



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

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: JR1141/23

In the matter between:

SOL PLAATJIE UNIVERSITY

Applicant

and

COMMISSIONER OLIPHANT N.O.

First Respondent

COMMISSION FOR CONCILIATION,

Second Respondent

MEDIATION AND ARBITRATION

MERAHE G

Third Respondent

Heard: 17 February 2026

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

PHAKEDI, AJIntroduction

- [1] The Applicant approached this Court in terms of section 145 (2) (a) (i) alternatively, section 158(1)(g) of the Labour Relations Act¹ (the LRA) seeking an order to review and set aside the arbitration award dated 5 June 2023 issued by the First Respondent under case number NC342-23. The review application was filed on 17 July within the prescribed timeframes. The Third Respondent is opposing the application and seeks its dismissal with costs.

Brief background facts

- [2] The Third Respondent, Mr Gobonamang Merahe (Merahe) was employed by the Applicant on 5 February 2018. He initially reported to the Registrar until the Student Affairs Unit was assigned to Deputy Vice Chancellor, Professor Baxen, who became his line manager. Ms Nicole Morris was later employed as Dean on or 1 July 2021 and Merahe then reported to her.
- [3] A position of Senior Manager: Student Affairs was advertised with higher education qualification, and he did not apply for it. The successful candidate, Mr Bantu Mnyaka resumed his duties on 01 October 2022 and he became Merahe's new supervisor.
- [3] Both Ms Morris and Mr Mnyaka started performing tasks which had previously been performed by Merahe, and he was aggrieved by these new developments. On 14 November 2022 Merahe lodged a grievance about his demotion, unfulfilled promotion promises and discrepancies in appointment of managers. His grievance was dismissed by the Vice Chancellor on 23 January 2023. He then referred an unfair labour practice dispute alleging demotion to the Commission for Conciliation, Mediation and Arbitration (CCMA) on 31 January 2023. The First Respondent was appointed to deal with the matter and his arbitration award is the subject of these review proceedings.

¹ Act 66 of 1995, as amended.

Arbitration proceedings and the award

- [4] Mr Merahe testified that he was appointed as Student Development Officer until he was demoted in terms of the new structure where his job title was now changed to Senior Admin Assistant Student Development. This new change did not affect his salary, however, it affected his prestige and social standing in that some of his tasks were taken away and distributed to other employees including the choir master who previously reported to him and the Senior Manager Student Affairs. The Senior Manager position in his division was advertised with higher qualifications (master's degree) to exclude him but the post for Senior Manager Resident and Student Support was advertised and filled with a lesser qualification (honours degree). He further testified that he was overlooked for acting appointments and he did not know about the policy.
- [5] He called Ms Denelia McCathy who testified that she was appointed to act after she had asked the Dean's approval to do so. She testified further that she was in the same position as Merahe in that they both established their units prior to the employment of Ms Morris. She also testified that a job evaluation was done and Mr Farmer's position changed from Human Resources manager to Director. She also confirmed that some of the tasks were taken away from Merahe.
- [6] Ms Nicole Morris testified on behalf of the Applicant. She stated that Merahe was an Officer and he needed assistance when the university grew. She then took it upon herself to do some of his duties particularly the strategic tasks. She was responsible for the new organogram which was accepted by Senior Management. She further confirmed that Nthabiseng and McCarthy had acted in senior positions but Merahe did not act as she had taken over some of his tasks. She, however, denied that Merahe was demoted.
- [7] At the close of proceedings, the Commissioner found that the Applicant had demoted Merahe and this conduct amounted to unfair labour practice. The Commissioner then awarded Merahe three months' salary as compensation. The Applicant is not happy with the findings and the award of the Commissioner and is challenging the same on the grounds stated hereunder.

Applicant's grounds for review

- [8] The Applicant submitted that the Commissioner failed to apply his mind to the relevant facts presented at arbitration and arrived at a conclusion not supported by evidence. It is further alleged that the Commissioner committed a material error in law in that he relied on the matter of *Nxele v Deputy Commissioner, Department of Correctional Services*² which was totally different from the facts of the matter before him. The Applicant stressed that Merahe was consulted, he had accepted his new job description, and he had consented to this new structure in order to accommodate the growth of the University.
- [9] The Third Respondent denies that the arbitration award is reviewable on any of the grounds listed by the Applicant, particularly its reliance on section 145 (2) and 158(1)(g) of the LRA. It was further submitted that has failed to provide evidence in its papers demonstrating that the Commissioner exceeded his powers or committed any gross irregularity in the conduct of proceedings.

Principles considered in unfair labour practice disputes

- [10] In terms of section 185(b) of the LRA, every employee has the right not to be subjected to unfair labour practices.
- [11] Section 186(2)(a) of the LRA defined unfair labour practice as '*any unfair act or omission that arises between an employer and an employee involving unfair conduct by the employer relating to the promotion, demotion, probation (excluding disputes about dismissals for a reason relating to probation) or training of an employee or relating to the provision of benefits to an employee.*' The Commissioner in his award, found that unfair conduct of taking away the Third Respondent's duties without consultation amounted to a demotion and falls squarely within the meaning of unfair labour practice.

² [2008] 12 BLLR 1179 (LAC).

[12] It is well established that consultation, or negotiation, is required before a decision to demote an individual can be fairly taken. In *Builders Warehouse v Benade*³ the Labour Appeal Court (LAC) stated that:

“The court a quo is correct that a dispute about an alleged unfair labour practice extends to “unfair conduct relating to demotion”. The fact that the parties have agreed that the aggrieved employee accepts demotion is not a complete defence because the ambit of this unfair labour practice is wider than this. The implementation of an agreement to accept demotion, may constitute an unfair labour practice.” Relying on this authority, this court held that consent itself did not imply waiver of the right to challenge the fairness of the demotion. Accordingly, it is settled that consent on its own does not establish that the demotion was fair.

[13] In *Nxele*⁴, the LAC held as follows:

“[88] I agree with counsel for the appellant that the mere fact that the appellant's rank and remuneration were not going to change does not mean that the transfer to Pollsmoor could not or did not constitute a demotion. I agree, too, that the status, prestige, and responsibilities of the position are relevant to the determination of whether or not a transfer in a particular case constitutes a demotion...

[89] The appellant also did not consent to such demotion. In terms of the common law a demotion without the employee's consent is unlawful. In terms of the Labour Relations Act the demotion of an employee without his consent would be unfair...”

[14] Based on the above authorities, the defence of the Applicant that Merahe had actively participated in strategic planning meetings and gave consent to some of his tasks being taken away is not a defence for a claim of unfair labour practice relating to a demotion. Furthermore, the Applicant's contention that the Commissioner committed an error of law by relying on the *Nxele* decision is without merit and stands to be dismissed.

³ (PA 1/14) [2015] ZALAC 77 (5 MAY 2015) at para 14.

⁴ Id fn 2 at paras 88 and 89.

- [15] The remaining ground which the Court is required to determine is whether the Commissioner committed any gross irregularity or exceeded his powers as submitted by the Applicant.

Review test and analysis

- [16] Although the Applicant is relying on both section 145 and 158 of the LRA, the current application is determined on the provisions of section 145 of the LRA as it involves the review of an arbitration award. The usual question in these kinds of review applications is whether the decision reached by the arbitrator is one that a reasonable decision-maker could not reach.⁵
- [17] In explaining the review test outlined in the *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others*⁶, the Labour Appeal Court in *Gold Fields Mining SA (Pty) Ltd (Kloof Gold Mine) v Commission for Conciliation, Mediation and Arbitration and Others*⁷ had, *inter alia*, the following, of relevance here, to say:

[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

⁵ See: *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others* [2007] 12 BLLR 1097 (CC) at para 110 (*Sidumo*).

⁶ [2007] 12 BLLR 1097 (CC) at para 110.

⁷ (2014) 35 ILJ 943 (LAC) at paras 18 and 19.

formalities and do so expeditiously and fairly. This is also confirmed in the decision of *CUSA v Tao Ying Metal Industries*.⁷

- [18] The Labour Appeal Court LAC in *HORSPERSA obo Tshambi v Department of Health, KwaZulu- Natal*⁸ held that:

‘an arbitrator is required to determine the true dispute between the parties. To that end, it is necessary to establish the relevant facts and construe the category of dispute correctly. An arbitrator must make an objective finding about what is the dispute to be determined...’

- [19] The Constitutional Court disposed on the above-mentioned issue in *CUSA v Tao Ying Metal Industries*⁹ and held that:

‘...commissioners are required to “deal with the substantial merits of the dispute with the minimum of legal formalities.” This requires commissioners to deal with the substance of a dispute between the parties. They must cut through all the claims and counterclaims and reach for the real dispute between the parties. In order to perform this task effectively, arbitrators must be allowed a significant measure of latitude in the performance of their functions. Thus, the LRA permits commissioners to “conduct the arbitration in a manner that the commissioner considers appropriate”. But in doing so, commissioners must be guided by at least three considerations. The first is that they must resolve the real dispute between the parties. Second, they must do so expeditiously. And, in resolving the labour dispute, they must act fairly to all the parties as the LRA enjoins them to do. An arbitrator must, as the LRA requires, “deal with the substantial merits of the dispute”. This can only be done by ascertaining the real dispute between the parties.’

- [20] It is commonly known that the duties and responsibilities of an employee are usually attached to their position within the organization and this in turn elevates their social standing, prestige and dignity. As such, demotion of an employee, even if it is by consent, impairs his or her dignity. Recently, the Constitutional Court in *Maleka v Boyce N.O. and Others*¹⁰ dealt with a case of

⁸ (2016) 37 ILJ 1839 (LAC) at para 16.

⁹ 2009 (2) SA 204 (CC) at paras 64 and 65.

¹⁰ [2026] ZACC 7 at para 51.

constructive dismissal which originated from a demotion of a senior manager and held that:

‘An employee who is allegedly unfairly demoted or has his or her status and responsibilities reduced and then resigns as a result of the unilateral changes to his or her conditions of employment because the employer has made continued employment intolerable, substantially suffers an impairment to his or her dignity. It is trite that recognising and protecting the right to one’s dignity is an “acknowledgement of the intrinsic worth of human beings [and their entitlement] to be treated as being worthy of respect and concern” Thus, the protection of the right to dignity is foundational to the right to fair labour practices. While Mr Maleka did not pertinently raise the issue of an infringement to his dignity either before the Commissioner or the Labour Courts, I nonetheless consider that given the nature of the complaints made by him as set out above, nothing precludes this Court from taking it into account in the overall assessment of his case, in the interests of justice.’

[21] The Applicant’s founding papers makes bald statements that the Commissioner ignored the material facts presented by its witness in order to demonstrate that the Third Respondent was not demoted. Furthermore, the Applicant seeks to rely on alleged consent to claim that the demotion was fair. The Third Respondent demies that he was consulted and instead demonstrated that he was charged with misconduct when he tried to perform the duties he had always been performing prior to the employment of both Mr Mnyaka and Ms Morris.

[22] There is no evidence before this Court to demonstrate that both parties were not given sufficient opportunity to present their case, nor the Commissioner did not resolve the dispute between them nor that he acted unfairly towards the Applicant. I am therefore not persuaded that the Commissioner ignored any evidence submitted by the Applicant. The arbitration award falls within the bands of reasonableness and it is based on the evidence presented by both parties. Furthermoe, the compensation awarded by the Commissioner is reasonable taking into account that the Third Respondent had not suffered any financial losses as a result of the unfair conduct of his employer.

Conclusion

- [24] Based on the authorities applicable in this court and on the principle of *stare decisis*, this court comes to a conclusion that the award falls within the band of reasonableness and warrants no interference. The review application therefore stands to be dismissed.

Costs

- [25] The Third Respondent sought costs in the event that the application is dismissed. It is trite that the awarding of costs in the Labour Court is discretionary as envisaged in section 162 of the LRA. The Constitutional Court in *Booi v Amathole District Municipality and Others*¹¹, dealt with the issue of costs in the Labour Court and held as follows:

‘However, this is a labour matter and this Court’s jurisprudence is settled: the ordinary rule that costs follow the result does not apply in labour matters. Rather, what emerges from the provisions of the LRA and the jurisprudence is that courts, when awarding costs in labour disputes, must consider what fairness demands and err on the side of not discouraging parties from approaching the courts for the peaceful resolution of labour disputes. Further, if costs are to be awarded in labour matters, there must be reasons that justify a court’s decision to depart from the position that a losing party should not be mulcted in costs in labour disputes.’

- [26] The above-mentioned principle was clearly espoused in *Member of the Executive Council for Finance, KwaZulu-Natal v Dorkin N.O and another*¹² where the Court held:

‘In making decisions on cost orders this Court should seek to strike a fair balance between, on the one hand, not unduly discouraging workers, employers, unions and employers’ organisations from approaching the Labour Court and this Court to have their disputes dealt with, and, on the other, allowing those parties to bring to the Labour Court and this Court frivolous cases that should not be brought to court. That is a balance that is

¹¹ (2022) 43 ILJ 91 (CC) at para 60.

¹² 2008 (29) ILJ 1707 (LAC) at para 19.

not always easy to strike but, if the court is to err, it should err on the side of not discouraging parties to approach these courts with their disputes. In that way these courts will contribute to those parties not resorting to industrial action on disputes that should properly be referred to either arbitral bodies for arbitration or to the courts for adjudication.'

[27] This Court has considered that there is an existing working relationship between the Applicant and the Third Respondent. It is therefore in the interests of the law and fairness that each party be burdened with its own costs.

[28] Accordingly, the following order is made:

Order

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

G C Phakedi

Acting Judge of the Labour Court of South Africa.

Appearances:

For the Applicant : Adv F Venter

Instructed by : Van De Wall Incorporated

For the Respondent: L Lobi of Lulama Lobi Inc

LABOUR COURT