



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

Signature

Date

04-08-2026

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: JR2111/22

In the matter between:

CONDRACT MOKWENA

Applicant

and

MARIROX T/A ALGLASICO

First Respondent

JOSEPH MPHAPHULI N.O.

Second Respondent

METAL AND ENGINEERING INDUSTRIES

BARGAINING COUNCIL (MEIBC)

Third Respondent

Heard: 13 May 2026

Delivered: 04 August 2026

JUDGMENT

LAUBSCHER, AJ

Introduction

- [1] This is an application for the review of the arbitration award by the Second Respondent (the Commissioner) made under case number METS6179 on 16 August 2022 (the award).
- [2] In terms of the award, the Commissioner held that the Applicant's dismissal was substantively and procedurally fair.
- [3] The review application was instituted on 26 September 2022. The notice of motion does not indicate the section of the Labour Relations Act¹ (the LRA) in terms of which the review application is brought. This court assumes that it is done in terms of section 145.

Background

- [4] The Applicant was employed by the First Respondent as a general worker. A physical assault took place on 8 December 2021 involving the Applicant and one of his co-workers, Mr Wonder Mpya.
- [5] The Applicant was charged with the following:
- “1. Charge 1:
- Gross misconduct in that on 8 December 2021 you started a physical fight with Mr Wonder Mpya shortly after leaving work. You physically assaulted Mr Mpya during the fight.
2. Charge 2:
- Gross misconduct in that on 8 December 2021 you created a hostile work environment for Mr Wonder Mpya by threatening him, insulting him and treating him disrespectfully within the workplace.”
- [6] A disciplinary inquiry took place on 14 December 2021. The Applicant pleaded not guilty. The First Respondent called three witnesses, namely Mr Mpya, Mr Frans Mkandawira and Mr Meshack Moleleki.

¹ Act 66 of 1995, as amended.

- [7] The Applicant was not represented at the inquiry, and he testified in his own defence. The Applicant did not cross-examine the First Respondent's witnesses.
- [8] He further refused to testify in respect of charge 1 on the basis that his attorney was dealing with this matter in another forum. The chairperson of the inquiry cautioned the Applicant regarding the potential consequences of a refusal or failure to testify, but he persisted with his approach.
- [9] As regards charge 2, the Applicant's version was that Mr Mpya verbally attacked him and pointed his fingers at him. He stated that Mr Mkandawira intervened and they went back to work.
- [10] The chairperson of the inquiry held that, in respect of charge 1, he only had the version of the First Respondent before him. As regards charge 2, the chairperson found that the First Respondent's version was more probable than the version of the Applicant. He accordingly found the Applicant guilty of the charges against him and recommended the sanction of summary dismissal. The Applicant was dismissed on 15 December 2021.
- [11] On 10 January 2022, the Applicant referred an unfair dismissal claim to the Third Respondent, the Metal and Engineering Industries Bargaining Council (the MEIBC).
- [12] The arbitration took place before the Commissioner on 11 August 2022. The Applicant appeared in person. The First Respondent was represented by Ms Maroronge. The First Respondent called three witnesses, namely Mr Mpya, Mr Moleleki and Mr Mkandawira at the arbitration.
- [13] The Commissioner explained the process to the Applicant, in particular that the Applicant had the opportunity to ask the First Respondent's witnesses questions. The Commissioner explained that, if there was anything the Applicant did not agree with or if he had a different version, he had to put his version to the witness. Therefore, if a witness said anything the Applicant did not agree with, the Applicant needed to say so and tell the witness why he did not agree. The Commissioner explained that if the Applicant did not question

a witness on a particular aspect, that aspect would be uncontested and would stand as the truth. The Applicant heeded this advice.

The evidence at the arbitration

[14] In summary, the evidence at the arbitration is set out below.

Mr Mpya

[15] Mr Mpya testified that during the afternoon of 8 December 2021, he and the Applicant were involved in a verbal argument. This arose when one of the truck drivers, one Chicco arrived, and greeted Mr Mpya. This was by way of a greeting common to members of the ZCC Church. Chicco greeted the Applicant in the same manner. Some discussion took place and Chicco left. Thereafter, the Applicant told Mr Mpya *“not to start with me”, “not to disrespect me”, “not to be too forward towards me”,* and that *“I am not your mate”*.

[16] The supervisor, Mr Mkandawira, intervened and the Applicant and Mr Mpya went back to work.

[17] About an hour later, the workers knocked off. Mr Mpya was scared of walking out of the First Respondent's premises on his own and he accordingly waited for a colleague, Mr Meshack Moleleki to walk with him.

[18] They approached the Applicant from behind. At the time, the Applicant was walking very slowly. They were still within the perimeter of the premises of the First Respondent's factory.

[19] When they got close to the Applicant, the Applicant put down his bag and umbrella and grabbed Mr Mpya by his shirt. The Applicant beat Mr Mpya on his chest and tried to hit him in the face. Mr Mpya tried to block the Applicant, but he kept throwing punches. One of their colleagues, Mr Errol Mabasa, intervened which gave Mr Mpya the opportunity to try to get away. Mr Mpya saw the Applicant was following him and he picked up a stone. The Applicant also picked up a stone, however, they did not throw the stones at each other; they both dropped the stones. The Applicant pointed at Mr Mpya and gestured

that he would kill him. Mr Mpya left and went home. When he got home, he wrote down what had happened.

- [20] Mr Mpya testified that he would not be able to work with the Applicant again.
- [21] Ms Maroronge put the version as contained in the Applicant's statement to Mr Mpya, i.e. that it was Mr Mpya that grabbed the Applicant; that Mr Mpya took out a razor or a knife and that he stabbed the Applicant on his thumb; and that Mr Mpya threw a stone at the Applicant. Mr Mpya denied this version.
- [22] In cross-examination, the Applicant did not put his version of what had occurred on the shop floor to Mr Mpya, namely that it was Mr Mpya who started shouting and pointed at the Applicant and asked the Applicant how he was disrespecting him; what he was talking about; and that he was not scared of the Applicant.
- [23] The Applicant did, however, cross-examine Mr Mpya regarding the physical assault. He put to Mr Mpya that he, the Applicant, had asked Mr Mpya what the problem was, why they were fighting, to try and solve the problem they had. The Applicant said Mr Mpya grabbed him by his clothes, his backpack fell and Mr Mpya then stabbed him with a knife. He asked whether he got the knife from Mr Moleleki.
- [24] Mr Mpya denied that he had a knife. He denied that he waited for Mr Moleleki to give him a knife – he just waited for anyone to walk with him because he was scared of walking alone.
- [25] The Applicant put to Mr Mpya that the Applicant's right hand was bleeding and this was because Mr Mpya had stabbed him. Mr Mpya denied that he stabbed the Applicant.
- [26] The Applicant put to Mr Mpya that Mr Mpya told him that he would face the consequences and would be kicked out of work. Mr Mpya testified that he wrote everything down when he came home and that he reported the incident to the First Respondent the next day.

Mr Moleleki

- [27] Mr Moleleki testified that on 8 December 2021, Mr Mpya waited for him and said that he was scared of walking alone. Mr Mpya asked Mr Moleleki to walk with him.
- [28] When they approached the Applicant, the Applicant put his backpack down and started to grab Mr Mpya by the shirt; the Applicant punched Mr Mpya; Mr Mpya defended himself by punching back; the Applicant tore Mr Mpya's shirt. Mr Moleleki tried to intervene, but the Applicant told him to stay away from them. One of the other colleagues, Eric, also tried to stop them. In the end, Mr Mabasa managed to pull them apart.
- [29] Under cross-examination, Mr Moleleki confirmed that the Applicant did not speak to Mr Mpya but just started to punch him. He confirmed that the Applicant tore Mr Mpya's shirt by using his hand and grabbing it. He also confirmed that he did not witness them picking up the stones. He did, however, see them throwing stones, but they did not hit anyone. Mr Moleleki confirmed that Mr Mpya told the Applicant that he would report what happened at work.
- [30] Mr Moleleki further denied that there was a blade. He confirmed that he did not see a blade, and also that he did not give Mr Mpya a blade or anything else.

Mr Mkandawira

- [31] Mr Mkandawira is a supervisor and he testified regarding the verbal argument between the Applicant and Mr Mpya during the afternoon of 8 December 2021.
- [32] Mr Mkandawira said that he saw the Applicant walking over to where Mr Mpya was working and he heard the Applicant telling Mr Mpya "*for the last time*", "*do not be overjoyed on top of my head*" and "*I'm not your friend*".
- [33] Mr Mkandawira said that Mr Mpya asked the Applicant whether he was threatening him. That is when Mr Mkandawira told Mr Mpya to leave the Applicant alone and to focus on his work.

- [34] Under cross-examination, Mr Mkandawira said that it was a small argument and that he managed to sort it out – he told Mr Mpya to leave the Applicant alone, and the Applicant went back and continued working.

The Applicant

- [35] The Applicant testified that, on 8 December 2021, the truck driver, Chicco, arrived. Chicco greeted the Applicant by saying “*Dumela makulu*”. This is a greeting commonly used among ZCC members. Chicco knew that the Applicant did not necessarily go to the ZCC church, but Chicco greeted him like that anyway. Chicco also greeted Mr Mpya in this manner.
- [36] Mr Mpya asked Chicco why he greeted the Applicant in that way, and when the Applicant looked up, he saw Chicco was laughing. The Applicant asked Chicco why he was laughing and he said it was because Mr Mpya had said that the Applicant is not a “*makulu*” (honourable). Chicco said further that Mr Mpya was just trying to annoy the Applicant. The Applicant thought it was disrespectful.
- [37] Mr Mpya started shouting and pointed at the Applicant and asked the Applicant how he was disrespecting him; what he was talking about; and that he was not scared of the Applicant; other people are scared of the Applicant, but he was not.
- [38] At that point, Chicco left to go and load the truck and the Applicant said that he just focused on the table where he was working.
- [39] When the supervisor, Mr Mkandawira, entered, the Applicant took the opportunity to tell him that Mr Mpya was interfering with his conversation with Chicco. Mr Mkandawira told the Applicant to just ignore Mr Mpya, who was just a boy. The Applicant felt uncomfortable because he knew Mr Mpya lived in the squatter camp where the Applicant also had a stand, and he felt that he now had enemies in the squatter camp.
- [40] Shortly after that, the Applicant went to the bathroom where he called one Bishop, a relative of Mr Mpya. He told Bishop that Mr Mpya was interfering

with him and that he had some sort of aim with the Applicant. Bishop suggested that the Applicant talk to Mr Mpya to find out what the problem is. The Applicant asked Bishop to rather talk to Mr Mpya.

- [41] At knock-off time, the Applicant changed his clothes and by the time he left, most of the other employees had already left.
- [42] The Applicant walked along the road as usual, with Mr Mabasa and one Gideon just behind him, Mr Mpya and Mr Moleleki behind them, and Eric behind them. When Mr Mpya and Mr Moleleki reached the Applicant, the Applicant asked Mr Mpya why they were fighting, and what the problem was. Mr Mpya did not answer him but grabbed his clothes and said that he had told him, he was not scared of the Applicant. The Applicant said he fell down, while he still had his umbrella in his hand and wearing the backpack. When he got up, Mr Mpya had a blade or a knife with which he stabbed the Applicant. They punched each other. At some point, Mr Mpya started running away and he picked up stones. Mr Mpya hit the Applicant with the stones as well. At that stage, Mr Mabasa came and tried to separate them. The Applicant picked up his bag and ran away. He left his umbrella.
- [43] The Applicant ran to security. When Mr Mpya reached the security, he told Mr Mpya to stop fighting. Mr Mpya then threw the stones away.
- [44] Under cross-examination, the Applicant persisted with his version that he tried to discuss the problem with Mr Mpya, but that Mr Mpya started the physical fight. The Applicant further stated that he knew Mr Mpya would be searched and would not have been able to leave the First Respondent's work area with a knife, and this was why Mr Mpya had waited for Mr Moleleki. Mr Moleleki was a supervisor and was not fully searched, and he could therefore bring Mr Mpya a knife with which to stab the Applicant.
- [45] When asked why the Applicant did not report the incident whereby Mr Mpya assaulted him to the First Respondent, the Applicant said this was because he did not know that he could do so. This was because the incident happened outside the First Respondent's premises and he did not think that the First Respondent had anything to do with it. He said that he thought he would work

the next day as normal and after work, he would go to the police station to open a criminal case.

- [46] It was further put to the Applicant that he was given the opportunity at the disciplinary inquiry to talk about the assault, but he refused to do so. Again, the Applicant explained that this was because he thought it had nothing to do with the First Respondent. He therefore opened a case at the police station.

The award

- [47] The Commissioner summarised the evidence succinctly.
- [48] The Commissioner noted that the Applicant's view was that the evidence in support of Mr Mpya was lies; that Mr Mpya was the aggressor; and that the Applicant only acted in self-defence.
- [49] On the other hand, the Commissioner regarded the First Respondent's witnesses' testimony as consistent and complementary on vital aspects of the substance of the dispute. To this end, the Commissioner held that Mr Mkandawira's testimony corroborated Mr Mpya's testimony insofar as the verbal altercation on the shop floor was concerned, and Mr Moleleki's version fell squarely within the context of Mr Mpya's evidence as regards the physical assault.
- [50] The Commissioner held that the First Respondent was entitled to treat the misconduct as a workplace transgression because it occurred within "*its jurisdiction*" (i.e. the wider workplace perimeter).
- [51] The Commissioner highlighted a number of areas in respect of which the probabilities favoured the First Respondent. For example, the fact that Mr Mpya reported the incident the very next day was consistent with the version that he was assaulted by the Applicant.
- [52] The Commissioner noted that Mr Mpya could not work with the Applicant following the assault, and the First Respondent had a duty to manage the workplace, including the removal of those whose presence in the workplace threatened obedient employees.

[53] In the circumstances, the Commissioner held that the Applicant's dismissal was substantively and procedurally fair.

The grounds for review

[54] The Applicant contends that the award is reviewable on the following grounds:

54.1 The Commissioner misdirected himself by ignoring the oral and documentary evidence presented by the Applicant, namely that Mr Mpya caused the fight.

54.2 The Commissioner committed a gross irregularity by failing to accept the Applicant's version that Mr Mpya was ready and prepared to fight as he even stabbed the Applicant with a razor blade used to cut glasses at work.

54.3 The Commissioner grossly misconstrued the evidence by failing to consider the fact that in this matter, the Applicant was even treated at the Clinic for the injuries sustained during the fight which was caused by Mr Mpya.

54.4 The Commissioner misconstrued the evidence presented before him as he did not consider the medical records presented by the Applicant.

54.5 The Commissioner ignored the glaring evidence that the Applicant acted in self-defence as he was left with no option but to defend himself against the assault which was initiated by Mr Mpya.

54.6 The Commissioner accepted the First Respondent's evidence which was presented by three witnesses despite such evidence being glaringly contradictory and implausible.

[55] The test for review is well-established. An award is reviewable if the award is one a reasonable decision-maker could not reach.² In *Quest Flexible Staffing Solutions (Pty) Ltd (A Division of Adcorp Fulfilment Services (Pty) Ltd) v*

² *Sidumo and another v Rustenburg Platinum Mines Ltd and others* (2007) 28 ILJ 2405 (CC).

Legobate,³ the Labour Appeal Court held that an award will be unreasonable if it is “*entirely disconnected with the evidence, unsupported by any evidence and involves speculation by the arbitrator*”.

Ignoring evidence that Mr Mpya caused the fight

- [56] The first ground of review is that the Commissioner ignored the oral and documentary evidence presented by the Applicant that Mr Mpya caused the fight. The Applicant does not indicate which evidence the Commissioner ignored.
- [57] As set out above, the First Respondent’s version in relation to the physical fight was based on the evidence by Mr Mpya as corroborated by Mr Moleleki. In particular, this evidence was that Mr Mpya was scared to walk out by himself; that they walked behind the Applicant; that when they got close to the Applicant, he dropped his bag and umbrella and started punching Mr Mpya; that the fighting stopped when Mr Mabasa intervened; that Mr Mpya said that he would report the matter the next day; and that he in fact reported the assault to the First Respondent the next day.
- [58] The Applicant’s version is that when Mr Mpya and Mr Moleleki reached him on their way out, the Applicant asked Mr Mpya why they were fighting, and what the problem was; and that Mr Mpya then started punching him. This is not corroborated by any witness, including Mr Moleleki.
- [59] The Applicant further contends that Mr Mpya stabbed him with a razor or a knife, while admitting that Mr Mpya would not be able to exit the First Respondent’s premises with a sharp object. He then speculates that Mr Moleleki must have given the blade to Mr Mpya. Mr Moleleki denies this. There is nothing to suggest that Mr Mpya spoke to Mr Moleleki before he met Mr Moleleki on the afternoon of 8 December 2021 and asked him to walk with him. There is also no basis to suggest that Mr Moleleki would have a sharp object with him, let alone carry it with him to give to Mr Mpya so that Mr Mpya could stab the Applicant.

³ (2015) 36 ILJ 968 (LAC) at para 12.

- [60] In light of the evidence before him, the Commissioner's finding that the Applicant, and not Mr Mpya, was the aggressor is a decision a reasonable decision-maker could reach. This evidence includes the aggression shown by the Applicant towards Mr Mpya during the verbal altercation, the corroborated evidence of the physical fight, and the undisputed evidence that Mr Mpya (and not the Applicant) reported the incident to the First Respondent the next day.

Failing to accept the Applicant's version that Mpya was ready to fight

- [61] The second ground of review is that the Commissioner committed a gross irregularity by failing to accept the Applicant's version that Mr Mpya was ready and prepared to fight as he even stabbed the Applicant with a razor blade used to cut glasses at work.
- [62] On the Applicant's own version, he did not see the object with which Mr Mpya allegedly stabbed him. He testified that this was a knife or a razor. Yet, in the founding affidavit, the Applicant suggested that Mr Mpya stabbed him with a particular object, namely "*with a razor blade used to cut glasses at work*".
- [63] Both Mr Mpya and Mr Moleleki testified that Mr Mpya had no sharp object with him.
- [64] By rejecting the Applicant's version, the Commissioner's decision was entirely reasonable, particularly when the probabilities are considered: as mentioned above, the Applicant conceded that Mr Mpya would not have been able to exit the First Respondent's premises with a sharp object; Mr Moleleki denied that he was in possession of a sharp object and denied that he had brought it to provide to Mr Mpya in order for Mr Mpya to stab the Applicant with it; there was no evidence that Mr Mpya spoke to Mr Moleleki before they met outside and asked him to walk with him. Mr Moleleki would therefore not have known to bring a sharp object with him so that Mr Mpya could stab the Applicant.

Failing to consider that the Applicant was treated for his injuries

- [65] The third ground of review is that the Commissioner grossly misconstrued the evidence by failing to consider that the Applicant was treated at the Clinic for the injuries sustained during the fights which was caused by Mr Mpya.
- [66] While the Applicant made mention of the fact that his hand was bleeding during the fight, he led no evidence regarding his visit to the Clinic on 10 December 2021.
- [67] There is accordingly no merit in the contention that the Commissioner committed a reviewable irregularity in this regard.

Failing to consider medical reports

- [68] The fourth ground of review is that the Commissioner misconstrued the evidence as he did not consider the medical reports presented by the Applicant.
- [69] The Applicant's medical reports, dated 10 December 2021, were included in the bundle of documents at the MEIBC.
- [70] The Applicant did not refer to any of these reports during the arbitration and these reports were accordingly not introduced into evidence, either by the Applicant or another witness. As such, they were inadmissible hearsay evidence, and the Commissioner correctly did not take them into account.
- [71] In the circumstances, the Commissioner did not misconstrue the evidence or committed a reviewable irregularity in this regard.

Ignoring that the Applicant acted in self-defence

- [72] The fifth ground for review is that the Commissioner ignored the glaring evidence that the Applicant acted in self-defence as he was left with no option but to defend himself against the assault which was initiated by Mr Mpya.
- [73] There is no merit in this contention. There was no glaring evidence that the Applicant acted in self-defence. On the contrary, as set out above, the probabilities favoured the First Respondent and the Commissioner accordingly made a decision a reasonable decision-maker could make.

Accepting contradictory and implausible evidence

- [74] The sixth ground for review is that the Commissioner accepted the First Respondent's evidence which was presented by three witnesses despite such evidence being glaringly contradictory and implausible.
- [75] The Applicant has failed to indicate in what way the evidence of the First Respondent's witnesses was contradictory and implausible.
- [76] The Commissioner's finding was that the evidence of the First Respondent's witnesses in fact corroborated each other on vital aspects of the substance of the dispute. In this regard, the Commissioner held that Mr Moleleki's evidence corroborated Mr Mpya's evidence insofar as the physical assault was concerned; and that Mr Mkandawira's evidence corroborated Mr Mpya's evidence insofar as the altercation on the shop floor was concerned.
- [77] There was no evidence or suggestion that the First Respondent's three witnesses had some personal relationship or that they in some way colluded to frame the Applicant. Their version of what transpired on 8 December 2021 remained consistent throughout the disciplinary inquiry and again at arbitration.

Test on review

- [78] In considering whether the award was one a reasonable decision-maker could reach, this court must consider the totality of the evidence before the commissioner and must ask whether the result is reasonable. It will be reasonable if there is a material connection between the evidence and the result.
- [79] This court is of the view that this test is met. In the words of the Labour Appeal Court in *Quest Staffing Solutions*, this is not a case where the award is "*entirely disconnected with the evidence, unsupported by any evidence and involves speculation by the arbitrator*". Quite the contrary.
- [80] There is accordingly no basis for this court to interfere with the decision of the Commissioner.

Costs

[81] In keeping with the law and fairness, this is not a matter where costs should be awarded.

[82] In the result, the following order is made:

Order

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

T. Laubscher

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant : Mr C. Mokwena (In person)

For the Respondent: Mr R. Kuhn of Rudolph Kuhn Attorneys

LABOUR COURT