. The amalgamation was directed by the Provincial Premier and Cabinet, with the Department of Cooperative Government (CoGTA) overseeing the process.

- [6] A placement committee was constituted comprising eight members from the employer side and eight from labour (SAMWU and IMATU), chaired by the former General Manager: Corporate Services of the former Umjindi Municipality. The placement process was guided by four key documents: the approved organisational structure, the placement policy, and the HR reports from both former municipalities.
- [7] The placement policy, at clause 4.3, set out the close match placement principle as follows:
- “Employees are to be placed in the new structure on a close match basis. In close matching a post, the job content of the new post is compared to the existing job content of the employees... Where the close match cannot be done 100%, the match must be done on the most matched job content.”
- [8] Following this process, the Applicant was placed as a data capturer, within the Administration and Customer Care Division (Valuations and Rating section), Southern Region, at Post Level 10.
- [9] The placement letter issued to the Applicant confirmed her new designation and attached a draft generic job description. That draft described the job purpose as:
- “To perform task activities associated with the processing of data in the tourism development section, capturing information and assisting with the administrative functions on an ad hoc basis.”
- [10] The Applicant testified that she had no familiarity with the tourism development section or its duties, and that she had remained in the Billing and Accounts department performing the same duties as she had at Umjindi Municipality.
- [11] The Municipality’s witness, Ms Tinyiko Predu Thibi (Manager: Organisational Design), explained that the job description attached to the placement letter was a draft generic document which employees were required to peruse, amend to reflect their actual duties, and return signed to Corporate Services by 31 March 2017.

- [12] She submitted that the correct, system-generated job description for the data capturer position in the Billing and Accounts section appeared at page 33 of the respondent's bundle, and that this was the document used for close-matching purposes during the placement process.
- [13] The Applicant lodged an objection to her placement. The Placement Objection Committee — which also included union and SALGA representatives — found that the Applicant had been correctly placed, recommending reorientation and induction including finalisation of her job description.
- [14] The Applicant subsequently appealed. An independent appeals body, Emanzini Staffing Solutions, was appointed to hear appeals. The appeal commissioner found:
- “I therefore recommend that the placement of I D Nkambule be confirmed in terms of the decision of the placement committee, which was also confirmed by the objections committee.”
- [15] Three successive and independent committees — the placement committee, the placement objections committee, and the appeals committee — all confirmed that the Applicant had been correctly placed.
- [16] Ms Queen Bothma, the Applicant's second witness, was a Clerk Grade 1 employed in the same billing section. She had also been placed as a data capturer following the amalgamation, but her appeal against her placement was successful, resulting in her designation being corrected to Clerk Grade 1.
- [17] She testified that all three employees — herself, the Applicant, and Ms Retha Phule — were performing the same billing duties, yet only her own redesignation to Clerk Grade 1 had been approved.
- [18] The Chief Financial Officer of the Municipality, through the Senior Manager: Revenue (Mr Pumula Mathebula), addressed a memorandum to the General Manager: Corporate Services recommending that the Applicant, Ms Bothma, and Ms Koenig be:

“...placed in line with their functions currently performed at the level of clerk grade 1.”

[19] However, this memorandum was never signed or approved by the General Manager: Corporate Services, who was the responsible authority for placements.

[20] Ms Thibi testified that the memorandum therefore did not carry institutional authority, as the decision-making authority for placements vested in the General Manager: Corporate Services alone.

The Arbitration Award

[21] The Commissioner made the following material factual findings:

21.1 The Applicant's salary had increased twice since the amalgamation and she was not financially worse off.

21.2 All witnesses confirmed that the Applicant continued to perform the same duties as she had at Umjindi Municipality, and remained senior to her two colleagues.

21.3 The allegation that the position of data capturer did not exist on the organogram was not convincingly substantiated; Ms Bothma appeared to speculate on this point, while the Municipality produced documentary evidence showing the position in the southern region organogram.

[22] The fact that Ms Bothma's appeal succeeded did not mean that the Applicant's appeal should similarly have succeeded, as placement was determined per individual and the two employees presented different cases to the appeals body.

[23] The unapproved CFO memorandum was “problematic” precisely because the person on whose behalf it was written — the General Manager: Corporate Services — did not endorse it, suggesting divergent institutional views on the matter.

- [24] If the Applicant had been asked to act in a Clerk Grade 1 position when she threatened to stop performing billing duties, this indicated that the Clerk Grade 1 position was a higher position than the one she occupied — thereby contradicting her assertion that she was demoted.
- [25] The Commissioner concluded that the Applicant's status had not been diminished relative to her status at Umjindi Municipality, and her salary had not been reduced. The Commissioner directed that if colleagues performing similar duties were earning more than the Applicant, the appropriate remedy would be a dispute of equal pay for work of equal value, not a demotion claim. The Commissioner held:

“The applicant, Ms Innocentia Nkambule, has not demonstrated that the respondent, City of Mbombela Local Municipality, committed an unfair labour practice related to demotion.”

Grounds of review

- [26] The Applicant raised the following grounds of review in her founding affidavit:
- 26.1. The Commissioner failed to appreciate and give effect to her powers and duties in terms of section 138 of the Labour Relations Act¹ (LRA).
 - 26.2. The Commissioner adopted an approach unjustified on the facts and inconsistent with her statutory duty;
 - 26.3. The Commissioner made wrongful and unjustifiable factual findings against the Applicant.
 - 26.4. The Commissioner did not properly apply her mind in arriving at her findings.
 - 26.5. The Commissioner considered irrelevant matters and failed to take proper account of relevant matters.

¹ Act 66 of 1995, as amended.

26.6. The Commissioner arrived at an award that no other reasonable decision-maker would have made.

[27] The Applicant specifically contended that:

27.1. The Commissioner dismissed her evidence that she was not performing the duties of the new position and was unfamiliar with the Tourism Development section.

27.2. The finding that her responsibilities as a data operator and data capturer were a “close match” was not supported by the totality of the evidence.

27.3. The Commissioner failed to consider that she had been instructed to continue her former job post-amalgamation despite her duties and grade being substantially changed.

27.4. The Commissioner failed to consider that she was performing work for substantially less remuneration than colleagues in the same job.

Analysis

[28] The Commissioner correctly applied the tests from *Nxele v Chief Deputy Commissioner, Corporate Services, Department of Correctional Services*² (that status, prestige and responsibilities are relevant) and *SAPS v Salukazana*³ (that movement leading to a reduction of status is a demotion), and correctly relied on *Mangcu v City of Johannesburg*⁴ for the proposition that demotion is naturally accompanied by a commensurate salary reduction.

[29] On the financial element: It is common cause that the Applicant received an unbroken series of salary increases following placement. This finding was supported by the Applicant’s own testimony that she received

² (2008) 29 ILJ 2708 (LAC).

³ (2010) 31 ILJ 2465 (LC).

⁴ [2017] 10 BLLR 1055 (LC).

increases of 7.36% in July 2017 and 7% in 2018. There was therefore no financial loss whatsoever.

- [30] On the status element: The Applicant's own evidence confirmed that she continued to perform the same billing duties she had always performed, and remained the senior of the three employees in the section. The assertion that her status was diminished is difficult to sustain where she continued performing identical work and remained recognised as the senior employee.
- [31] On the post level element: The Applicant moved from Post Level 9 at Umjindi to Post Level 10 at Mbombela — a numerical increase. The Applicant's own case under cross-examination was that she wished to be placed at Post Level 11 (Clerk Grade 1), meaning she was aware her new placement was numerically higher than her Umjindi level.
- [32] On the close match finding: The close match was between the position of Data Operator (Task Grade 8) at Umjindi and Data Capturer (Post Level 10) at Mbombela. The placement policy expressly provided that "*the close match is done on job content and not job designation.*" The correct job description for the Data Capturer in the Billing and Accounts section described duties relating to data capturing in billing, accounts, and meter reading — substantially aligned with what the Applicant had been performing at Umjindi. The Commissioner's finding that the close match was not unreasonable was supported by the evidence.
- [33] On the tourism job description: The attachment of a generic draft job description referencing tourism development duties to the placement letter was a logistical shortcoming in the placement process — one that Ms Thibi candidly acknowledged arose from the challenge of processing 2,013 placement letters. The Applicant was invited to peruse, amend, and return the job description by 31 March 2017. She did not do so. The Commissioner's treatment of this issue — as a draft document that could not define the placement — was a conclusion open to a reasonable decision-maker.

Equal pay issue distinguished from demotion

[34] The Applicant's most compelling factual complaint is not that she was demoted, but that she is performing work of equal value to Clerk Grade 1 colleagues who are paid more. The Commissioner made the careful and legally correct observation that this grievance — however meritorious on its own terms — is a separate cause of action under equal pay for work of equal value principles, not a demotion claim. The Applicant's complaint that she is under remunerated relative to her colleagues is not synonymous with having been demoted. A demotion requires a deterioration from a previous position; here, the evidence shows the Applicant's position improved financially and in grade from what she held at Umjindi.

CFO memorandum

[35] The unapproved CFO memorandum recommending Clerk Grade 1 placement for the Applicant cannot be treated as determinative. The General Manager: Corporate Services was the authority responsible for placements, and that official never appended a signature approving the recommendation. The memorandum represents a recommendation — one that was not acted upon through the correct institutional channels — and cannot be construed as an admission that the placement was unlawful or constituted a demotion.

Bothma comparison

[36] Ms Bothma's successful appeal to Clerk Grade 1 status does not establish that the Applicant's placement was incorrect or constituted a demotion. Ms Thibi testified credibly that placement was determined per individual, and the appeals body would have considered each case on its own merits.

[37] The evidence does not disclose what specific grounds Ms Bothma relied upon in her appeal, nor is it known whether the appeals commissioner applied different factual considerations to her case. The Commissioner's

treatment of this issue — as inconclusive on the question of whether the Applicant was correctly placed — was reasonable.

- [38] The Commissioner's finding that Ms Bothma "appeared to speculate" in respect of the organogram is supported by the transcript. In cross-examination, Ms Bothma conceded that she "could be wrong" about whether data capture positions appeared on the finance billing section organogram.
- [39] She was also shown to have been confused about whether the Applicant's placement letter referred to Tourism Development, ultimately conceding it did not — it referenced Administration and Customer Care. A negative credibility assessment of this witness was reasonably available to the Commissioner on the record.

Conclusion

- [40] Applying the test enunciated in *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others*⁵— whether the decision reached by the arbitrator is one that a reasonable decision-maker could not have reached — this court finds that the Commissioner's award falls squarely within the bounds of reasonableness, and the following considerations are determinative:

- 40.1. No salary reduction: The Applicant's salary increased consistently and materially from placement. This is the most fundamental indicator against a finding of demotion, recognised expressly in *Mangcu v City of Johannesburg*.
- 40.2. No reduction in status or responsibilities: The Applicant continued to perform the same duties, in the same section, with the same seniority over colleagues.
- 40.3. No reduction in post level: The Applicant moved from Post Level 9 to Post Level 10 — a numerical upgrade in grade.

⁵ (2007) 28 ILJ 2405 (CC).

40.4. A lawful, representative placement process: Three independent and jointly constituted committees — including union representatives — confirmed the correctness of the placement, with the appeals stage handled by an independent external body.

40.5. The correct job content was applied to close-matching: The tourism draft was a generic placeholder; the system-generated billing job description was used for close-matching purposes.

40.6. The distinction between demotion and an equal pay claim was correctly drawn by the Commissioner. The Applicant's real complaint relates to remuneration parity with colleagues — not to any deterioration from her Umjindi position.

[41] In view of the ongoing employment relationship between the parties, an adverse costs order is not appropriate.

[42] In the results the following order is made:

Order

1. The review application is dismissed.
2. The Applicant's claim that the Third Respondent committed an unfair labour practice relating to demotion is dismissed.
3. No order as to costs.

SB Nhlapo

Acting Judge of the Labour Court of South Africa.

Appearances:

For the Applicant : Doman Weitsz Attorneys

For the Respondent : Msikinya Attorneys & Associates

LABOUR COURT