



- (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: JR1981/2023

In the matter between:

MICHAEL BOSHOFF

Applicant

and

COMMISSIONER NTOMBEKHAYA SESANI N.O.

Applicant Respondent

**COMMISSION FOR CONCILIATION, MEDIATION
AND ARBITRATION**

Second Respondent

TRSS GUARDING (PTY) LTD

Third Respondent

Heard: 19 February 2026

Delivered: 31 March 2026

Summary: Dismissal as envisaged in section 186(1)(e) of the LRA – Commissioner found that the employee was not dismissed – principles and requirements for establishing a claim for constructive dismissal considered – applicable test restated – review application dismissed.

JUDGMENT

PHAKEDI, AJ

Introduction

- [1] The Applicant approached the Court in terms of section 145 of the Labour Relations Act¹ (the LRA), seeking to review and set aside the arbitration award (the award) issued by the First Respondent on 3 October 2023 under case number GAJB2154-23. The review application was filed within the prescribed period on 09 October 2023, and the record was subsequently filed together with the notice in terms of Rule 7A(8) of the Labour Court Rules² on 19 December 2023.
- [2] The Third Respondent filed its answering affidavit together with a condonation application on 29 January 2024. In its application, the Third Respondent explained that it only received the founding affidavit together with the transcribed record on 14 December 2023. Due to festive season holidays, legal representative only collected the documents on 15 January 2024. On 17 January, the Attorney sought an indulgence from the Applicant's legal representative but such a request was declined. The condonation application was vehemently opposed by the Applicant whose replying affidavit was also filed way out of time on 19 February 2024. Counsel for the Applicant also took issue with the third respondent's late filing of its heads of argument.
- [3] Both counsel confirmed that neither of the parties filed a notice of objection as prescribed in the Practice Manual³ of the Labour Court objecting to the late filing of the respective affidavits. Item 11.4.2 of the Manual provides that:
- 'Where the respondent or the applicant has filed opposing or replying affidavits outside the time period set out in the rules, there is no need to apply for condonation for the late filling of such affidavits unless the party upon whom the affidavits are served files and serves a Notice of Objection to the late filing of the affidavits. The Notice of Objection must be served and filed within 10 days of the receipt of the affidavits after which time the right to object shall lapse.'

¹ Act 66 of 1995, as amended.

² GN 1665 of 1996: Rules for the Conduct of Proceedings in the Labour Court (repealed, effective 17 July 2024).

³ Practice Manual of the Labour Court of South Africa, effective 2 April 2013 (repealed, effective 17 July 2024).

- [4] In terms of the Practice Manual, the answering and the replying affidavit have been considered in the determination of this review application.

Background facts

- [5] The Applicant was employed by the Third Respondent in the capacity of an Operations Director from the 14th of September 2015 until his resignation on 30th of December 2022. He earned a monthly salary of R62 250.00 which was processed through payroll (R28 080.00) and invoicing system (R37 170.00).

- [6] On 16 December 2022, he issued an invoice of R37 170.00. On the same day, he received a letter informing him that he will be receiving a R0.00 bonus through payroll but he will receive R10 000.00 bonus through invoice. He duly received his R10 000.00 on 20th December 2022. On 19 December 2022 he sent the following email to the Senior executive of the company, Mr Charles Urban:

'Boss please can you withdraw taking the R10K off. I know my personal life has nothing to do with you but I really need the extra cash, Sindie and I both agreed to take our bonus and pay off some of our debt. With interest going up and hospital bills we just make it every month...'

- [7] On the 30th of December 2022, he sent the following WhatsApp text to Mr Urban tendering his resignation:

'Good Morning

I am resigning with immediate effect, the continued employment relations have become intolerable. The shouting swearing running me down is one thing but taking money for my salary I won't except even after I begged and explained why. You still decided to take R10k off my salary. What surprises me is Hendrik also did not hand in his packs and he was not penalized at all, this is clear to me you want me out of TRSS.

One thing I can say is that / am not stupid or useless and this is something you will see now that I am no longer hear, I have always been dedicated and loyal to you and TRSS.

I have handed in all my company things to Rina who will hand them to you when you are back at the office.

This is something / wont except and will not leave unattended’.

- [8] On or about 26 January 2023, the Applicant referred a dispute to the Commission for Conciliation Mediation and Arbitration (CCMA) claiming constructive dismissal. His referral was dismissed and he is now challenging the outcome thereof.

Arbitration proceedings and the award

- [9] The First Respondent was appointed to preside over the proceedings and her award is the subject of these proceedings. The issue before the Commissioner was to determine whether the Applicant was dismissed as envisaged in section 186(1)(e) of the LRA⁴.
- [10] The Applicant testified in his own case and stated that the continued working relationship was made intolerable by the rude and abrupt attitude of his boss, Mr Charles Urban. He testified that Mr Urban regularly insulted employees, calling them *c*nts* and would tell them to *f#ck* off in meetings. Mr Urban used to insult him in front of with his wife and his daughter and this caused him great stress and depression. On or about 3 October 2022, he tendered his resignation and addressed it to Roy Clarke and it was accepted on the same day. In his resignation letter, he stated:

‘Dear Roy

As hard as this is for me to take this route it is in the best interest of my health and my family. Please accept this letter as formal notice of my resignation from my position as Operation Director at TRSS Guarding.

Thank you for giving me the opportunity to work for TRSS guarding for the last 7 years. I have learnt so much from all and I will never forget this. I appreciate all the opportunities you have given me. For an efficient and effective handover to my successor I will be working a 3 month notice period end date 16 January 2022.

⁴ Act 66 of 1995, as amended.

I will remain dedicated and will give my 100% in training my replacement. I will remain positive to our staff at TRSS as well as our clients.

Thank you again for the opportunity, and I wish you and TRSS Guarding all the best for the future.

Your sincerely.

Michael Boshoff

- [11] However, his wife, who was also an employee of the Third Respondent, found out about the resignation and spoke to Mr Urban about the Applicant's frustrations. She then requested him to disregard the resignation and Mr Urban agreed to meet with the Applicant to discuss his issues. During their meeting, Mr Urban undertook to stop attacking and insulting him and their working relationship was restored. However, a week later, Mr Urban went back to his old ways. One afternoon he asked him why the tracking report was not handed in, this was despite his earlier statement that the reports should not be done as they were a waste of time. He then accused him of lying and stating that he had breached trust and continued to use foul language and called him names. He then told him that he was going to deduct an amount of R10 000.00 from his salary due to his failure to submit daily packs. This was knowing that packs could not be submitted because there was no printing paper.
- [12] He then pleaded with Mr Urban not to deduct his salary but he ignored his pleas. He then tendered his resignation as he could not allow the deduction of R10 000.00 to continue unabated because he knew that Mr Urban was never going to stop making deductions from his salary. He stated that he could not file a grievance because Mr Urban was the most senior person in the company and it would have been a waste of time to lodge such a grievance. He further stated that he could tolerate the abusive behavior and bullying by Mr Urban but the deduction of his salary was the last straw for him.
- [13] He further testified that he was forced to sign an acknowledgement of debt agreeing that he was going to pay R50 000.00 as a result of the CCMA award that was issued against the Third Respondent.

- [14] Under cross examination he conceded that he ought to have represented the company at the CCMA but he instead submitted a fraudulent medical certificate hence Mr Urban resolved that he would be liable for the R50 000.00 portion of the amount awarded to the former employee. He further conceded that during his time with the Third Respondent, he would also raise his voice to the staff but he would not attack them personally or belittle them.
- [15] The Third Respondent called Ms Sonja Van Zeil who was Mr Urban's personal assistant. She confirmed that Mr Urban would from time to time raise his voice and swear at the staff and he did this to everyone. She further stated that the Applicant also interacted with the staff in a similar manner and this is how things were at the Third Respondent's premises. The Applicant had told her to f#ck off on numerous times and everyone was subjected to shouting and yelling of Mr Urban.
- [16] She stated that she was part of the management meetings and the Applicant was informed of the consequences of failing to print daily packs. She was also aware that the Applicant has signed an acknowledgement of debt but she was not aware of any other deductions.
- [17] At the close of proceedings, the Commissioner found that the Applicant failed to prove that he was constructively dismissed. The Applicant is not happy with the findings of the Commissioner and is challenging the award on the grounds stated hereunder.

Applicant's grounds for review

- [18] The Applicant submitted that the Commissioner committed gross misconduct in relations to the conduct of the proceedings when she chose not to consider his resignation of October 2022. By so doing, it is submitted that she failed to give proper weight to the series of events which led to his resignation.
- [19] The Applicant further submitted that the Commissioner's failure to deal with his closing arguments regarding the Third Respondent's failure to call Mr Urban as a witness is confirmation that she ignored the submissions and this is evidence that she committed a gross irregularity in the conduct of arbitration

proceedings. Furthermore, the Applicant submitted that he could not have submitted a grievance because there is no procedure outlining how grievances were to be dealt with by the Third Respondent. In essence, the arbitration award is challenged on the basis that the Commissioner reached a conclusion which a reasonable commissioner could not have reached.

[20] The Third Respondent denied that there are any grounds for the arbitration award to be reviewed and set aside in that the Commissioner correctly found on the facts that Mr Urban's conduct was tolerable and the Applicant only resigned because of a R10 000.00 bonus deduction and this was the real reason for his resignation not the abusive language. It was submitted further that the Commissioner correctly found that the deduction did not make the working relationship intolerable and the Applicant resigned out of anger. It was further submitted that the Applicant had other alternatives as opposed to resignation and there are other legal ways he could have followed to deal with the unlawful deduction of his bonus payment.

[21] The Applicant persisted with his claim that the conduct of the employer made the continuous relationship intolerable and sought maximum compensation.

Principles relating to constructive dismissal disputes

[22] Section 186 (1) of the LRA⁵ reads:

'Dismissal means that -

...

(e) "an employee terminated employment with or without notice because the employer made continued employment intolerable for the employee".'

[23] What is required in these kind of dismissals is for the employee to prove, on a balance of probabilities, that he did not terminate the contract of employment voluntarily but he was forced to leave his employment as a result of the intolerable working conditions imposed by the employer. The focus is not

⁵ Ibid.

necessarily on the feelings or perceptions of the employee. It must be the omissions or conduct of the employer which rendered continued employment intolerable or unbearable for the claim of constructive dismissal to succeed.

[24] The starting point is to first determine whether the Applicant was indeed dismissed within the meaning of section 186 (1)(e). When dealing with a case involving constructive dismissal, the Commissioner has to first establish the existence of a dismissal as this would then grant him/her the necessary jurisdiction to arbitrate the matter.⁶ Once the Commissioner finds that indeed the Applicant was dismissed, she then moves to determine the fairness of the dismissal. It is only when the fairness of a dismissal has been determined that the Applicant will be entitled to invoke the reasonableness test espoused in *Sidumo*⁷.

[25] The Applicant is aggrieved that the Commissioner failed to take into account that his resignation was not voluntary but influenced by the conduct of Mr Urban. In this case, the Commissioner found that the Applicant failed to prove that he was constructively dismissed. Objectively speaking, the applicable test in this review application is that of correctness as opposed to reasonableness.

[26] The Labour Appeal Court (LAC) in *Solid Doors (Pty) Ltd v Theron N.O*⁸ restated the test applicable in constructive dismissal disputes and held that:

“The question whether the employee was constructively dismissed or not is a jurisdictional fact that, even on review, must be established objectively. That is so because if there was no constructive dismissal – the CCMA would not have the jurisdiction to arbitrate. A tribunal such as the CCMA cannot give itself jurisdiction by wrongly finding that a state of affairs necessary to give it jurisdiction exists when such state of affairs does not exist. Accordingly, the enquiry is not really whether the commissioner’s finding that the employee was constructively dismissed was unjustifiable. The question in a case such as this one – even on review – is simply whether or not the employee was constructively dismissed. If I find that he was constructively dismissed, it will be necessary to consider other issues...”

⁶ See *South African Rugby Players Association v SA Rugby (Pty) Ltd* [2008] 9 BLLR 845 (LAC) at paras 39 - 40.

⁷ *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others* [2007] 12 BLLR 1097 (CC).

⁸ (2004) 25 ILJ 2337 (LAC) at para 29.

Analysis and conclusions

[27] The concept of constructive dismissal “conveys a notion that there existed an implied term in a contract of employment that an employer would not conduct itself in a manner that is designed to destroy or materially damage the relationship of trust and confidence that sustains the employment relationship, which term, if breached, entitles the employee to cancel the contract.”⁹

[28] The LAC in *Solid Doors (Pty) Ltd Ltd v Theron N.O*¹⁰ set out the following three requirements for establishing that an employee has been constructively dismissed:

‘There are three requirements for constructive dismissal to be established. The first is that the employee must have terminated the contract of employment. The second is that the reason for the termination of the contract must be that continued employment has become intolerable for the employee. The third is that it must have been the employee’s employer who made continued employment intolerable. All three requirements must be present for it to be said that a constructive dismissal has been established. If one of them is absent, constructive dismissal is not established.’

[29] Furthermore, in *Sanlam Life Insurance Ltd v Mogomatsi*¹¹ the approach to constructive dismissal disputes is as follows:

‘In constructive dismissal disputes, a two stage approach is normally followed. First, the employee must prove that the employer effectively dismissed him or her by making her or his continued employment intolerable. It is an objective test. The employee need not prove that he had no choice but to resign, all that is required is to prove that the employer made continued employment intolerable. The conduct of the employer towards the employee and the cumulative impact thereof must be such that, viewed objectively, the employee could not reasonably be expected to cope with it...’

⁹ *Maleka v Boyce N.O. and Others* [2026] ZACC 7 at para 1.

¹⁰ *Ibid* at para 28.

¹¹ 11 BLLR 1166 (LAC) at para 32.

- [30] The first requirement set out above has been met in that it is not disputed that the Applicant is the one who terminated his employment relationship with the Third Respondent without notice. This is evident from the WhatsApp text he sent to Mr Urban on 30th of December 2022, which reads:

‘I am resigning with immediate effect, the continued employment relations have become intolerable. The shouting swearing running me down is one thing but taking money for my salary I won’t except even after I begged and explained why. You still decided to take R10k off my salary...’

- [31] The question before me is whether the Applicant has shown that the conduct of the Third Respondent or the conditions of his employment were intolerable to an extent that he could not have been reasonably expected to continue with his employment. It is common cause that the resignation of 30 December was the second one in a period of two months, having been preceded by the first one on 3 October 2022, which was later withdrawn.

- [32] Just as the Commissioner did, I also find it difficult to accept that the rough or foul language used by Mr Urban made the Applicant’s employment intolerable. The witnesses testified that it was a common language used by employees, including the Applicant himself. The Commissioner was correct in finding that the Applicant resigned due to the deduction of the R10 000.00 bonus from his remuneration, and this had very little to do with the attitude or conduct of Mr Urban, which he had endured for the past eight years prior to his resignation. The Court is mindful and accepts that Applicant may have been frustrated in the manner in which he was being treated, shouted at and belittled by Mr Urban. Particularly because his family was also working with him and had to witness this assault on his role as a manager, father, husband and on his dignity. However, to succeed with a claim for constructive dismissal, more was required.

- [33] The LAC in *Miladys (A Division of Mr Price Group Ltd) v Naidoo & others*¹² held that employees cannot prescribe the management style of their superiors:

¹² (2002) 23 ILJ 1234 (LAC) at para 33.

'I do not believe that an employee is entitled to make a case of constructive dismissal out of her own excessive overreaction to a management style with which she does not agree.'

- [34] Generally, an employee who resigns because the employer has refused to perform some action which would have entailed the perpetuation of the employment relationship is not entitled to claim constructive dismissal.¹³ The threshold for establishing constructive dismissal is high. The other fact which has been taken into account is that the Applicant may have resigned on the fear of the deductions persisting in line with the signed acknowledgement of debt or for any other reason other than the unprofessional conduct of Mr Urban. He testified as follows:

'ADV. ROSSOUW : All right and just explained to the Commissioner your state of mind at that stage.

APPLICANT : Well, it was not [inaudible - over talking] [0:51:07.1] -

ADV. ROSSOUW : Why was R10 000.00 (ten thousand rand) such an issue for you?

APPLICANT : So, every time I've had meetings with Charles and it was an out-blow, it was always personal attacks, like you know, I "feed" our fat face, and, you're "over paid."

And I didn't see the worth in "worth" in you. Or, you know, things like that. And when the R10 000.00 (ten thousand rand) was taken off my salary, then I knew, if I accepted the R10 000.00 (ten thousand rand) being taken off my salary, it's not going to stop. Where's it going to stop? I tried to have meetings with Charles on not to attack me the way he does, that didn't last very long. So there was no stopping, if he took the ten (10), there is no stopping him before.

¹³ See Grogan *Dismissal (Fourth edition)* (Juta & Co Ltd, Cape Town 2022).

ADV. ROSSOUW : Was not receiving R10 000.00 (ten thousand rand) in December a critical issue for you?

APPLICANT : No, it was critical.'

[35] From the above, it is clear that the Applicant's resignation was fueled by his anger due to the deduction of his bonus and he might have pursued a claim for constructive dismissal when he realized that he was now unemployed and the Third Respondent was intending to enforce the restraint of trade agreement. The Constitutional Court has recently confirmed that section 186 (1)(e) of the LRA does not envisage a future or anticipated intolerability but deals mainly with existing circumstances.¹⁴

[36] Having regard to all the evidence and material filed in this matter, I cannot find any basis to review and set aside the arbitration award on any of the grounds submitted by the Applicant. The Commissioner was correct to find that the Applicant was not dismissed and he resigned out of anger.

Costs

[37] It is trite that the awarding of costs in the Labour Court is discretionary as envisaged in section 162 of the LRA. Based on the established authorities, this court comes to the conclusion that it is in the interests of the law and fairness that each party be burdened with its own costs.

[38] In the result, the following order is made:

Order

1. The review application is dismissed.
2. There is no order as to costs.

¹⁴ *Maleka v Boyce N.O. and Others* [2026] ZACC 7.

G. C. Phakedi

Acting Judge of the Labour Court of South Africa

LABOUR COURT

Appearances:

For the Applicant: Adv GJ Rossouw

Instructed by: V Mohan Attorneys

For the Respondent: Adv A J Nel

Instructed by: Lee & McAdam Attorneys

LABOUR COURT