



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

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, GQEBERHA

Case No. PR303/22

In the matter between:

FALCON CLEANING (PTY) LTD

Applicant

and

**COMMISSION FOR CONCILIATION,
MEDIATION AND ARBITRATION**

First Respondent

NOMBEWU, VUYO YOYO N.O.

Second Respondent

S TOBI

Third Respondent

Heard: 10 June 2026

Delivered: 12 June 2026

This judgment was handed down electronically by circulation to the parties and/or their legal representatives by email. The date of hand-down is 12 June 2026.

JUDGMENT

MAKHURA, J

Introduction

- [1] On 6 November 2022, the second respondent, acting as a commissioner under the auspices of the Commission for Conciliation, Mediation and Arbitration (CCMA), issued an arbitration award in an unfair dismissal dispute between the applicant company and the third respondent employee. In terms of the award, he found that the employee's dismissal was substantively unfair and ordered the company to reinstate her retrospectively.
- [2] This application, brought by the company in terms of section 145 of the Labour Relations Act¹ (LRA), seeks to overturn that award. In addition, the company seeks a declaration that the employee's dismissal was substantively fair or that the dispute be remitted to the CCMA for a *de novo* hearing. The employee opposes the application.

Material facts

- [3] The employee was employed by the company as a cleaner from 1 March 2020 until her dismissal on 20 August 2021. During her employment, she rendered cleaning services at Williams Hunt, the company's client.
- [4] The employee faced two main charges relating to insolence and conduct allegedly bringing the company's name into disrepute. These allegations stemmed from incidents involving the employee wearing jeans instead of the required uniform pants and her interaction with her manager and the director of the company, Charlinn Jonker, following Jonker's return from two weeks' leave.
- [5] The first primary charge concerned allegations of gross insolence arising from the events of 17 August 2021. The company alleged that the employee behaved in a rude and disrespectful manner towards Jonker, in that when she was asked why she was wearing jeans instead of her uniform, she responded that Jonker buys "*sh*t pants*". The employee was, however, dismissed for saying "*cheap*

¹ Act 66 of 1995, as amended.

pants” and not “*sh*t*” as recorded in the charge sheet. The second aspect of the gross insolence was that when Jonker offered to buy her a new uniform, she refused and said that Jonker should wait for her until the end of the month to buy herself good-quality or durable pants.

- [6] The second primary charge against the employee was that she had brought the company’s name into disrepute. The allegation was that, on 17 August 2021, she posted inflammatory comments about the company on her WhatsApp status, and that after she was served with a notice of a disciplinary hearing on 18 August 2021, she went to the company’s client and “*screamed and shouted, resulting in a complaint being received from [the] client*”.
- [7] The company called Jonker as its witness, together with two employees of Williams Hunt, namely Petronella van Rooyen and Trevor Villet, who served as the General Manager. The employee testified and called Lindelwa Falithenjwa as a witness.

The insolence

- [8] The company’s employees are issued four sets of uniforms, consisting of pants and jackets, on an annual basis. Any additional uniform is at the employee’s expense. It is undisputed that by August 2021, the employee, who had received her allocated uniforms for the year, had all four pairs of pants damaged and had already incurred costs in purchasing one additional pair.
- [9] Jonker had been on leave for two weeks before the incident and returned to work on 17 August 2021. It is common cause that Jonker said to Falithenjwa that she was back to “*irritate*” her. Jonker’s evidence was that she said this in jest -

‘Not to irritate her with work, but irritate her with small things. Lindelwa and I have another relationship. We joke. We laugh together. It was not meant to irritate her because of her work. I was here to irritate her because I had been off for 14 days. It was a joke between myself and Lindelwa.’

[10] Later that morning, Jonker observed the employee in the corridors wearing jeans and questioned why she was not wearing her uniform pants. The employee explained that her uniform pants were damaged and that she had obtained permission from Sheldon Breedt, her supervisor, as well as from a Williams Hunt employee, Lee-Anne.

[11] During cross-examination, it was put to Jonker that the employee had requested an opportunity until the end of the month to purchase durable replacement pants. Jonker's response was that:

'She said I must give her until the end of the ... I will wait for her until the end of the month when she has money to buy her own pants. That is what she said.'

[12] Asked to describe how the employee was rude and disrespectful, Jonker responded that:

'Her attitude towards me. The way that she spoke. I mean the tone she spoke to me as well. You do not speak to your employer like that. Even when I asked you in a normal conversation.'

[13] The employee disputed that she had behaved in an insolent manner. She testified that she explained to Jonker that she had permission to wear jeans and requested an opportunity until the end of the month to purchase the durable pants. It is not in dispute that she said the company-provided pants were cheap. Falithenjwa corroborated the employee's account and said that it was Jonker who was rude to the employee.

Bringing the company's name into disrepute

[14] In addition to the allegations of insolence, the company relied on comments the employee posted on her WhatsApp status on 17 August 2021. The company contended that those remarks brought its name into disrepute.

[15] There were three WhatsApp status posts that the company relied on. The first post reads that rich people always think that they can bribe everyone and that

they know that they cannot go to the CCMA or Labour Court, but television shows can help the poor people. The second post reads that it is unlike her to “*have hatred [for] this person*” because she is not the type of person who hates people, even if they hate her. The third post reads that “*irritations early in the morning ... hay marn nxi*”.

- [16] It is undisputed that the comments were posted on the morning of 17 August 2021 after her discussion with Jonker about the uniform. It is further undisputed that the employee had posted 14 WhatsApp status comments on the day and that she was charged with misconduct the following day, 18 August 2021.
- [17] During cross-examination, Jonker conceded that the second and third comments on the employee’s WhatsApp status did not bring the company’s name into disrepute. Jonker initially testified that because she had told Falithenjwa that morning that she was back to irritate her, the employee was referring to her when she said *irritations in the morning*. She testified that the post was about her and the company. During cross-examination, although she maintained that the post was about her, it did not bring the company’s name into disrepute.
- [18] Jonker was also asked about how the second post brought the company’s name into disrepute. She said that it “*does not*”, but that it brought her name into disrepute.
- [19] Concerning the first post, the employee disputed that it brought the company’s name into disrepute. Her case was that she watched a television programme called *Asikhulume*, which was about employment and labour relations rights. Jonker could not articulate how this brought its name into disrepute.
- [20] Regarding the incident on 18 August 2021, the employee disputed Van Rooyen’s and Villet’s account that she was screaming, shouting or throwing her hands up in the air. She stated that she was crying and hurt, having not expected the issue to escalate to a disciplinary process. She then went to Lee-Anne’s office and asked her to meet in the bathroom. Falithenjwa also followed the employee to the

bathroom. When Falithenjwa and Lee-Anne asked what had happened, she was unable to speak because of her emotions. Villet later came to the bathroom. In his account, he believed the employee was in a fit. He said she should be escorted out by security if she did not stop. Villet said this incident almost resulted in the cancellation of the company's contract. He testified:

'if there were dignitaries at the business and they witnessed this, our reputation would have been tarnished forever.'

[21] Van Rooyen testified that customers allegedly enquired how they treat their employees.

The arbitration award

[22] The commissioner considered whether the employee had permission to wear jeans and concluded that she did. Based on this finding, he determined that the employee's conduct did not constitute gross insolence. In relation to the allegation that the employee requested or demanded to wait until month-end before purchasing new pants, the commissioner accepted the evidence that Falithenjwa was present when Jonker questioned the employee about wearing jeans. He found that the employee was neither rude nor disrespectful during the exchange and that it was, instead, Jonker who behaved in a rude manner. Consequently, the commissioner concluded that the employee was not guilty of insolence.

[23] Regarding the WhatsApp status charge, the commissioner considered Jonker's concession that the posts concerning hatred towards a person and irritation did not mention or relate to the company. As for the post referring to the CCMA and Labour Court, the commissioner accepted the employee's explanation that the post was unrelated to the company. He stated:

'The status clearly talks about a TV show. It also talks about bribe, of which there was not bribing between the applicant and the respondent. At the time of this status been placed the applicant was not charged or made aware that she will be

charged whereby the CCMA, or the Labour Court will be in a way relevant. Having considered the above it is my finding that the respondent failed to prove that the status referred to her.'

- [24] In relation to the incident of 18 August 2021, after the employee had been issued with a charge sheet and notice to attend a disciplinary hearing, the commissioner accepted that the employee made "noise". He noted that people react differently to different situations. He considered whether the "screaming" and "shouting" brought the company's name into disrepute and found that the employee's conduct did not bring the company's name into disrepute and that any adverse effect arising from the incident would have been suffered by the client rather than the company itself. On that basis, he found the employee not guilty of the charge.

The review grounds

- [25] The company contends that the commissioner committed misconduct, exceeded his powers, committed a gross irregularity, and ultimately reached an unreasonable outcome. It argues that the commissioner failed properly to identify and determine the true dispute between the parties. In relation to the charge of gross insolence, the company submits that the commissioner confined his enquiry to whether the employee was authorised to wear jeans, instead of considering whether the employee's remarks and conduct towards Jonker amounted to gross insolence. The company further avers that the commissioner failed adequately to assess the evidence and probabilities relating to charges 1 and 2 concerning insolence.
- [26] As regards the second primary charge, namely bringing the company's name into disrepute, the company argues that the commissioner failed to engage with the substance and merits of the allegations. It criticises the commissioner for disregarding the probabilities arising from the evidence presented. According to the company, the proximity between the WhatsApp status updates and the incident of 17 August 2021, during which the employee was confronted about her

uniform, demonstrates, on a balance of probabilities, that the posts were directed at the company.

[27] The company further submits that the employee's conduct on 18 August 2021, when she allegedly shouted and screamed after receiving notice of the disciplinary hearing, was disruptive and ultimately prompted Villet to proceed to the ladies' bathroom and summon security to escort the employee from the premises. On the company's version, this conduct brought its name into disrepute. It additionally contends that enquiries made by customers regarding the treatment of employees were sufficient to sustain the charge. The company takes issue with the commissioner's finding that any detrimental impact of the incident would have been suffered by the client rather than the company, describing that conclusion as untenable.

[28] The company also contends that the employee's disruptive behaviour and the involvement of the client's employees, including Lee-Anne, were deliberate and calculated. In the circumstances, it submits that the commissioner failed properly to consider the evidence and arrived at a decision that no reasonable decision-maker could reach.

The test for review

[29] The applicable test on review is well established. This Court is required to determine whether the commissioner's decision is one that a reasonable decision-maker could not reach on the material before him or her². The enquiry is directed at the outcome reached and recognises that arbitration awards should not lightly be interfered with merely because of errors or irregularities committed during the proceedings.

² *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others (Sidumo)* [2007] ZACC 22; (2007) 28 ILJ 2405 (CC) at para 110; *Fidelity Cash Management Service v Commission for Conciliation, Mediation and Arbitration and others* (2008) 29 ILJ 964 (LAC); [2008] 3 BLLR 197 (LAC) at para 100; *Bestel v Astral Operations Ltd and others* [2010] ZALAC 19; [2011] 2 BLLR 129 (LAC) at para 18.

[30] In *Commercial Workers Union of SA v Tao Ying Metal Industries & others*³, the Constitutional Court 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 counter-claims and reach for the real dispute between the parties. In order to perform this task effectively, commissioners 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.’

[31] The role of this Court on review was explained by the Labour Appeal Court in *Gold Fields Mining South Africa (Pty) Ltd (Kloof Gold Mine) v Commission for Conciliation, Mediation and Arbitration and others*⁴. The central consideration is whether the commissioner addressed the principal issue, properly evaluated the evidence presented, and arrived at a reasonable conclusion on the material before him or her. The LAC further made it clear that a process-related irregularity, without more, does not justify interference on review. Put differently, the existence of an error or irregularity does not automatically render the outcome unreasonable. A reviewing court must therefore avoid adopting a fragmented or piecemeal assessment of isolated portions of the award. Instead, the evidence and reasoning must be considered holistically to determine whether the decision reached is one that a reasonable arbitrator could make.

[32] Accordingly, in conducting a review under section 145(2)(a)(ii) of the LRA, the court is not required to scrutinise every factor individually or determine whether each omission or misdirection by the arbitrator constitutes a reviewable defect.

³ 2009 (2) SA 204 (CC); (2008) 29 ILJ 2461 (CC) at para 65.

⁴ (2014) 35 ILJ 943 (LAC); [2014] 1 BLLR 20 (LAC) at paras 16 – 18.

Such a piecemeal approach is inappropriate. The proper enquiry is whether, when the evidence is considered in its totality, the commissioner's decision falls within the spectrum of decisions that a reasonable decision-maker could reach.⁵

Analysis

- [33] The primary issues before the commissioner in determining the fairness of the dismissal were, firstly, whether the employee acted insolently by allegedly stating that the company supplied "*cheap pants*" and by requesting time until the end of the month to purchase durable pants that would last longer than those issued by the company. Secondly, the commissioner had to determine whether the employee committed misconduct through the three WhatsApp status updates and by her conduct on 18 August 2021 after being served with a notice to attend a disciplinary enquiry. If any of these allegations were established, the commissioner was further required to determine whether dismissal was an appropriate sanction.
- [34] The first allegation of gross insolence arose from the employee's response when Jonker questioned why she was wearing jeans instead of the work uniform pants. According to the company, the employee stated that the company purchased "*cheap pants*". It is, however, common cause that the company initially believed she had referred to the uniforms as "*sh*t pants*" rather than "*cheap pants*". The uncontested evidence before the commissioner was that the employee had obtained permission from her supervisor, Breedt, to wear jeans at work. In addition, the company's client, Williams Hunt, through the General Manager's personal assistant, Lee-Anne, had similarly approved her wearing jeans.
- [35] The commissioner's reasoning centred largely on whether the employee had permission to wear jeans, rather than on the question whether the statement that

⁵ *Duncanmec (Pty) Ltd v Gaylard NO and others* (2018) 39 ILJ 2633 (CC); [2018] 12 BLLR 1137 (CC) at paras 42; see also *Herholdt v Nedbank Ltd (Congress of SA Trade Unions as Amicus Curiae)* (2013) 34 ILJ 2795 (SCA); [2013] 11 BLLR 1074 (SCA) at para 25; *Head of Department of Education v Mofokeng and Others* (2015) 36 ILJ 2802 (LAC); [2015] 1 BLLR 50 (LAC) at paras 31 – 33; *Makuleni v Standard Bank of South Africa Ltd and Others* [2023] ZALAC 4; (2023) 44 ILJ 1005 (LAC) at paras 4 and 13.

the company purchased "*cheap pants*" amounted to insolence. He ultimately concluded that the conduct did not constitute gross insolence. The company contends that the commissioner failed to engage properly with the substantive merits of the allegation. The issue for determination is therefore whether the employee's remark that the company bought cheap pants can objectively be regarded as insolent conduct.

[36] It is common cause that, at the beginning of the year, the employee received four free uniforms free of charge. By August 2021, the employee had worn out all four pairs of pants and had already paid for an extra pair approximately two months before the incident. The evidence further showed that the company was aware that the employee repeatedly experienced problems with the durability of the pants. Jonker herself acknowledged that the employee "*was the only one that had a problem, pants after pants, after pants, after pants*".

[37] When Jonker returned from leave and questioned the employee about wearing jeans instead of her uniform, the employee explained that her uniform pants had torn and that she had been granted permission to wear jeans. In those circumstances, there appears to have been no basis for the employee to respond in a rude or disrespectful manner to Jonker's enquiry. Considered in this proper context, the employee's remarks concerning the quality of the pants were linked to the practical issue she faced regarding the durability of the pants rather than an intention to undermine or insult management.

[38] Viewed objectively, the statement that the company purchased "*cheap pants*" amounted to the employee's expression of frustration regarding the poor quality of the uniform pants rather than deliberately disrespectful behaviour. This does not, without more, constitute insolence.

[39] Counsel for the company, Ms Glanvill, contended that the issue did not lie in the actual words used, but rather in the manner and tone in which they were spoken. Although the commissioner did not expressly determine whether the statement that the company purchased "*cheap pants*" was rude or disrespectful, or the

manner in which she uttered the words, his ultimate conclusion that the employee was not guilty of insolence nonetheless remains reasonable. That error or irregularity therefore had no distorting effect on his ultimate decision. Jonker was unable to explain convincingly how the statement, the employee's tone, or her demeanour amounted to insolence. In any event, even had the charge been established, there was no evidence demonstrating that it was gross and a breakdown in the trust relationship. Dismissal on this basis alone would therefore have been disproportionate.

[40] The second allegation of gross insolence also arose from the discussion between the employee and Jonker on 17 August 2021. The company alleged that after Jonker offered to purchase replacement uniform pants, the employee refused and stated that she would rather wait until month-end to buy herself better-quality pants. Jonker characterised this conduct as disrespectful and unacceptable.

[41] When requested by the commissioner to clarify how the conduct amounted to insolence or disrespect, Jonker stated that it was the employee's manner of speaking, attitude and tone. Jonker further testified that an employee should not address an employer in such a manner, nor dictate to the employer what would be done. However, she failed to substantively demonstrate conduct that was disrespectful or insolent. A mere assertion that the employee displayed an inappropriate attitude or tone, without substantiation, is insufficient to sustain a finding of insolence. By contrast, the employee's version, which was supported by Falithenjwa, was that she herself had not acted rudely and that it was Jonker who was rude. Moreover, irrespective of whether the statement could be interpreted as a request or demand, and I do not accept that it amounted to a demand, it remains common cause that the company neither rejected the request, withdrew the permission to wear jeans, nor insisted that the employee wear the uniform pants.

[42] The commissioner's conclusion that the employee was not guilty of insolence is therefore one that falls within the reasonableness threshold. Even if some

misconduct had been established, dismissal would still have been a disproportionate sanction in the absence of evidence showing deliberate defiance, serious disrespect, or conduct undermining Jonker's authority.⁶

- [43] In relation to the allegation that the employee had brought the company's name into disrepute, Jonker conceded that the employee was not guilty regarding two of the WhatsApp status posts. With reference to the remaining post, which concerned rich people believing they could bribe others, the employee denied that the message was directed at the company or that it damaged its reputation. She explained that the post related to a television programme, *Asikhulume*, dealing with labour and employment rights. No evidence was presented to contradict this version. The commissioner accepted the employee's explanation and concluded that the company had failed to establish that its reputation had been harmed. He further noted that, at the time the post was made, there was no dispute between the employee and the company, and that the reference to bribery bore no connection to the employee and the company.
- [44] In relation to charge 4, the commissioner accepted that the employee became emotional, screamed, and made noise on 18 August 2021 after receiving a notice to attend a disciplinary hearing. The uncontested evidence showed that, upon receiving the notice, the employee cried and thereafter approached Lee-Anne. It was also common cause that when Lee-Anne and Falithenjwa attempted to ask her what had happened, she was unable to respond. According to the employee, she was emotionally overwhelmed to the point where she could not speak. Villet similarly confirmed that the employee appeared to be suffering from what resembled an emotional episode or fit.
- [45] The commissioner rejected the company's contention that this conduct brought the company into disrepute. Although he remarked that any reputational consequence would more likely affect Williams Hunt, the client, the essential

⁶ See *Palluci Home Depot (Pty) Ltd v Herskowitz & Others* (2015) 5 BLLR 484 (LAC); (2015) 36 ILJ 1511 (LAC) at para 22.

finding was that the company failed to prove the allegation against the employee. That conclusion cannot be said to be unreasonable. There was no evidence that the client terminated its contract because of the incident and, even if it had, the employee's emotional reaction could not reasonably be viewed as the cause. Villet's evidence that alternative quotations were sought on the same day because of this incident is inherently improbable and was unsubstantiated. In fact, Villet confirmed that Williams Hunt did not suffer any reputational harm when he testified that if there were dignitaries who witnessed the incident, their reputation would have been tarnished forever.

[46] The incident itself arose from the broader dispute about the employee reporting for duty in jeans and her dissatisfaction with the quality of the uniform pants supplied by the company. Significantly, while the charge sheet alleged that she referred to the pants as "*sh*t pants*", the evidence demonstrated that the dispute concerned her complaint that the trousers were of poor quality. The employee further explained that she had never anticipated that the issue would escalate into disciplinary proceedings, especially given that she had obtained permission to wear jeans.

[47] The allegation that the commissioner demonstrated bias by allegedly sharing humour with the employee's legal representative is entirely without substance. The complaint was never raised contemporaneously when the conduct supposedly occurred and surfaced only after the arbitration outcome proved unfavourable to the company. In the circumstances, the allegation is an unsubstantiated afterthought and cannot be sustained.

[48] Having regard to the grounds advanced by the company, the applicable principles governing review proceedings, and the record, I am satisfied that the arbitration award meets the threshold of reasonableness. The review application accordingly falls to be dismissed.

Conclusion

[49] The parties did not rightly pursue the issue of costs. As a result, the application falls to be dismissed with no order as to costs.

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

Order

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

M. Makhura

Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Ms H. Glanvill

Instructed: Ivings MacFarlane Attorneys

For the 3rd Respondent: Mr V. Sigidi of Sigidi Inc.

LABOUR COURT