



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

Signature

Date

19/06/2026

THE LABOUR COURT OF SOUTH AFRICA, DURBAN

Case No: **D476/2023**

In the matter between:

MANDLA NGCOBO

Applicant

and

**COMMISSION FOR CONCILIATION,
MEDIATION AND ARBITRATION**

First Respondent

LEON PILLAY N.O

Second Respondent

PRIVATE SECURITY REGULATORY AUTHORITY

Third Respondent

Heard: 29 January 2026

Delivered: 19 June 2026

Summary: This judgment was handed down electronically by circulation to the parties and / or their legal representatives by email.

JUDGMENT

GOVENDER AJ

Introduction:

1. This is an application to review and set aside the Arbitration Award (Award), issued by the Second Respondent (the Arbitrator), under the auspices of the First Respondent (CCMA), under case number KNDB5555-21, dated 10 July 2023.
2. The Applicant (Ngcobo) was employed by the Third Respondent (PSRA) on 1 June 2014, as an Inspector in the Compliance Division of the Durban branch. The Applicant was charged with various allegations pertaining to misconduct.
3. In brief, the Applicant faces the following charges:
 - 3.1. *Dereliction of duty - in failing to report non-compliance of Mr Mthethwa, as a service provider to the Respondent, nor taking the necessary steps against Mr Mthethwa;*
 - 3.2. *Bribery - it was alleged that the Applicant solicited a bribe from Mr Mthethwa in exchange for exonerating Mthethwa from the consequences of non-compliance;*
 - 3.3. *Visiting Mthethwa with the SAPS and seizing Mthethwa's equipment and subsequently soliciting a bribe from Mthethwa for the release of the equipment;*
 - 3.4. *Failing to report the bribe to the Director of the Respondent; and*
 - 3.5. *Unprofessional conduct whilst on duty in that the Applicant was unprofessional, rude and/or abusive to Mr Ramdin and Ms Daphne K on 10 October 2019.*
4. The Applicant was found guilty as charged and dismissed on 01 June 2021. He appealed against the dismissal, but his appeal was unsuccessful. Aggrieved with the outcome, he referred an unfair dismissal to the CCMA.

5. The Arbitrator found that the Applicant's dismissal was procedurally and substantively fair. The Applicant launched this review application, seeking to set aside the Award and substituting the Award with an order, to the effect that he be reinstated to his position with full backpay.
6. A brief synopsis of the background is that Applicant was accused by Mr Mthethwa of soliciting a bribe from him in order to overlook the fact that he was an unregistered security service provider, who was rendering services at the U Square shopping mall in Umlazi. There were further allegations about the Applicant's dereliction of duties as a result thereof.
7. In 2019, the regional manager, Talent Zwane (Zwane) was informed by a Mr Majola, that PSIRA inspectors were taking bribes from security service providers. Mr. Majola was a director of the Vukela group. Zwane sent an email detailing the complaint she received and requested an investigation. Ms. Selina Mohlala was appointed as investigator and she conducted the investigation into the allegations levied against the Applicant of soliciting a bribe from Mr Mthethwa, a retired police officer. Mahlangu and Chima were also appointed investigators dealing with other allegations.
8. It was alleged he was being paid R20 000-00 per month to render guarding services at the U-Square Mall (mall). Ms Mohlala interviewed Mr Mthethwa and his wife and prepared a statement for him to sign, which was done. Mthethwa, however, did not testify at the disciplinary hearing or the arbitration. He was subpoenaed but she still did not attend, and no explanation was offered for his non- attendance, except that he stopped taking calls from Mohala and appeared not willing to testify. The Third Respondent led the evidence of Zwane, Ramdin, Mahlangu, Chima and Mohlala. The evidence is well summarized in the award, and I will not repeat the evidence herein. The Applicant testified in his defence and denied the allegations against him.
9. The court will focus on the charge pertaining to the Applicant soliciting a bribe as that was the reason that the Arbitrator found that the dismissal was for fair reason and is also the basis of these review proceedings

10. The arbitrator found that the probabilities clearly favored the employer's version that the applicant had solicited a bribe from Mthethwa to keep him happy. He found that this also renders the applicant guilty of dereliction of duty in failing to report Mthethwa as an unregistered security service provider¹.

GROUNDINGS OF REVIEW

11. The Applicant contends that the Award is reviewable for the following reasons:
 - 11.1. The Arbitrator misconceived the nature of the enquiry when he preferred hearsay evidence over direct evidence that had been given at the arbitration hearing. The Applicant contends that the witness Mohlala had stated that she could not vouch for the veracity of the evidence as told to her by Mthethwa and his wife;
 - 11.2. The Applicant further contends that the Arbitrator's findings at paragraph 32 of the Award, that it was undisputed that Mthethwa was not a registered security service provider, demonstrates the Arbitrator's complete misdirection in reaching this conclusion as the Applicant maintains that he had disputed that Mthethwa was running a private security business;
 - 11.3. The Applicant contended that there had been no evidence that Mthethwa was running an unregistered security business when he and the other inspectors went to the U-Square Shopping Mall in Umlazi to conduct inspections;
 - 11.4. The Applicant further raised that he had disputed the veracity of Mohlala's evidence and therefore the Arbitrator committed a gross irregularity by placing more weight on the hearsay evidence of her testimony pertaining to what was reported to her by Mthethwa;

¹ Page 38 Pleadings Index para 41 of the Award

- 11.5. The Applicant contended that the arbitration's finding that the Applicant's explanation as to how Mthethwa could have obtained his private cellphone number was improbable. Further that this finding, amounts to a reviewable irregularity. The applicant submitted that the Arbitrator should have preferred his evidence over that of Mohlala , and have accepted that since he had worked in the Community Policing Forum his number was out for public knowledge , the number was also included on his business card and therefore Mthethwa could have obtained his number through these avenues;
- 11.6. The Applicant contended that the Arbitrator was incorrect to reject his contention that there had been a bad relationship between him and the manager of the Durban Branch, Ms. Talent Zwane. He stated that an external investigation was conducted against Ms. Zwane and after the external investigation, Ms. Zwane did not return to her position, but she assumed a senior position in Gauteng. He averred that Ms. Zwane denied knowledge of the investigation but that he had referred to evidence in the bundle, which showed that Ms. Zwane was interviewed by a Ms. P Singh. He maintained that the Arbitrator, instead of finding that Zwane was not telling the truth, had instead rejected his evidence, which was incorrect.
- 11.7. The Applicant contended that the Award of the Second Respondent is therefore one that a reasonable decision-maker could not have made and should be reviewed and set aside.
- 11.8. I pause to mention that there was no supplementary affidavit filed and therefore, the grounds of review, as set out above, are the only grounds of review raised by the Applicant. The Applicant did not supplement the grounds of review with any reference to the evidence from the transcribed record.
12. The Third Respondent (PSIRA) opposed the review. In short, PSIRA contended that the Award issued by the Commissioner falls within a band of

reasonableness and that the Applicant has failed to make out a case for a review.

13. Further that the Applicant's founding affidavit did not mount any challenge to the Commissioner's reasoning and analysis of the evidence. It was emphasized that the Arbitrator made a ruling on the admissibility of hearsay evidence and his ruling was clear that whilst he excluded the admission of affidavits of Mthethwa, Majola and Kelly, (unless they testified at the arbitration which they did not), he would admit the evidence of the investigators on what was told to them by Mthethwa, Mohlala and Kelly.
14. PSIRA maintained that the Commissioner had direct evidence from Mohlala who stated that she went to the Centre (U Square Mall) and found guards there. The Centre was owned by a Mr Salim, who had enlisted the services of Mr. Mthethwa to guard the Centre. Further that Mthethwa was not a registered security service provider.
15. The Third Respondent contended that the Applicant had not disputed that Mthethwa had had his private cell number and that the Arbitrator was correct in rejecting the Applicant's version that the number was obtained because he was a member of the CPF, or known to the public from his time he was a police officer , as highly improbable.
16. PSIRA averred that since Mohlala's evidence was based on what was recounted to her by Mthethwa , then together with Mthethwa's version of what transpired and the fact that he had the correct cellphone number of Mthethwa , then the probabilities clearly favored the Third Respondent's version in respect of the bribery allegations. The Third Respondent maintained that there was indeed satisfactory evidence that was tendered during the arbitration proceedings, which supported the conclusion that the Applicant had solicited and took bribes from Mthethwa. Further that since bribes, fraud and dishonesty are all in the same basket of deceit, it would have served no purpose for the Arbitrator to reinstate the Applicant who had broken the fundamental element of an employment relationship which is based on trust.

Evaluation

17. The test to review an Award is now well established. The court's powers of intervention in review proceedings are narrowly circumscribed. A court may only review and set aside an arbitration award, if it can shown to contain a defect as contemplated by section 145 of the Labour Relations Act 66,1995 (LRA), renders the award so unreasonable that no reasonable decision maker could have reached on the same evidence.
18. The test as well-known to be set out in Sidumo and Another v Rustenburg Platinum Mines Ltd & Others² [Sidumo], is whether the decision reached by the Commissioner is one that a reasonable decision-maker could not reach. This standard of reasonableness, established in *Sidumo*, thus places a high threshold on applicants seeking to challenge an arbitration outcome or a ruling. In Herholdt v Nedbank Ltd³, the Supreme Court of Appeal held that the test is a stringent one that will ensure that awards are not lightly interfered with.
19. In short, a reviewing court must ascertain whether the Arbitrator considered the issues before him or her; evaluated the facts presented at the hearing and came to a conclusion that is reasonable. It is trite that 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 determine whether a failure by the Arbitrator to deal with it, is sufficient to set the Award aside. Hence it is trite that a piecemeal approach to dealing with the Award is improper, and a reviewing court must consider the totality of the evidence and decide whether the decision made by the Arbitrator is one that a reasonable decision-maker could make, based on the evidence adduced before him.

² 2007 (28) ILJ 2405 (CC) at para 1110

³ [2013] 11 BLLR 1074 (SCA)

20. The court is mindful that a determination of any reviewable irregularity on the part of the decision maker includes a determination of whether or not, the decision of the arbitrator falls within a band of decisions, to which a reasonable decision maker could reach on the available material. If so, the award must be upheld regardless of any lapses in the decision maker's reasoning or conduct. The test is outcome based. If the outcome can be sustained on the evidence led at the arbitration, regardless of the reasons advanced for the finding, it must be sustained.
21. The grounds of review appear in paragraphs 15 to 19 of the founding affidavit. The Pleadings Index contains all pleadings. There has been no supplementary affidavit filed. I pause to mention, that the Transcribed Record was in total disarray and the court had to spend many hours trying to make sense of the Record, given the manner in which it was presented. Be that as it may, eventually the court was able to follow the dates and the evidence as presented as the arbitration hearing.

Hearsay evidence versus Direct evidence

22. The Applicant contended that the Arbitrator misconceived the nature of the enquiry when he preferred hearsay evidence over direct evidence.
23. Although, it is trite that arbitration proceedings are less formal than criminal or civil proceedings, this does not infer that the correct legal principles on the law of evidence and or the admissibility of hearsay evidence in particular, are not applied. A right to fair hearing embraces a concept of substantive fairness to all parties to the hearing and includes a right to challenge the evidence.
24. Hearsay evidence is inadmissible, unless permitted in the interests of justice after due consideration of the factors, as set out in S3(1)(c) of the Law of Evidence Amendment Act 45 of 1998 (the Act). S 3(1)(c) of the Act provides

that the evidence may be permitted after the court carefully weighs the following factors:

- i) the nature of the proceedings;
- ii) the nature and purpose of the evidence;
- iii) the probative value of the evidence;
- iv) the reason the original person is not giving the evidence themselves;
- v) any prejudice the admission of the hearsay might cause;
- vi) and other factor the court finds relevant.

25. From the reasons in the award, it is clear that the Arbitrator assessed the evidence of what was *reported* to Mohala against the version of the Applicant.
26. Mohlala testified that she had conducted an investigation, and during her investigations she interviewed Mthethwa. She testified that Mthethwa had told her that he had been rendering services at U-Square Shopping Mall, as an unregistered service provider. That the Applicant and him had exchanged cellphone numbers and thereafter he had met the Applicant on two occasions and paid him monies so that he was not reported, as the Applicant as duty bound to do as an inspector. The arbitrator accepted all the evidence of what was reported to Mohlala during her investigation, even though Mohlala was very clear that she was not present to witness any incident and further that she could not confirm if anything told to her by Mthethwa was correct or not .
27. All the evidence pertaining to interview with Mthethwa falls squarely into the category of hearsay evidence, as the probative value of such evidence depended on the credibility of Mthethwa and not Mohlala. The analysis and probative value attached to this evidence certainly illustrates a misdirection and irregularity in the proceedings, as there was no ruling that this hearsay evidence was accepted in the interests of justice and the reasons, therefore.
28. The court notes that there was a previous ruling before another arbitrator that hearsay evidence would be accepted but then for reasons not clear , there was a second ruling before the current arbitrator where he excluded the written

statements from the evidence but stated that he would allow the investigators to testify on what was told to them . Needless to point out, any version related to them would be hearsay evidence as well.

29. Having perused the records, the court finds that the ruling excluding the admission of the written cannot be faulted and accords with the correct legal principles on the law on hearsay evidence and its admissibility. However, rather baffling, is that the Arbitrator accepted the very same hearsay evidence, through the “backdoor”, via testimony of Mohlala. He not only accepted the evidence of what was allegedly told to her by Mthethwa during her interview process but also placed considerable probative value on what was allegedly reported to Mohlala and reached his conclusions based on such acceptance, which is flawed.
30. This was despite the fact, that is common cause from the Transcribed Record that Mohlala, testified that she could not verify the veracity of what Mthethwa reported to her, nor confirm the incidents as she was not there. Therefore, there should have been no probative value attached to such evidence.
31. A further issue with acceptance of such evidence as a version that was assessed against the testimony of the Applicant and determined on the probabilities and improbabilities is that the Applicant, did not have an opportunity to challenge the version that was told to Mohlala by Mthethwa. The entire report of what was told to Mohlala during her investigation amounted to hearsay, unless Mthethwa himself had testified to that version. It is irrelevant whether the evidence was accepted from the written statement, which was excluded, or whether Mohlala herself testified on what was told to her and which she in fact recorded in that written statement as that statement was prepared by her. The oral testimony of Mohlala could carry no greater weight than the statement, as her testimony was that she had prepared the statement. A fact that seems to have eluded the arbitrator.

32. It is also evident from the transcribed record, that the Applicant disputed that Mthethwa had been guarding at U -Square shopping mall when he conducted a search. The Arbitrators finding at paragraph 32 of the Award, is at odds with evidence led before him. It was put to Mohlala under cross -examination that the Applicant denied that the guards at U Square shopping mall, were non - complaint ⁴ and had denied that Mthethwa was found rendering services at the mall.
33. Hence the Arbitrators finding that it is “undisputed that Mthethwa was not registered as a security service provider, but he did provide security service at U-Square shopping mall is not correct at all. It was in fact disputed that at the material time of the Applicant’s inspection Mthethwa was not rendering services. Even if it is common cause that Mthethwa is not a registered security services provider, it was nonetheless disputed that he was rendering services at the time of the Applicant’s inspection. This was material fact from the evidence led, which the Arbitrator clearly misunderstood. The court finds that arbitrator misdirected himself when he found that it was undisputed that Mthethwa rendered services at U- Square , despite being unregistered with PSIRA.

Evidence of Applicant’s cellphone number on Mthethwa’s cellphone

34. The Arbitrator correctly found that it was not disputed that Mthethwa had the Applicant’s private cellphone number and therefore it was incumbent to provide a reasonable explanation on how Mthethwa would have obtained the Applicant’s private number. However, again without the evidence of Mthethwa confirming how he obtained the Applicant’s cellphone number, the Arbitrator was incorrect to dismiss the Applicant’s version in this regard.

⁴ Transcribed Record 05 December 2022, Page 26 Lines 25 to page 27.... “but at the time that he (Applicant) got there with the police, there was no non-complaint guards on site “

35. The Applicants' version of course was pure speculation. On his version he had no knowledge of how Mthethwa had the number but speculated on how it could be possible. In his evidence he denied the employer's version that he had given Mthethwa his cell phone number in order to solicit a bribe and further that the only reason why Mthethwa had his cellphone number was because the Applicant had given it him. The court is not persuaded that the employers' version is the only plausible explanation.
36. The Applicants evidence is that his cellphone is widely known from his days as a police officer in the community as well as his participation in the community police forum. This version was not disputed by any evidence to the contrary but was dismissed as highly improbable. The Applicant testified that he did not know but thought it could have been obtained from anyone as his cell phone number was circulated when he was a police officer and public would sometimes contact him on his cell phone. His cellphone number was not private according to his evidence.
37. There could be a variety of possibilities of how someone's cell number is circulated. Had the arbitrator properly applied his mind to the evidence, he would have recognized that the applicant's version was not unreasonable in this regard, or an unreasonable evasion, but rather a logical response in the circumstances based on speculation against his bare denial of having given the cell phone number himself. The arbitrator mischaracterized the response as improbable, when the basis of the employer's version was hearsay evidence. The applicant did not have an opportunity to challenge Mthethwa on the cellphone number was obtained. The fact that he had the number was not conclusive proof that the Applicant had given to him. The court finds that was in reality a rational statement of fact (that the applicant on his version, did not know as a matter of fact how Mthethwa had obtained his cellphone), was in the court's view wrongly construed as a failure to provide a reasonable explanation.
38. The arbitrator placed an unnecessary evidentiary burden on the Applicant to disprove an unsubstantiated assumption of guilt based on hearsay evidence,

which could not be tested and the veracity of which could not be confirmed by Mohlala herself, rather than requiring the employer to positively prove the misconduct complained of. By treating the Applicant's inability to speculate about how the cellphone number was obtained as evidence against him, the Arbitrator reversed the burden of proof, and by so doing acted wholly inconsistently with the notions of basic fairness which underpins all labour processes. The arbitrators' flawed reasoning in this regard has resulted in a decision that no reasonable arbitrator could have reached on the evidence led before him.

39. Another important aspect of the evidence, which was not given due consideration, was the evidence of Mohlala, that there were four other inspectors who conducted the investigation with Mthethwa at U-Square Mall but who was not interviewed by her. This is rather perplexing as they would have in the best position to confirm if Mthethwa or any of the alleged unregistered guards were found at the mall.⁵ This was critical evidence that was ignored. The fact that they were not interviewed, when they could have been interviewed, raises suspicion as to why they were not interviewed.
40. The explanation offered by Mohlala was not satisfactory at all and appears to be rather evasive. The explanation offered by her was that Mthethwa had told her that no other person was present when the bribe was solicited. But this explanation seems illogical, as the reason to interview the other four inspectors, would not have been to verify the alleged bribe, but more importantly for them to confirm the alleged reason giving rise to a need for a bribe in the first place. But Mohlala didn't see a need for such corroboration.
41. There was no cogent explanation before the arbitrator as to why these witnesses did not come to testify. There was mere speculation of alleged intimidation because the Applicant was an ex -police officer. Since there was no satisfactory explanation, the arbitrator ought to have drawn a negative inference from the non- appearance of critical witnesses, instead of assessing

⁵ Transcribed Record Page 11 and Page 14 Lines 9 to 11; Page 16 Lines 1 to 6

the evidence of Mohala's secondhand account of Mthethwa's narrative against the evidence of the Applicant. This conduct indeed amounts to a gross irregularity in the proceedings, compromising the basic tenets of fairness of the proceedings.

42. As an aside, the court also must point out that neither Mohlala or the other inspectors who confirm that Mthethwa was found unlawfully guarding during their investigations, appear to have taken any action against Mthethwa, and this appears rather odd to the court. It was a point that was raised in cross examination with Mohlala as well with reasonable explanations.
43. Further, for all intents and purposes, Mohlala was also a single witness and the necessary caution should have been applied to her evidence. But instead, the Arbitrator completely relied on her evidence and on what was allegedly reported to this single witness, without any corroborating evidence at all, to find that the Applicant had been justly dismissed, without the accuser being called to testify. This kind of conduct does not at all inspire a process that was fair to the employee at all.
44. Further, even the crux of the actual hearsay evidence of Mthethwa's version was not corroborated by any witness and even his evidence too falls into category of a single witness. Even the evidence pertaining to his wife did not offer any corroboration. The nature of the allegations of soliciting a bribe are serious and the Applicant ought to have been given an opportunity to face his accuser. It is re-iterated that there was no valid or cogent reasons advanced at all as to why the accusers (except for Kelly), did not testify or respond to their subpoenas. Surely this would have been a factor to consider in deciding whether to permit hearsay evidence.

Conclusion

45. The court finds that the Commissioner had not correctly assessed and evaluated the evidence wholistically with regard to the available evidence before him. It is generally accepted that courts will resolve factual disputes by assessing the credibility of the various witnesses, their reliability and the probabilities.
46. However, the Arbitrator in causa, considered the probabilities or improbabilities of each parties' version based on pure hearsay evidence. He did not correctly apply the legal principles on the law of evidence and or hearsay evidence and the admissibility thereof, with regard to Mohlala's evidence on what was singularly reported to her by Mthethwa. The court is mindful that there are instance, when it is in the interests of justice to admit hearsay evidence, but there are no reasons advanced in the award as to why the arbitrator allowed the hearsay evidence. In any event, after considering all the evidence, the court finds no reasons that justify the admission of such evidence at all. As stated, no evidence of intimidation or any other basis laid for the reluctance of these witnesses. The evidence of the witnesses who did not testify were critical to the allegations and in the interests of justice they should have been called to testify.
47. The Arbitrator's finding that the Applicant had in all probability solicited a bribe from Mthethwa, based on Mthethwa's report to Mohlala, and on Mohlala's own investigations and confirmation that Mthethwa renders services at U-Square Shopping Mall, although he is not a registered service provider in terms of PSIRA's compliance requirements , is deeply flawed . The reason being is that the critical aspect, had to be evidence pertaining to the time when the operations were carried out by the Applicant at the shopping mall, and not the time when the investigations were carried out by Mohlala. Again, the four inspectors could have been crucial witnesses, but they were not interviewed.
48. In the result, the Arbitrator committed gross irregularities in the proceedings, and he reached a decision that does not fall with a band of reasonableness. The evidence was poor, lacking and unsatisfactory to establish a finding of guilt for charge of soliciting a bribe , or a dereliction of duties in failing to report Mthethwa. The arbitrator made an incorrect finding on law as he overlooked

the fact that all the evidence pertaining to what was told to Mohlala was clearly hearsay evidence, was not irrefutable, in fact was disputed and cannot be considered as conclusive evidence of events that actually transpired.

49. The above evaluation of the arbitrators' findings reveals a failure by him to rationally and properly assess the evidence. He overlooked material evidence and attached undue weight to unsubstantiated evidence. The outcome is disconnected from the evidence led. In the circumstances, the Applicant was not given a fair hearing, and the Applicant was greatly prejudiced.
50. Therefore, the arbitration award stands to be reviewed and set aside. I am satisfied that a direct substitution of the Arbitrators award is appropriate, rather than remitting the matter for a *de novo* hearing. There are no reasons not to order a re-instatement and the court in these circumstances is obliged to do so , once the conclusion is reached that the Applicant was unfairly dismissed.

COSTS

51. In terms of the provisions of section 162(1) of the LRA, the court has a wide discretion when it comes to the issue of costs. The court is aware of the reaffirmed principles as set out in Zungu v the Premier of the Province of KwaZulu-Natal & Others⁶⁷ , where the court held that when making an adverse costs order in a legal matter, a presiding officer is required to consider the principle of fairness and have due regard to the conduct of the parties.
52. I do not find it necessary to make any costs order.

In the premises the following Order is made:

⁶ Transcribed Record 05 December 2022, page 26

⁷ (2018) 39 ILJ 523 CC at para 25

- i) The arbitration award of the Second Respondent is reviewed and set aside.
- ii) The arbitration award is substituted with the following order:
“1. The dismissal of the Applicant by the Third Respondent was substantively unfair.
2. The Third Respondent is ordered to re-instate the Applicant retrospectively from the date of dismissal, on the same terms and conditions of employment that existed prior to his dismissal, and without any loss of benefits.
3. The Applicant is ordered to report to work within 07 (seven) days of receipt of this order.”
- iii) There is no order as to costs.

Nalini Govender

Acting Judge of the Labour Court of South Africa

APPEARANCES:

APPLICANT: Bulose and Partners

RESPONDENT: Adv Xolani Mofokeng instructed by Moeti Kanyane Attorneys

LABOUR COURT