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

_____ _____
Signature Date

THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Case No: C395/24

In the matter between:

AMANDA NOSIPHO KUNENE **Applicant**

and

CITY OF CAPE TOWN MUNICIPALITY **First Respondent**

SOUTH AFRICAN LOCAL GOVERNMENT BARGAINING COUNCIL (SALGBC) **Second Respondent**

DE VLIEGER SEYNHAEVE, I *N.O.* **Third Respondent**

Heard: **14 May 2026**

Delivered: **8 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 8 June 2026.

JUDGMENT

MAKHURA, J

Introduction

[1] Section 192 of the Labour Relations Act[1] (LRA) places a burden on an employee to prove the existence of a dismissal.[2] Once dismissal is established, the jurisdictional requirements for the Commission for Conciliation, Mediation and Arbitration (CCMA) or relevant bargaining council will be satisfied for the commissioner to determine the fairness or otherwise of the dismissal. If the employee fails to prove the existence of a dismissal, that is the end of the enquiry.

[2] In this matter, the applicant employee referred to an unfair dismissal dispute in terms of section 186(1)(e)[3] of the LRA, alleging that she had been constructively dismissed after she terminated her employment on notice on 30 November 2023. Her employment with the City of Cape Town (City), the first respondent in these proceedings, continued until the expiry of her notice period on 28 December 2023.

[3] On 15 August 2024, the commissioner issued an arbitration award dismissing her claim on the basis that she failed to discharge her onus in terms of section 192(1) of the LRA. The essence of the commissioner's award is that the South African Local Government Bargaining Council (SALGBC) had no jurisdiction to arbitrate the applicant's alleged unfair dismissal dispute because no dismissal had been established.

[4] Aggrieved with the outcome, the applicant launched the current proceedings in terms of section 145 of the LRA to review and set aside the award. The City opposes the application.

---

[1] Act 66 of 1995, as amended.

[2] Section 192 provides that:

'(1) In any proceedings concerning any dismissal, the employee must establish the existence of the dismissal.

(2) If the existence of the dismissal is established, the employer must prove that the dismissal is fair.'

[3] Dismissal in terms of this section means that *"an employee terminated employment with or without notice because the employer made continued employment intolerable for the employee"*.

[5] Since the commissioner's finding effectively amounts to a jurisdictional ruling, reviewable based on correctness, this Court must determine whether the applicant was dismissed and, if so, whether the dismissal was substantively and procedurally unfair.[4]

Material facts and evidence

[6] The applicant commenced employment with the City as a Legal Advisor on 1 December 2022, reporting to Mhlangabezi Seti (Seti), who led the labour-related matters stream. At the time of her employment, the manager was Vuyokazi Ngcobozi. On 30 November 2023, she resigned from her employment. Her resignation letter read as follows:

> '…kindly be advised that I hereby tender my resignation as a legal advisor at Legal Services. I would like to request that my resignation be with effect from 27 December 2023. Kindly advise if I need to discuss the letter with yourself and or HR.'[5]

[7] Although her resignation only became effective at the end of December 2023, it is common cause that she stopped working during early December after being booked off sick until 28 December 2023.

[8] Thereafter, the applicant referred an unfair dismissal dispute to the SALGBC, contending that she had been constructively dismissed. She relied on several incidents occurring between late August or early September 2023 and the date of her resignation, alleging that these incidents rendered her working environment intolerable.

[9] Broadly stated, the applicant alleged that since Zunaid Mohamed started acting as a manager at the beginning of September 2023, there was an immediate shift in the work environment. According to her, Mohamed indicated from the outset

[4] *Maleka v Boyce NO & others* [2026] ZACC 7; (2026) 47 ILJ 839 (CC) *(Maleka)* at para 61.
[5] Although the resignation letter is not part of the record, it was read into the record during the applicant's cross-examination by the City's legal representative.

that legal advisors who were not adequately performing their duties would be dealt with firmly, or he would come down hard on them.

[10] The first incident concerned the labour dispute between the City and Dylan Hendricks (Hendricks matter). In that matter, the City had failed to establish the fairness of Hendricks' dismissal during the arbitration, resulting in the commissioner ordering his reinstatement. The City received the arbitration award on 28 July 2023. The City's employee relations division resolved to challenge the award on review. A legal request seeking the appointment of attorneys to assist with the review was generated on 23 August 2023 and forwarded to Legal Services for allocation on 29 August 2023

[11] On 30 August 2023, Seti sent an email to the applicant to assist in the matter and specifically asked her to be *"mindful of the timeframes"*. The applicant only prepared the necessary authority to institute review proceedings and appoint attorneys on 14 September 2023, by which stage the six-week period had already expired. It is common cause that the mayor approved the authority on or about 6 October 2023.

[12] Before the mayor granted approval, Fiona Stewart, the mayor's legal advisor, raised concerns on 4 October 2023 regarding both the prospects of success in the proposed review application and the fact that the application would be filed out of time. The applicant was accordingly requested to explain the delay and comment on the prospects of success. She prepared a detailed memorandum in response, which she forwarded to Seti, who commented and sent it back to the applicant. In reply, the applicant wrote that:

> 'I have taken note of your comments and I acknowledge that I ought to have spoken to you if there was an issue with meeting the deadline, for which I apologise, as I note the dire consequences.'

[13] During arbitration, the applicant testified that she apologised because she regarded the matter as her responsibility, that the buck stopped with her, and that it was appropriate to accept accountability and apologise for what had occurred.

[14] On 9 October 2023, Mohamed sent an email to Seti, copied to Riaana Sayed, the director of Legal Services. Mohamed enquired from Seti whether the applicant should be issued a written warning, a counselling session, or both. He expressed the view that the City should adopt a *"hard stance"* to reinforce the importance of meeting deadlines. He said that:

> 'We need to get the basics right. If we too soft the same thing will happen over and over, placing you as the PPO and the City at risk. I am inclined to go with the written warning route.'

[15] Seti, however, proposed counselling. Mohamed replied and said that he would leave it to Seti to decide. Around the same period, Seti convened an urgent meeting with the applicant and informed her that the Hendricks matter had become *"a hot potato"* and that she had *"dropped the ball"*. She again apologised. Seti showed her Mohamed's email proposing a hard stance and a possible written warning. Seti further advised, so the applicant testified, that he intended to issue her with a notice for a disciplinary hearing. Seti's evidence was that he intended to issue the applicant with a notice to attend a counselling session rather than a disciplinary enquiry. It is common cause, however, that no such notice was ever issued. The applicant testified that:

> 'So, for me, at that point, my heart sank, because I'm like, why is it that I'm being shown this email, number one, and why is it that it seems to me that a decision has already been taken on what the outcome of whatever process I am going to be put through, there's already a determination that's been made, that I need to be given a written warning. But over and above that, the biggest concern for me was the fact that I'm going to made an example out of. How? I mean, it sort of seemed to me as if there was going to be an intentional campaign to smear me, almost as if I was going to the poster child for what happens to legal advisors who don't meet deadlines. So, at that moment, my heart sank, because I was

> like, what could I have possibly done so wrong for somebody to make a decision that I am going to be some who is going to be made an example of, and, you know, basically embarrassed in front of, you staff. I mean, I wondered, like how are we even going to embark on this particular campaign of making an example out of me?...
>
> So, I was fine with the fact that I was going to be disciplined, but what I could not understand or make sense of was, but why am I going to be made an example of?'

[16] The applicant also relied on an incident that occurred on 23 October 2023, when she participated in a one-on-one Skype meeting with Mohamed. She testified that Mohamed kept his camera switched off and informed her that the City intended adopting a strict approach toward legal advisors who failed to comply with deadlines. According to the applicant, Mohamed further stated that legal advisors were expected to manage their work in the manner of a legal practice and that those guilty of gross negligence or missing deadlines would face disciplinary consequences, including warnings and final written warnings. The applicant considered these remarks unsettling, particularly considering the earlier discussions relating to her own conduct. She testified that:

> 'So, you can imagine at that point that what [Seti] had shown me a couple of days ago, and now what was being reiterated to me, kind of heightened, that this was kind of like general across the board, but I thought to myself, how strange is it that you are meeting me for the first time and that's what you are jumping straight into, sort of being very specific about warnings and written warnings and legal advisors being dealt with swiftly.'

[17] The applicant further complained that Mohamed abruptly terminated the Skype call without saying goodbye. When she returned the call, believing there had been a technical issue, Mohamed informed her that the discussion had concluded. She testified that, during this period, she also became aware that she was no longer receiving labour-related matters and that her workload consisted

mainly of contract-vetting tasks, while her colleagues appeared to continue dealing with labour-related matters and review matters.

[18] On 8 November 2023, the applicant held a meeting with Sayed concerning a proposed settlement and draft court order in a damages' claim against the City arising from an alleged electrocution of a minor child. Seti joined the meeting later. The matter had been inherited by the applicant from another legal advisor. During the discussion, Sayed questioned the insufficiency of the available evidence, including uncertainty regarding the identity of the child, the claimant, the precise nature and cause of the injuries, and whether the alleged incident had in fact occurred. The applicant asked Sayed whether the fact that the claimant's guardian *"telephonically informed the electricity department"* of the incident did not satisfy her, to which Sayed responded:

> 'No it's not about what satisfies me. It's about what satisfies the requirements of the law and to pay money out of the coffers of the city.'

[19] During arbitration, the applicant accepted that Sayed's concerns were valid and required attention.

[20] On 15 November 2023, while attending a disciplinary hearing in Belville, Seti informed the applicant that legal advisors would no longer attend disciplinary hearings and that her attendance on that occasion would be her last, although legal advisors would still attend arbitrations. The applicant testified that she was confused by this *"very random decision"* and that for her, disciplinary hearings and arbitrations are *"sort of the same thing"*. She testified that although one colleague confirmed to her that legal advisors had indeed been instructed to stop attending disciplinary hearings, she also observed that certain colleagues nevertheless continued to attend such proceedings

[21] On 16 November 2023, the applicant met with Seti in his office. She testified that he first questioned why Sayed had been so critical of her during the meeting of 8 November 2023, before informing her that management had decided to transfer

her to a newly established procurement unit from March 2024. This decision, she testified, was taken without consultation. When the applicant asked why she had been selected, Seti responded that management regarded her as one of the strongest candidates, although he could not provide detailed answers to her further queries other than indicating that they would *"go through a process"*. The applicant testified that the decision immediately caused her concern because she associated the procurement unit with Mohamed, whom she believed would likely oversee it given his procurement background and experience. She stated that the absence of proper explanations regarding her selection or the process heightened her suspicions and caused her considerable anxiety.

[22] The applicant testified that she left Seti's office *"very confused"* and *"extremely upset"* and felt like a *"sitting duck"*. She was *"fed up"*, wanted to *"just get out of here"*, and *"just want[ed] to go"*. Approximately two days later, a colleague allegedly informed her that the transfer was motivated by Sayed's dissatisfaction with her.

[23] The applicant also relied on the incident that occurred on 24 November 2023, when Mohamed opened the door to her office and said *"no, not this office, not this one"*, and closed the door before walking away and engaging with other legal advisors. She felt *"upset"*, *"isolated"* and unable to *"continue working"* and this reinforced her perception that Mohamed had issues with her and did not want her at work.

[24] On 30 November 2023, the applicant sent an email to Seti tendering her resignation. Later on the same day, 30 November 2023, Seti forwarded the resignation email to Mohamed. In response, Mohamed wrote:

> 'You see, I'm not dreaming … I thought I'm losing it. Unless I got a glimpse of the future in my dream.'+

[25] The applicant interpreted this response as Mohamed *"rejoicing"* and taking pleasure in her resignation. She testified that she had expected Seti to discuss

her resignation with her, but instead, the City simply accepted it. In a later discussion with Seti, she enquired what Mohamed meant by the email above. Seti explained that Mohamed thought there was, in addition to the two legal advisors who resigned in November 2023, another legal advisor who had resigned.

[26] When questioned about why she did not lodge a grievance before resigning, the applicant stated that she believed the grievance procedure would not have provided any effective remedy and that no meaningful intervention could have assisted her. She testified that:

> 'these things that were being done to me were being done in isolation, but also in sort of a very quick succession, but you didn't really have anything sort of tangible that you could then go to HR and say, this is the thing, because I mean, even for me to have confirmation that [Seti] showed me the email, or that I was moving because the director was unhappy, all of that stuff was confirmed at the end, after I had resigned. So, I mean if I'm going to go and lodge a grievance and say, I'm being threatened that I'm going to be made an example of, where am I going to get the proof from, that I was shown an email of that nature? Because when I walked in there, I wasn't expecting that I was going to be told what I was told.
>
> So, it didn't feel to me as if that was something that I would have been able to substantiate, but also that anybody could have sort of changed things for me or done anything about it. So that was ultimately why, and it was a very highly stressful environment…' (Emphasis added)

Arbitration award

[27] In her arbitration award, the commissioner first considered the meaning of intolerability and referred to *Booi v Amathole District Municipality*[6] where the Constitutional Court explained that intolerability denotes *"a level of unbearability"*

[6] (2022) 43 ILJ 91 (CC); [2022] 1 BLLR 1 (CC).

which requires *"more than the suggestion that the relationship is difficult, fraught or even sour"*.[7]

[28] The commissioner thereafter examined each incident relied on by the applicant in support of her constructive dismissal claim before considering whether resignation had been a measure of last resort.

[29] Concerning the applicant's allegation that Mohamed and Seti had discussed making an example of her through disciplinary action, the commissioner found that no such email existed. While accepting that Mohamed and Seti had discussed possible disciplinary measures arising from the Hendricks matter, the commissioner concluded that this did not objectively render the employment relationship intolerable, particularly because no disciplinary proceedings or action were ever instituted against the applicant before her resignation.

[30] The commissioner held that there was nothing irregular or improper in management emphasising adherence to deadlines. She found that Mohamed's remarks that strict action would be taken against legal advisors who failed to comply with deadlines fall within the scope of managerial authority and constituted a warning about the consequences of non-compliance.

[31] Regarding the allegations that Mohamed abruptly ended the Skype call and later opened and closed the applicant's office door without greeting her, the commissioner found that these amounted to subjective interpretations and assumptions made by the applicant. The commissioner concluded that such incidents were insufficient, objectively considered, to establish an intolerable working environment.

[32] In relation to the meeting with Sayed and the proposed settlement concerning the electrocution claim, the commissioner found that the applicant's complaints were similarly based on assumptions. The commissioner accepted that Sayed had merely posed difficult but legitimate questions and that there was nothing

[7] Ibid at para 40.

personal in her conduct toward the applicant. As for the allocation of work, the commissioner accepted the City's explanation that legal advisors had generally ceased attending disciplinary hearings, a decision which fell within management's prerogative, as did the allocation of contract-related work.

[33] Dealing with the decision to transfer the applicant to the procurement unit in March 2024 without consultation, the commissioner found that the applicant had been identified for this procurement position and that the decision was not final.

[34] The applicant's attempt to rely on the email from Mohamed post-resignation, which she said Mohamed rejoiced over her resignation, was rejected by the commissioner on the basis that the email was sent after the applicant had already resigned and could not have influenced her earlier decision to resign. The commissioner also accepted the explanation given by Seti on 1 December 2023 and Mohamed's evidence regarding the context of the email and rejected the applicant's interpretation that Mohammed wanted her out and was celebrating her resignation.

[35] Addressing the applicant's failure to utilise the grievance procedure, the commissioner observed that the applicant enjoyed a good relationship with Seti. The commissioner also accepted Seti's evidence that they had an open-door policy and that the applicant could have raised her concerns or issues with him before resigning. Consequently, the commissioner rejected the applicant's assertion that lodging a grievance would have been futile.

The grounds of review

[36] The applicant contends that Mohamed's conduct toward her was retaliatory and intended to unsettle her. She argues that had the commissioner properly considered an email from Stewart, she would have found that there was *"no just cause"* to threaten disciplinary action against her.

[37] The applicant further argues that the commissioner failed to accord proper weight to the City's alleged non-compliance with procedural fairness requirements. She

submits that the commissioner committed a gross irregularity by relying on evidence not advanced by the City when finding that Seti had instructed her to stop attending disciplinary hearings, which, according to the applicant, resulted in an incorrect conclusion.

[38] The applicant also contends that the commissioner committed misconduct and a reviewable irregularity by overlooking what she described as three conflicting explanations relating to her removal from disciplinary hearings. The first explanation was that legal advisors would only attend certain categories of hearings; the second was Mohamed's version that legal advisors would participate only in high-profile cases; and the third was Seti's version that only complex matters required their attendance and that legal advisors continued attending disciplinary hearings in some instances.

[39] In addition, the applicant criticised the commissioner for failing to attach significant weight to her evidence that the City had changed her terms and conditions of employment without consultation. She argued that, had proper consideration been given to this evidence, the commissioner would have concluded that the City was not merely exercising managerial prerogative but was deliberately disregarding legal obligations in a manner that rendered her work environment intolerable. She further maintained that the commissioner committed misconduct in relation to the reasons advanced for preventing her from attending disciplinary hearings.

[40] The applicant also relied on what she alleged were material inconsistencies in the evidence of Seti and Mohamed concerning her proposed transfer to the procurement unit. She contends that both witnesses were dishonest regarding the claim that she had been pre-selected for the transfer. According to the applicant, Mohamed's assertion that he played no role in the decision and would not have selected her because she lacked procurement expertise was contradicted by Seti's evidence that management, including Mohamed, had

resolved during a strategy session that she should be transferred, with Seti merely tasked to inform her of that decision.

[41] The applicant further submits that the commissioner ignored relevant evidence concerning her fears about the transfer. She argued that her primary concern was that Mohamed would ultimately oversee the procurement unit and, given his earlier comments about making an example of her together with her limited procurement experience, she believed she would inevitably make mistakes and thereby expose herself to disciplinary action or dismissal.

[42] In her supplementary affidavit, the applicant submits that the decision to transfer her was based *"purely on Sayed's emotions"* and that it was *"unlikely that the decision was going to change"*, despite Seti's evidence that the decision was not final. She argues that if the decision was not final, Seti had two weeks to discuss the issue further with her, but no additional discussions took place. The applicant also criticised the way her resignation was processed, contending that Seti accepted it without first speaking to her to establish the reasons underlying her decision to resign.

[43] The applicant further maintains that the commissioner disregarded material evidence demonstrating that Seti was able to recognise and identify the true catalyst for her resignation as *"the decision to transfer"* her to the procurement unit. She argued that had Seti advised her that the decision was not final, he would not so readily have identified the transfer as the trigger for her resignation.

[44] The applicant then criticises the commissioner's finding concerning her meeting with Sayed. She confirms in her affidavit that *"she had no issues with the discussion and found some of Sayed's questions to be valid"*. She, however, contends that *"unbeknownst to her, it was in fact Sayed who was terribly upset about the discussion that had transpired"* with her.

[45] In relation to Mohamed's alleged statement or email suggesting that she should be made an example of, the applicant argued that the commissioner

misconstrued the contents of the email. She maintained that Seti never denied showing her an email in which Mohamed proposed that she be made an example of, and accordingly, the commissioner ought to have accepted her version.

[46] Regarding her failure to lodge a grievance, the applicant submits that the commissioner committed misconduct by overlooking what she described as credibility concerns arising from contradictions in the evidence of Mohamed and Seti about her transfer to the procurement unit. She argued that, even if she had invoked the grievance procedure, the same alleged dishonesty and lack of transparency would have persisted, particularly because at that stage she lacked proof that she had been singled out, excluded from consultation, and selected for transfer solely because of Sayed's alleged dissatisfaction with her.

[47] The applicant also takes issue with the commissioner's suggestion that she could have escalated her concerns to the City Manager. She contends that such a finding was speculative because Mohamed served as the City Manager's strategic legal advisor, making it unlikely that the City Manager would have intervened against senior officials in his own office in the absence of supporting evidence.

Evaluation

[48] The commissioner found that the applicant failed to establish the existence of a dismissal, and consequently, the SALGBC lacked jurisdiction to entertain the dispute. Such a finding, as already alluded to above, constitutes a jurisdictional ruling, reviewable based on the correctness test or objectively justifiable grounds as set out in *SA Rugby Players Association & others v SA Rugby (Pty) Ltd & others*.[8] The primary enquiry is therefore whether, objectively assessed, the commissioner's decision is correct.

[8] (2008) 29 ILJ 2218 (LAC); [2008] ZALAC 3 at paras 39 - 41; see also *Royale Energy (Pty) Ltd v Commission for Conciliation, Mediation and Arbitration and others* [2026] ZALAC 26.

[49] In *Maleka*, the Constitutional Court endorsed the above approach[9] and approved the test formulated by the Labour Appeal Court in *Solid Doors (Pty) Ltd v Commissioner Theron & others*[10], where the LAC identified the three jurisdictional requirements for constructive dismissal as follows:[11]

> '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 had 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. Thus, there is no constructive dismissal if an employee terminates the contract of employment without the two other requirements present. 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.'

[50] In the present matter, there was no dispute that the applicant herself terminated the employment relationship. The enquiry therefore centred on the remaining requirements, namely, whether the applicant resigned because continued employment had become intolerable and whether such intolerability was attributable to the conduct of the City.

[51] Against that legal framework, the question is whether the incidents relied upon by the applicant were of such a nature that she could no longer reasonably endure remaining at work, and whether the alleged intolerability had been created by the conduct of Mohamed, Seti and Sayed acting within their scope of employment.

[52] In *Maleka*, the Constitutional Court, in addition to what it said in *Booi*, also emphasised that intolerability requires something more than unpleasant, stressful or difficult working conditions. Conduct that is merely rude, uncompromising or

[9] See fn 4 above.
[10] [2004] ZALAC 14; (2004) 25 ILJ 2337 (LAC) at para 29.
[11] Ibid at para 28.

unfair does not in itself establish intolerability. Rather, so the Court continued, the employee must demonstrate objectively unbearable or agonising circumstances directly caused by the employer's conduct, to the point where the employee's tolerance has reached a breaking point.[12]

[53] The incidents relied upon by the applicant do not, in my view, constitute genuine grounds for complaint and fell far short of establishing intolerability. None of the conduct attributed to Mohamed, Seti or Sayed demonstrated hostility, conflict, or conduct approaching objectively unbearable treatment, whether on a professional or personal level. Her review grounds simply expressed general unhappiness with the commissioner's reasons for her decision.

[54] I deal first with the Hendricks matter and the discussion of possible disciplinary action. The applicant herself accepted responsibility for the delay and apologised on more than one occasion. Mohamed and Seti were entitled, within the bounds of managerial authority, to consider possible disciplinary measures. Although Mohamed initially proposed a written warning, he ultimately accepted Seti's suggestion of counselling. Whether Seti intended to issue a notice for a counselling session or a formal disciplinary hearing is, in my view, of no moment. The circumstances did not objectively establish an intolerable working environment, and the failure to pursue the matter further could not plausibly have rendered the workplace unbearable.

[55] The applicant repeatedly relied on Mohamed's email, which allegedly stated that she should be made an example of. The record contains no email in which Mohamed said the applicant should be made an example of. Properly construed, however, the email in question was part of a discussion about appropriate disciplinary measures for missing deadlines in the Hendricks matter. Mohamed's comments about adopting a *"hard stance"* toward non-compliance with deadlines fell within the bounds of legitimate managerial oversight, and there was nothing

[12] *Maleka* at paras 73; see also *Booi v Amathole District Municipality & others* (2022) 43 ILJ 91 (CC) at para 40, where the CC also said that '*'intolerable' implies a level of unbearability, and must surely require more than the suggestion that the relationship is difficult, fraught or even sour.'*

improper in management insisting that legal advisors comply with prescribed procedures and time periods. The applicant had accepted her mistake in delaying the processing of the Hendricks matter, and Mohamed was justified in proposing disciplinary measures to remind legal advisors of the importance of meeting deadlines.

[56] There is no merit to the applicant's complaint regarding Mohamed's conduct during the Skype meeting and the incident in which he opened and closed her office door without greeting her. Whether or not those incidents occurred as alleged, they are so trivial and, in my view, incapable, objectively assessed, of rendering continued employment intolerable.

[57] The applicant's complaint concerning the allocation of work similarly lacks substance. The City's decision that legal advisors would no longer attend disciplinary hearings applied to all legal advisors and was not directed specifically at the applicant. In any event, decisions relating to work allocation and operational responsibilities fall within the realm of managerial prerogative. The applicant was also unable to demonstrate that she had been deliberately excluded from labour-related matters or that she had ever raised any concern with Seti regarding her workload before resigning.

[58] Further, the applicant's contention that the City had unilaterally changed her terms and conditions of employment by preventing her from attending disciplinary hearings and had decided to transfer her to the procurement unit without consultation, and that this offended her right to procedural fairness, is without merit. First, these complaints had not featured prominently during the arbitration proceedings. Second, withdrawing her and other legal advisors from attending disciplinary hearings and transferring her to a procurement unit as a legal advisor do not, on the record before this Court, constitute a unilateral change to terms and conditions of her employment.

[59] The applicant's complaint against Sayed was, just like all others, an afterthought without a factual foundation. The applicant herself admitted that she had no

difficulty with the meeting regarding the settlement of the electrocution claim and accepted that Sayed's questions were legitimate. Her subsequent belief that Sayed had orchestrated her transfer to the procurement unit was based purely on assumptions drawn after Seti questioned her about the meeting and informed her of the possible transfer. The applicant's later assertion that Sayed had been *"terribly upset"* is similarly unsubstantiated.

[60] During the hearing, the applicant described the transfer as a straw that broke the camel's back. However, the evidence shows that the applicant was grasping at straws. Her allegations of intolerability were rooted largely in speculation, conjecture and subjective assumptions rather than objective evidence. Even if it is accepted that the transfer decision was final, the applicant's complaint related at best to anticipated future intolerability rather than an existing intolerable working environment. The concept of anticipated intolerability was rejected by the Constitutional Court in *Maleka* where the Court held that section 186(1)(e) does not extend to future or anticipated circumstances that an employee merely fears may become intolerable.[13] The applicant's concern that Mohamed might eventually lead the procurement unit and exploit her lack of procurement experience to discipline or dismiss her amounts to speculative apprehension and does not deal with the environment leading to her date of resignation, a resemblance to the facts in *Maleka*, where the resignation was linked more to anticipated future difficulties than to an existing unbearable work environment.

[61] The email sent by Mohamed after her resignation is, as the commissioner correctly found, irrelevant. In the absence of any established intolerable conditions before her resignation, it is immaterial whether Mohamed celebrated her resignation.

[62] The applicant had very limited interaction with Mohamed and Sayed. From September to November 2023, she had only one Skype meeting with him and a single in-person encounter when he opened and closed her office door. She

[13] *Maleka* at para 85.

reported directly to Seti rather than Mohamed, and there was no evidence of any strained or intolerable relationship between herself and Seti. Likewise, her only interaction with Sayed was the meeting concerning the proposed settlement of the minor child's claim.

[63] This relatively short period between the alleged intolerable incidents complained of and the date of resignation is relevant.[14] And so are the limited interactions between the applicant and those who allegedly created the intolerable work environment. Properly considered, the incidents relied upon by the applicant commenced only after mid-September 2023, and by her own account, the *"last straw"* occurred during the meeting of 16 November 2023.

[64] The applicant did not lodge a grievance. Although lodging a grievance is not an absolute prerequisite for constructive dismissal, it remains an important consideration, as the Court warned in *Maleka*:[15]

> 'In circumstances where an employee elects not to follow such internal procedures, the employee cannot, as a matter of principle, claim constructive dismissal, unless of course the employee is able to prove circumstances that make it appropriate for him to be absolved from this obligation.'

[65] Tied to the significance of following internal dispute resolution procedures is the fact that resignation should be a measure of last resort. The Constitutional Court articulates the reason as follows:[16]

> 'This is to avoid an unhealthy situation in a workplace where employees, who have become disgruntled and dissatisfied for flimsy reasons, would simply walk out and thereafter claim a constructive dismissal. Such a situation would be at odds with the prescripts of fairness in labour practices, which requires that 'an employee who is dissatisfied with his employer's conduct, at first, offers the employer an opportunity to redress the dissatisfaction. Employees should refrain

[14] *Maleka* at para 84.
[15] *Maleka* at para 89.
[16] *Maleka* at para 74.

from hastily resigning and then arguing that the employment relationship had become unbearable'.' (Emphasis added)

[66] There is a consistent theme that emerged from both the arbitration record and the applicant's affidavits - her admission that, at the time of resignation, she lacked evidence to substantiate her complaints or sustain a grievance. This concession, in my view, is fatal to her constructive dismissal claim because it demonstrated the absence of any objectively verifiable intolerable conduct on the part of the City. The allegation that the evidence surfaced after her resignation is an afterthought that lacked foundation, as demonstrated by her failure to articulate how the incidents created an intolerable work environment.

[67] None of the incidents relied upon by the applicant justified a claim of constructive dismissal or warranted resort to the grievance procedure. Self-generated and self-imposed feelings of dissatisfaction or perceived unfair circumstances, exaggerated through conjecture or founded merely on personal disgruntlement, cannot amount to the intolerable conditions contemplated in section 186(1)(e). The commissioner's decision was correct, and the application falls to be dismissed.

Conclusion

[68] Having considered the matter, I do not believe that there is a case made out for the Court to deviate from the established legal principle in this Court that costs do not follow the result. In the result, the applicant shall be dismissed with no order as to costs.

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

Order

1. The application is dismissed.

2. There is no order as to costs.

_____

M. Makhura

Judge of the Labour Court of South Africa

Appearances:

For the Applicant:	Self
For the 1st Respondent:	Ms B. Bosch
Instructed by:	Cluver Markotter Inc.