



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

Signature

2026-05-15
Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: JR 1747/22

In the matter between:

JOEL NAPO MOKOETLE

Applicant

and

GIJIMA HOLDINGS SOUTH AFRICA (PTY) LTD

First Respondent

COMMISSION FOR CONCILIATION,

MEDIATION AND ARBITRATION

Second Respondent

GIJIMA HOLDINGS SOUTH AFRICA (PTY) LTD

Third Respondent

Heard: 21 January 2026

Delivered: 15 May 2026

JUDGMENT

BRITZ, AJ

Introduction

- [1] This is a review application in terms of section 145 of the Labour Relations Act¹ (LRA) in which the Applicant seeks to review and set aside an arbitration award issued by the Third Respondent, who found that the Applicant had not been constructively dismissed.
- [2] The matter was enrolled for hearing on 21 January 2026 and proceeded on the opposed roll in a virtual hearing before this Court.

Procedural posture

- [3] The Applicant did not appear when the matter was called, either virtually or physically at the Labour Court, Braamfontein.
- [4] The Court satisfied itself that the Applicant had been properly notified of the set down on 13 October 2025 and that the Teams link had been transmitted to the Applicant.
- [5] Ms Maluleke further confirmed that the Teams link for the virtual hearing had been transmitted to the Applicant.
- [6] In addition, the Court caused enquiries to be made as to whether the Applicant had presented physically at the Labour Court in Braamfontein. It was confirmed that the Applicant had not done so.
- [7] In these circumstances, the Court is satisfied that the Applicant was aware, or ought reasonably to have been aware, of the hearing and failed to attend without explanation.
- [8] In the exercise of its discretion, and given that the matter concerns a review application determined on the record, the Court proceeded to consider the merits in the absence of the Applicant.

The issue

¹ Act 66 of 1995, as amended.

- [9] The central issue is whether the arbitration award is reviewable on the basis that the commissioner erred in finding that the Applicant had not established a constructive dismissal.
- [10] The enquiry is not whether the commissioner's finding was one that a reasonable decision-maker could reach. In a constructive dismissal matter, the question whether a dismissal occurred is a jurisdictional fact. The Court must determine objectively whether the jurisdictional fact of dismissal was established.

Applicable legal framework

- [11] Section 186(1)(e) of the LRA provides that dismissal means that 'an employee terminated employment with or without notice because the employer made continued employment intolerable for the employee'.
- [12] In *Solid Doors (Pty) Ltd v Commissioner Theron and Others*,² the Labour Appeal Court formulated the requirements for constructive dismissal as follows:

'It should be clear from the above that 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 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 these 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...There is also no constructive dismissal if the employee terminates the contract of employment because he cannot stand working in a particular workplace or for a certain company and that is not due to any conduct on the part of the employer.'

- [13] In *Pretoria Society for the Care of the Retarded v Loots*³, the Labour Appeal Court described the position of an employee alleging constructive dismissal as follows:

² *Solid Doors (Pty) Ltd v Commissioner Theron and Others* (2004) 25 ILJ 2337 (LAC) at para 29.

³ *Pretoria Society for the Care of the Retarded v Loots* (1997) 18 ILJ 981 (LAC) at 984D-G.

‘When an employee resigns or terminates the contract as a result of constructive dismissal such an employee is in fact indicating that the situation has become unbearable that the employee cannot fulfil what is the employee’s most important function, namely to work. The employee is in effect saying that he or she would have carried on working indefinitely had the unbearable situation not been created. She does so on the basis that she does not believe that the employer will ever reform or abandon the pattern of creating an unbearable work environment. If she is wrong in this assumption and the employer proves that her fears were unfounded then she has not been constructively dismissed and her conduct proves that she has in fact resigned.’

[14] More recently, in *Sanlam Life Insurance Limited v Mogomatsi and Others*⁴, the Labour Appeal Court held:

‘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.’

[15] These authorities establish that the Applicant bore the onus to prove, objectively, that (a) first, he terminated the employment relationship; (b) secondly, continued employment had become intolerable; and (c) thirdly, the intolerability was caused by the employer.

[16] If any one of these requirements is absent, constructive dismissal is not established.

Evaluation

[17] The Applicant’s case, as pleaded, is that the First Respondent’s refusal to grant a voluntary retrenchment package, coupled with the Applicant’s personal circumstances, rendered continued employment intolerable.

⁴ *Sanlam Life Insurance Limited v Mogomatsi and Others* (2023) 44 ILJ 2516 (LAC) at 2517I-J.

- [18] The Applicant plainly terminated the employment relationship. The first requirement is therefore present. The difficulty lies with the second and third requirements.
- [19] The refusal of a voluntary retrenchment package does not, without more, establish intolerability. It is not enough for an employee to show that they were dissatisfied with the employer's decision, disappointed by the refusal of a benefit, or personally distressed by the consequences of that refusal.
- [20] The pleaded case does not establish that the First Respondent created an unbearable working environment or that its conduct made it objectively intolerable for the Applicant to continue working.
- [21] Nor does the pleaded case establish the necessary causal link between the First Respondent's conduct and the alleged intolerability. The Applicant's personal stress and dissatisfaction may explain why he wished to leave employment, but they do not establish that the employer made continued employment intolerable.
- [22] Measured against the test in *Solid Doors*, the Applicant's case fails because the second and third requirements are absent. Measured against *Pretoria Society*, the pleaded facts do not establish an unbearable situation created by the employer. Measured against *Sanlam*, the conduct of the employer and its cumulative impact were not such that, viewed objectively, the Applicant could not reasonably be expected to cope with continued employment.
- [23] The authorities make clear that intolerability must be caused by the employer. Personal hardship, without more, does not satisfy this requirement. There is further no indication that resignation was a measure of last resort, as required by the jurisprudence.
- [24] On the Applicant's own version, the essential jurisdictional facts for constructive dismissal are absent. The commissioner considered these factors and concluded that the Applicant had failed to discharge the onus.
- [25] The commissioner therefore correctly found that the Applicant had not established constructive dismissal.

[26] It follows that the jurisdictional fact necessary to sustain the unfair dismissal claim was not established. The review application must fail on that basis.

Costs

[27] The First Respondent sought costs.

[28] The Court in considering costs, afforded the First Respondent's representatives an opportunity to address it on their failure to file a practice note as required in terms of paragraph 4.1.1 of the set down directive. The explanations advanced were not persuasive.

[29] In the Labour Court, costs do not follow the result and must be determined in accordance with the requirements of law and fairness. In light of the First Respondent's non-compliance with the applicable directive, the Court is not persuaded that a costs order in its favour would be appropriate.

[30] The interests of fairness dictate that no order as to costs be made.

[31] In the result the following order is made:

Order

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

C. Britz

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant : No appearance

Instructed by : N/A

For the Respondent: Ms. T Moyo of Snyman Attorneys

LABOUR COURT