



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

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: JR810/23

In the matter between:

MABUZA, MOSES SIPHO

Applicant

and

SAFETY AND SECURITY SECTORAL

BARGAINING COUNCIL

First Respondent

COMMISSIONER ANNELIE BEVAN

Second Respondent

SOUTH AFRICAN POLICE SERVICE

Third Respondent

Heard: 23 April 2026

Delivered: 25 August 2026

JUDGMENT

MUNSAMY, AJ

INTRODUCTION

- [1] This application in terms of section 145, read with section 158(1)(g), of the Labour Relations Act 66 of 1995 (LRA) to review and set aside the arbitration award issued by the Second Respondent (the commissioner) on 12 April 2023, as subsequently varied on 22 June 2023. The Commissioner found the Applicant's dismissal by the South African Police Service (SAPS) was both procedurally and substantively fair.
- [2] The Applicant requests that the award be set aside and that this Court substitute a finding that his dismissal was unfair. The SAPS "the Third Respondent" opposes the application and seeks its dismissal with costs.
- [3] The dispute concerns a police sergeant who made a sworn witness statement about a drunken-driving arrest but later testified at the criminal trial that he had been asleep and had not witnessed the facts recorded in that statement. The Commissioner found that this conduct fell under regulation 5(4)(x) of the South African Police Service Discipline Regulations, 2016 (the Regulations), and justified dismissal.

CONDONATION

- [4] The review application was filed approximately 60 days late. SAPS's Answering Affidavit was also delivered approximately one month late, after an agreed extension, and the Replying Affidavit was delivered outside the prescribed period without a substantive condonation application but there appears to be no objection filed by the SAPS to the late filing of the Applicants Replying affidavit.
- [5] Condonation is not granted merely on request. The Court considers the degree of lateness, the explanation, prospects of success, prejudice and the importance of the matter, all of which are interrelated. In *Melane v Santam Insurance Co Ltd*¹, the Appellate Division held that a slight delay and a good explanation may compensate for weak prospects, while strong prospects may compensate for a less satisfactory explanation. In *Grootboom v National*

¹ 1962 (4) SA 531 (A).

*Prosecuting Authority and Another 2014*², the Constitutional Court emphasized that the overarching enquiry is the interests of justice.

- [6] The Applicant's delay is material but not inordinate. His explanation, read as a whole, is adequate. The matter concerns the loss of employment after 14 years of service. The SAPS does not persist in opposing condonation of the review and the dispute ought to be finally determined on its merits. Accordingly, condonation for the late institution of the review is granted.
- [7] The SAPS explained that the official who had represented it at arbitration and with whom its legal team had consulted died before the answering affidavit could be finalised. A replacement official, who had no prior knowledge of the matter, had to be consulted after the outstanding record documents were obtained. The delay is adequately explained and no irreparable prejudice is established. Condonation for the late answering affidavit is also granted.
- [8] The Replying Affidavit was also filed late. There is no notice of objection on file placing the late filing in dispute. It is therefore not necessary to grant condonation for the late filing of the replying affidavit.

MATERIAL BACKGROUND

- [9] The Applicant commenced employment with the SAPS in July 2007 and, at the time of his dismissal on 25 May 2021, held the rank of sergeant within Visible Policing, Hendrina. The misconduct arose from a criminal prosecution for driving under the influence of intoxicating liquor.
- [10] The Applicant deposed to a detailed statement in the police docket. However, during the criminal trial on the 7th of December 2020, he testified that he had been asleep and did not witness the material events attributed to him in the statement. Further, that he had copied the statement of another policeman when he submitted his report regarding the matter. The accused was discharged in terms of section 174 of the Criminal Procedure Act 51 of 1977.

² (2) SA 68 (CC).

- [11] The SAPS invoked the expeditious procedure under regulation 9. The Applicant was charged with contravening regulation 5(4)(h), relating to defeating or obstructing the course of justice, and regulation 5(4)(x), relating to conduct that detrimentally affects the SAPS's image, brings it into disrepute, or involves an element of dishonesty. The formulation of the second charge referred to perjury and the making of a false oath or affirmation.
- [12] During the internal process, the chairperson considered an investigation report and statements, including those of the Prosecutor, the Investigating Officer, the Station Commander and the Applicant. The Applicant was represented, furnished with the allegations and supporting material, and elected not to testify or call witnesses. He was found guilty and dismissed after mitigation and aggravation were considered.
- [13] At arbitration, the Commissioner found the Applicant not guilty of the charge under regulation 5(4)(h) but guilty under regulation 5(4)(x). She found the dismissal both procedurally and substantively fair.

THE REVIEW TEST

- [14] The applicable test is settled. In *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others*³, the Constitutional Court held that an award is reviewable if the decision reached is one that a reasonable decision-maker could not reach. A review is not an appeal and does not permit this Court to replace the commissioner's assessment merely because it may have reached a different conclusion.
- [15] In *Herholdt v Nedbank Ltd (Congress of South African Trade Unions as Amicus Curiae)*⁴ explains that a gross irregularity will justify interference where the arbitrator misconceived the nature of the enquiry or arrived at an unreasonable result an error of fact or law without more does not suffice.

³ 2008 (2) SA 24 (CC) at para 110.

⁴ 2013 (6) SA 224 (SCA) at para 25.

- [16] In *Head of the Department of Education v Mofokeng and Others*⁵, the Labour Appeal Court held that an irregularity or error must be material to the outcome. The enquiry is whether it distorted the arbitrator's conception of the case or produced an unreasonable result. The record and the reasons are assessed holistically, not by subjecting every sentence of the award to microscopic scrutiny.
- [17] *Gold Fields Mining SA (Pty) Ltd (Kloof Gold Mine) v Commission for Conciliation, Mediation and Arbitration and Others*⁶ cautions against a fragmented, process-related review. The Court asks whether the arbitrator gave the parties a fair hearing, identified the dispute, understood the nature of the enquiry, dealt with the substantial merits and reached a reasonable result.

GROUND OF REVIEW

- [18] Although the Founding Affidavit advances overlapping allegations of misconduct, gross irregularity, excess of powers, errors of fact and law, and unreasonableness, the complaint reduces to six questions: whether the Commissioner (a) wrongly equated dishonesty with common-law perjury; (b) disregarded the criminal-trial record; (c) departed from the pre-arbitration minute or the charge; (d) failed to assess the fairness of the expeditious procedure; (e) upheld dismissal without evidence that trust had broken down; and (f) failed to apply her mind, as allegedly shown by irrelevant passages in the award.

REGULATION 5(4)(X), DISHONESTY AND PERJURY

- [19] Regulation 5(4)(x) defines serious misconduct as '*any act of misconduct which detrimentally affects the image of the Service or brings the Service into disrepute or which involves an element of dishonesty*'. Its language is disjunctive and broad. It is not confined to the common-law crime of perjury.

⁵ (2015) 36 ILJ 2802 (LAC) at paras 32-33.

⁶ (2014) 35 ILJ 943 (LAC) at paras 14 and 20.

- [20] The Applicant's case places undue weight on the reference to perjury in the charge sheet. A charge sheet in workplace discipline is not an indictment in a criminal trial. The question is whether the employee was informed, with sufficient particularity, of the case he had to meet and whether any departure caused prejudice. See *Woolworths (Pty) Ltd v Commission for Conciliation, Mediation and Arbitration and Others*.⁷
- [21] The factual allegation was unmistakable. The Applicant had made a false sworn statement intended for use in a criminal prosecution. At arbitration, he accepted that he copied allegations from Colonel Mahlangu's statement. That he recorded matters he had not witnessed. That he knew he was not telling the truth and that making a false statement under oath was an offence. He understood and answered that case. No forensic prejudice arose from the label attached to it.
- [22] Even if the Commissioner were mistaken in concluding that all the technical elements of common-law perjury were established, such an error would not be material. The proven and admitted facts clearly fall within the scope of the independent dishonesty and disrepute provisions of regulation 5(4)(x). The award's reasonableness does not rely on a criminal conviction for perjury.
- [23] The Applicant's submission that there can be no dishonesty without perjury reverses the logical relationship between the concepts. Perjury necessarily involves dishonesty and dishonesty is not limited to perjury. A police officer who knowingly verifies facts he did not witness for inclusion in a docket and use in court acts dishonestly, whether or not a criminal court later convicts him of perjury.
- [24] The Commissioner did not change the reason for dismissal or create a new charge. She found the same charge under regulation 5(4)(x), based on the facts disclosed in the notice and ventilated at arbitration. The decision in *POPCRU obo Vearey v National Commissioner of the South African Police*

⁷ (2011) 32 ILJ 2455 (LAC).

*Service and Others*⁸, relied on by the Applicant to support the proposition that an employer may not rely at arbitration on an entirely different reason for dismissal, is distinguishable. There was no new factual case here.

THE CRIMINAL-TRIAL RECORD

- [25] The acquittal of the accused in the drunken-driving matter does not establish whether the applicant engaged in workplace misconduct. The SAPS was not prosecuting the applicant during that trial, as the purpose and parties involved differed. Furthermore, the standard of proof at arbitration was based on a balance of probabilities.
- [26] The contention that the Commissioner ignored the criminal record is contradicted by the award and the record. Evidence concerning the trial was presented, the Commissioner considered the Prosecutor's testimony and the Applicant's explanation, and she recorded the conflict between his sworn statement, and his oral evidence. An arbitrator need not expressly refer to every page of the record. What matters is whether the material substance was considered.
- [27] The evidence provided by the Applicant constituted the decisive proof. In both versions, one of the two mutually exclusive accounts given under oath or affirmation was knowingly false. His explanation that he '*withdrew*' or '*retracted*' the docket statement when called to testify did not negate the original dishonesty or its consequences for the administration of justice.

THE PRE-ARBITRATION MINUTE

- [28] The Applicant correctly invokes *SA Breweries (Pty) Ltd v Louw*⁹: a pre-trial minute is an agreement which limits the issues and from which a litigant may not unilaterally resale. The principle applies with equal force to a properly concluded pre-arbitration minute.

⁸ [2024] ZALCCT 6.

⁹ (2018) 39 ILJ 189 (LAC) at para 8.

- [29] It does not assist the Applicant. The Commissioner recorded the agreed charges and the issues narrowed during the arbitration. On 14 September 2022, the existence, reasonableness, awareness and consistent application of the rule were no longer disputed. The remaining substantive issues were whether the misconduct occurred and whether dismissal was appropriate. Those are the issues the Commissioner decided.
- [30] Nor did the Commissioner detach dishonesty from the charge and thereby escape the minute. Regulation 5(4)(x), which formed part of the agreed charge, expressly includes misconduct involving an element of dishonesty. The award remained within the agreed field of dispute.

PROCEDURAL FAIRNESS

- [31] The Applicant submits, with reference to *Leonard Dingler (Pty) Ltd v Ngwenya*¹⁰, that compliance with an agreed disciplinary procedure does not automatically establish fairness. That proposition is sound. Fairness depends on the procedure actually followed and the circumstances of the case.
- [32] Regulation 9 authorizes an expeditious process when a designated senior officer is satisfied that the alleged misconduct falls within regulation 5(4) and is sufficiently serious. It requires notice of the allegations, representation, access to available supporting material, an opportunity to defend against the allegations, consideration of the employee's evidence, and mitigation before sanction.
- [33] The Applicant received the allegations and supporting statements, was represented, and was afforded an opportunity to respond. He elected not to testify or call witnesses during the internal proceedings. At the subsequent *de novo* arbitration, he was provided with a full opportunity to challenge the SAPS's evidence and to present his case. The Commissioner evaluated the actual procedure, not merely the existence of the Regulations.

¹⁰ (1999) 20 ILJ 1711 (LAC)

- [34] The evidence established serious misconduct contemplated by regulation 5(4)(x). The jurisdictional basis for regulation 9 was present. The Applicant has not identified a procedural deprivation that rendered the dismissal unfair, let alone a material irregularity in the arbitration that produced an unreasonable result.

SANCTION AND THE TRUST RELATIONSHIP

- [35] The Applicant relies on *Edcon Ltd v Pillemer NO and Others*¹¹, where the absence of evidence demonstrating the impact of misconduct on the trust relationship was material. The principle is not that direct formulaic evidence is invariably indispensable.
- [36] In *Woolworths (Pty) Ltd v Mabija and Others*¹², the Labour Appeal Court held that the nature of the misconduct may itself justify an inference that trust has broken down. The relevant considerations include the nature of the employer's enterprise, the nature and effect of the misconduct and whether corrective discipline could prevent recurrence.
- [37] That approach has been reaffirmed in *Department of Home Affairs and Another v Ndlovu and Others*¹³, *G4S Secure Solutions (SA) (Pty) Ltd v Ruggiero NO and Others*¹⁴, and *Autozone v Dispute Resolution Centre of Motor Industry and Others*¹⁵. Where dishonesty demonstrates untrustworthiness and the employer's operations depend upon integrity, the breakdown may be apparent from the offence and its setting.
- [38] In any event, this is not a case in which the SAPS led no evidence on trust. Captain Mahlangu addressed the damage caused by dishonest police officials and the resultant loss of public and institutional trust. Brigadier Bolton testified that honesty is a core principle of the SAPS Code of Conduct, that the SAPS

¹¹ 2010 (1) SA 1 (SCA).

¹² (2016) 37 ILJ 1380 (LAC) at paras 17-19.

¹³ (2014) 35 ILJ 3340 (LAC) at para 18.

¹⁴ (2017) 38 ILJ 881 (LAC) at paras 26 and 30.

¹⁵ (2019) 40 ILJ 1501 (LAC) at para 12.

cannot retain dishonest members, and that such conduct jeopardizes public confidence and exposes SAPS to civil claims. The Commissioner referred to this evidence.

- [39] The context is decisive. Police officials enforce the law, investigate offences, compile dockets and give evidence upon which personal liberty and public confidence depend. A knowingly false sworn statement by a police sergeant strikes at the core of those functions. It is not a peripheral lapse capable of correction by instruction or progressive discipline.
- [40] The Applicant had 14 years of service, a weighty mitigating factor. That did not render dismissal disproportionate. Long service may aggravate rather than mitigate where an experienced officer knows the importance of truthful evidence. The Commissioner considered the seriousness of the misconduct, the Applicant's position and the operational need for integrity. Her conclusion that dismissal was fair was one a reasonable decision-maker could reach.

ALLEGED FAILURE TO APPLY THE MIND

- [41] The Applicant points to paragraphs in the award said to concern matters that the Commissioner was not called upon to decide and infers that facts from another matter were imported. The criticism is not substantiated by a demonstration that any such passage distorted the enquiry or affected the outcome.
- [42] An award is not reviewed for infelicity of expression. Read as a whole, it identifies the parties, charges, agreed issues, evidence, governing Regulations and applicable fairness enquiry. The Commissioner acquitted the Applicant on the first charge, which itself demonstrates differentiated consideration rather than mechanical acceptance of SAPS's case.
- [43] The Commissioner understood that she had to determine whether the misconduct under regulation 5(4)(x) occurred, whether the expeditious process was fair, and whether dismissal was an appropriate sanction. She addressed the substantial merits and reached a result supported by the Applicant's admissions and SAPS's evidence. The general allegation of non-

application of mind does not cross the review threshold in *Sidumo, Herholdt, and Mofokeng*.

CONCLUSION

[44] The review case ultimately seeks an appeal on the merits. It isolates parts of the award, treats the workplace charge as a criminal indictment, and overlooks the breadth of regulation 5(4)(x) and the Applicant's admissions. None of the identified errors, individually or cumulatively, establishes that the commissioner misconceived the enquiry or reached an outcome outside the range of reasonableness.

[45] The award is therefore not susceptible to review under section 145 of the LRA.

COSTS

[46] Section 162 of the LRA requires the Court to determine costs according to the requirements of law and fairness. In *Zungu v Premier of the Province of KwaZulu-Natal and Others*¹⁶, the Constitutional Court cautioned that costs do not ordinarily follow the result in labour matters and that the Court must exercise a judicial discretion with due regard to the ongoing relationship and the chilling effect of adverse costs orders.

[47] This matter does not involve collective bargaining or an ongoing employment relationship. The Applicant persisted in a review that materially mischaracterized the wording of regulation 5(4)(x), despite his admissions and the record showing that evidence on trust was led. The SAPS was required to oppose a meritless application and to cure delays partly occasioned by the state of the record.

[48] Considering these factors collectively, and without presuming costs as an inevitable outcome of failure, the principles of law and equity substantiate an order for costs in favour of SAPS.

¹⁶ (2018) 39 ILJ 523 (CC).

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

ORDER

1. The Applicant's late institution of the review application is condoned.
2. The Third Respondent's late delivery of its Answering Affidavit is condoned.
3. The review application is dismissed.
4. The Applicant is ordered to pay the Third Respondent's costs on a party and party scale-B, together with the costs of Counsel.

K.R. Munsamy

Acting Judge of the Labour Court of South Africa

APPEARANCES

For the Applicant: Advocate J.S. Jansen Van Rensburg.

Instructed by Wynand Prinsloo & Van Eeden Inc.

For the Third Respondent: Advocate H.M. Vermaak.

Instructed by the State Attorney.

LABOUR COURT