



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

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case No: JR2292/19

In matter between:

PETRUS MAKANETA

Applicant

And

RONNIE BRACKS N.O.

First Respondent

COMMISSION FOR CONCILIATION MEDIATION

AND ARBITRATION

Second Respondent

SOUTH AFRICAN HUMAN RIGHTS COMMISSION

Third Respondent

Heard: 22 July 2026

Delivered: 27 August 2026

JUDGMENT

RAMJI, AJ

Introduction

[1] The applicant (Mr Makaneta) was employed by the third respondent (the SAHRC) as its Chief Financial Officer (CFO) from 1 March 2012. Mr Makaneta was dismissed on 1 April 2019 for misconduct relating to his

engagements with another member of SAHRC executive staff, which in turn arose from his engagements with the SAHRC chairperson.

Background

- [2] An SAHRC commissioner, Commissioner Gaum, was invited to Australia in his official capacity for a conference in the last week of November 2018. On 15 November 2018, Commissioner Gaum forwarded the invitation to all other commissioners seeking their agreement to him attending the conference. He stated in the e-mail that the chairperson advised that there was money available for the trip, and that he should consider whether he should *'fly business class due to the long haul.'*
- [3] The funds were in fact not available.
- [4] After all commissioners had agreed, on 21 November 2018, the chairperson wrote to all commissioners and copied the CEO and Mr Makaneta. In his e-mail, the chairperson stated that there was likely a misunderstanding, that that he had *'no confirmation'* about whether funds were available and that *'[t]o date, I do not know whether there are any savings because I did not get any confirmation from the CFO when I tried to meet the CFO to confirm and give me details of those funds.'*
- [5] Mr Makaneta responded immediately to the chairperson's e-mail and recorded his position, including that –
- 5.1. he never informed any SAHRC commissioner of surplus funds being available;
 - 5.2. he had referred the SAHRC commissioners to potential underspending in different budgeted activities, but subsequently checked and confirmed that there was no surplus there; and
 - 5.3. he was only required to prepare a report by 6 December 2018 on how savings would be utilised, and he was working on this.

[6] On 21 November 2018, Commissioner Gaum communicated directly with Mr Makaneta. Mr Makaneta replied to Commissioner Gaum and proposed that funding for his travel could be *'taken from the general savings of the [SAHRC]'*. Commissioner Gaum made this request to the chairperson. Commissioner Gaum did not hear from the chairperson for two days and so cancelled his trip, expressing disappointment with how the matter was handled. This was on 23 November 2018.

[7] On 28 November 2018, the chairperson replied to Commissioner Gaum, copying all other SAHRC commissioners, the secretariat, and adding to the chain the SAHRC commissioners' secretaries. Overall, the e-mail concerned communication issues in general at the SAHRC. However, the chairperson specifically referred again to his failed attempts to communicate with Mr Makaneta on the availability of surplus funds.

[8] A back-and-forth ensued between the chairperson and Mr Makaneta:

8.1. Mr Makaneta responded to the e-mail group, extending the chain of recipients to include senior managers. He again defended his position, this time more robustly, explaining that he was not involved with SAHRC commissioners' travel and that his name was always being *'dragged'* into this issue.

8.2. The chairperson replied in a lengthy e-mail taking issue with the tone of Mr Makaneta's previous e-mail, describing it as disdainful, inappropriate, intolerant and discourteous. The chairperson defended and explained his e-mail, saying that it concerned communication within the organisation as a whole.

8.3. Mr Makaneta responded that he had *'nothing further to say regarding this matter.'*

[9] Following this exchange, the CEO intervened. In a letter dated 30 November 2018, and sent to Mr Makaneta on 3 December 2018, the CEO asked Mr Makaneta to explain his conduct and particularly why he should not be charged with gross insubordination for his e-mails to the chairperson. In the

correspondence, the CEO expressed his initial (negative) views on Mr Makaneta's correspondence to the chairperson.

[10] Mr Makaneta responded to the CEO's request on 5 December 2018 (the 5 December e-mail). That same day, he was provisionally suspended for the 5 December e-mail, i.e. his response to the CEO and not his e-mails to the chairperson.

[11] For his 5 December e-mail, Mr Makaneta was charged as follows:

11.1. Charge 1: Gross insolence for attacking the CEO in his e-mails of 29 November and 5 December 2018.

11.2. Charge 2: Insubordination.

11.3. Charge 3: Offensive behaviour in the form of disrupting the workplace and publicly insulting the CEO between 12 November and 5 December 2018.

[12] He was found guilty on charges 1 and 3, and dismissed by the CEO, who accepted the recommendation of the chairperson, which recommendation, in turn, was based on an externally chaired disciplinary inquiry.

Award and pleaded case

[13] Mr Makaneta referred an unfair dismissal dispute to the second respondent (the CCMA). On 29 August 2019, the first respondent (the CCMA Commissioner) handed down an award finding that the dismissal was substantively and procedurally fair.

[14] This application to review the CCMA award was accompanied by a founding affidavit. Mr Makaneta did not file a supplementary founding affidavit.

[15] Mr Makaneta's current legal representatives replaced his initial attorneys after close of pleadings, and they are unfortunately bound by the pleaded alleged irregularities. I therefore do not consider references made in argument to alleged irregularities that were not pleaded, including that –

- 15.1. there was a brash culture of speaking in the organisation;
- 15.2. the CCMA Commissioner failed to consider properly whether the breakdown in trust had been proved; and
- 15.3. the SAHRC had not proved procedural unfairness.

[16] Mr Makaneta pleaded the following irregularities:

- 16.1. First irregularity: The CCMA Commissioner committed an error of law in finding that Mr Makaneta could be dismissed by the chairperson, when in fact, an employee in his position can only be dismissed by the CEO with the approval of the Commission.
- 16.2. Second irregularity: The CCMA Commissioner relied on irrelevant evidence by considering Mr Makaneta's e-mail correspondence with the chairperson, when he was not charged in relation to his conduct towards the chairperson.
- 16.3. Third irregularity: Related to this, the only relevant evidence in the substantive fairness inquiry was whether Mr Makaneta's representations in the 5 December e-mail, and not his earlier statements to the chairperson.
- 16.4. Fourth irregularity: At the same time, Mr Makaneta pleads that it was unfair to charge and dismiss him for his representations to the CEO, because the CEO requested that he make them to explain his prior engagements with the chairperson. (At the hearing, Mr Makaneta's representatives pursued the fourth alleged irregularity and not the third. This makes sense: a litigant cannot argue that a dismissal was unfair because the charges emanated from a particular e-mail that which cannot be held against him and simultaneously argue that the contents of only this e-mail were relevant (third alleged irregularity).
- 16.5. Fifth irregularity: The Commissioner failed to consider that all or at least most of Mr Makaneta's allegations about the SAHRC in the 5

December e-mail were true or at least widely held beliefs in the organisation.

First irregularity

- [17] A dismissal that is unfair is essentially a violation of section 185(a) of the Labour Relations Act (LRA).¹ There was either no good reason for dismissing the employee, or their procedural rights were not upheld. It is only to this extent that such a dismissal can be regarded as 'unlawful', but it is more appropriately described as unfair.
- [18] The argument in support of the first irregularity is a challenge to the constitutional validity of the chairperson's power to dismiss the CFO of the SAHRC pursuant to a recommendation from a disciplinary hearing. Mr Makeneta's representative explained in detail the process that needed to be followed to dismiss a Level 13 employee (including the CFO), with reference to the Constitution of the Republic of South Africa, 1996 and the South African Human Rights Commission Act.² He then explained the shortfalls in the process. Essentially, the support of the Commission was required, but was not obtained.
- [19] The argument was that this was unfair, as opposed to unlawful, because if one has not followed the process required by statute to dismiss a particular employee, then a dismissal is substantively unfair because the employer did not have the requisite authority to dismiss the employee. I do not agree: Mr Makeneta's claims based on the powers of the SAHRC and claims that the chairperson acted *ultra vires* are not the assertion of a claim under the LRA, and they should have been brought in a different form, e.g. a contractual claim or a public law claim. The Constitutional Court in *Baloyi v Public Protector & Others* has effectively held that two causes of action flowing from a dismissal cannot be pursued jointly in a single case:

¹ Act 66 of 1995, as amended.

² Act 40 of 2013.

'In the labour context, where more than one potential cause of action arises as a result of a dismissal dispute, a litigant must choose the cause of action she wishes to pursue and prepare her pleadings accordingly.'³

[20] It was not competent to raise it by way of an unfair dismissal referral to the CCMA, and it follows that it cannot be pursued in this Court through an application to review the CCMA award. The first alleged irregularity is a clear challenge to the constitutionality, lawfulness and validity of the decision to dismiss Mr Makaneta, based on statutes other than the LRA. The converse to the statement of the Constitutional Court in *Gcaba v Minister for Safety and Security & Others* applies: if pleadings, properly interpreted, establish that the application is asserting a claim under public law, one that is to be determined by the High Court, the Labour Court would lack jurisdiction.⁴

[21] The first irregularity, as pleaded, has no merit in the context of an unfair dismissal claim.

[22] Mr Makaneta relies on his LRA rights for the remainder of his review application.

Remaining alleged irregularities

[23] The remaining questions are whether the Commissioner acted irregularly in –

- 23.1. failing to consider that Mr Makaneta was charged and dismissed for the 5 December e-mail;
- 23.2. relying on Mr Makaneta's earlier correspondence with the chairperson when he was only charged in relation to the 5 December e-mail; and
- 23.3. ignoring evidence that Mr Makaneta's 5 December e-mail contained allegations that were either true, or at least widely held beliefs among SAHRC staff.

³ (2021) 42 ILJ 961 (CC) at para 38.

⁴ (2010) 31 ILJ 296 (CC) at para 75. The statement of the Constitutional Court reads: 'If however, the pleadings, properly interpreted, establish that the applicant is asserting a claim under the LRA, one that is to be determined exclusively by the Labour Court, the High Court would lack jurisdiction'

Disciplining an employee for statements in written representations

[24] Is it fair to (a) request an employee to make representations as to why he should not be disciplined for certain conduct, and to then (b) discipline him for the content and approach to such representation? If it is fair, then there is no irregularity.

[25] The argument for Mr Makaneta, that this is inherently unfair, cannot succeed for several reasons:

25.1 Written representations on why an employee should not be dismissed are still made in the course of one's employment. There is no principle in law where immunity attaches to making such representations. There is therefore no reason why, in the absence of an agreement or policy to the contrary, an employee is not bound by rules relating to 'good order'⁵ when participating in disciplinary proceedings.

25.2 It is accepted that separate disciplinary charges can arise out of behaviour during disciplinary proceedings.⁶

[26] The CCMA Commissioner therefore did not act irregularly when he declined to attach weight to the fact that Mr Makaneta was charged and dismissed for his written representations to the CEO in respect of a different investigation into earlier misconduct.

Relying on correspondence with the chairperson

[27] The factual basis for this alleged irregularity is not present: the CCMA Commissioner did not rely on Mr Makaneta's correspondence with the chairperson when assessing if Mr Makaneta's dismissal was substantively fair. The CCMA Commissioner clearly distinguished between the reason for Mr Makaneta's dismissal (the 5 December e-mail) and the background to this e-mail (the correspondence to the chairperson), recording:

⁵ Item 80 to the CCMA Guidelines on Misconduct Arbitrations.

⁶ See: *Ekurhuleni Metropolitan Municipality v South African Municipal Workers Union and Others* (2018) 39 ILJ 546 (LAC).

'I need to state at the outset that [the correspondence with the chairperson] was not the reason why the applicant was charged, but it was after the CEO had intervened...'

- [28] In the rest of his award, the CCMA Commissioner proceeded to deal only with the contents of the 5 December e-mail. Perhaps for this reason, Mr Makaneta's current representatives did not pursue this pleaded irregularity at the hearing.

Ignoring that the statements for which an employee was dismissed for were true or widely held beliefs

- [29] The record shows that only one allegation in the 5 December e-mail was true – that of the CEO using vulgar language towards other senior staff at a meeting. Regarding the other allegations in the e-mail, a political movement had opened an assault against the CEO – the CEO had not, however, been convicted. Further, it could not be established that there was overall low staff morale. These factual findings are not unreasonable from the record, particularly Mr Makaneta's own testimony. Another decision-maker may have found that the allegations were sufficiently true for purposes of written representations, but this CCMA Commissioner's finding remains reasonable.

- [30] In any case, even positing that every allegation against the CEO in the 5 December e-mail is true, even truthful statements can constitute insolence. Generally, the Labour Court has considered the context in which truthful allegations are made in an unsavoury manner, with differing outcomes. Context largely concerns the employer's own behaviour in relation to the employee.⁷ This CCMA Commissioner's value judgment was that the statements constituted offensive behaviour and insolence worthy of dismissal, and that the circumstances under which the statements were made did not justify the way in which they were made.

⁷ See for example: *Sylvania Metals Pty Ltd v Mello No and Others* (JA83/2015) [2016] ZALAC 52 (22 November 2016) at para 20; *Palucci Home Depot (Pty) Ltd v Herskowitz and Others* (2015) 36 ILJ 1511 ('Palucci') (LAC) at para 33. *Jewellery Council of South Africa v Maharaj and Others* (JR2527/21) [2024] ZALCJHB 236 (30 May 2024) at para 22; *Jenecker v SA Medical and Education Foundation NPC and Others* (C611/2022) [2025] ZALCCT 104 (17 October 2025) at para 46; *Neumann v Western Cape Education Department* (C383/2023) [2026] ZALCCT 1 (5 January 2026) at para 141.

[31] Again, another decision-maker may have found that there were contextual factors that excused Mr Makeneta's remarks and that he was driven to this point by the surrounding events, as occurred in some of the cited cases. That does not mean that the decision reached in this case is one that no other decision-maker could have reached. In the light of relevant case law, the CCMA Commissioner's finding that Mr Makeneta's conduct was not excusable or provoked, is based on relevant considerations:

31.1. The CCMA Commissioner took the approach of establishing which allegations were true.

31.2. He then considered comparable and distinguishable cases, concluding that the tone of and attempt to embarrass in the 5 December e-mail, and the lack of remorse were serious.

31.3. He analysed the words closely, including throwaway remarks suggesting the CEO did not know how to run the SAHRC, and some of the gratuitously combative language used, and a general attitude of disrespect.⁸

31.4. He also weighed up Mr Makeneta's words against those that he was responding to and concluded that these were not disrespectful or condescending.

[32] Finally, there is case law that supports the view that sufficiently egregious speech towards a team leader, can constitute a threat to that leader's authority, leading to a breakdown in the employment relationship.⁹

[33] I find that the remaining alleged gross irregularities are not proved and there is no basis to claim that the award is grossly unreasonable.

Costs

⁸ Such statements in the 5 December e-mail include, among others: 'One [would have] expected that you and the Commissioner would reflect on the trip and take lessons...'; 'If you check your e-mail properly...'; 'If you would carefully read my e-mail...'; '... your letter to me has all malicious intent and it shows your abuse of power and is somewhat a way of victimising me'; '... one would expect you to provide leadership...'

⁹ *Palluci supra* at para 19.

[34] The application was not clearly pleaded in the founding affidavit, but that is not an exceptional factor warranting deviation from the general rule. It is just and equitable for each party to pay their own costs.

[35] Accordingly, I make the following order:

Order

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

B. Ramji

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Mr C G Grove, CGG Inc.

For the Third Respondent: Dr R J C Orton, Snyman Attorneys.

LABOUR COURT