



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

TDM _____ 08/09/2026
Signature _____ Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case No: JR 179/22

In the matter between:

OLIVER PHEFONG TSEBANE

Applicant

and

COMMISSIONER MORGAN MAIMANE NO

First Respondent

COMMISSION FOR CONCILIATION,

MEDIATION AND ARBITRATION

Second Respondent

MATHIPANE TSEBANE ATTORNEYS INC

Third Respondent

Heard: 6 May 2026

Delivered: 08 September 2026

JUDGMENT

RAMASHIA, AJ

Introduction

- [1] This is an application brought before this court in terms of section 145 of the Labour Relations Act¹ (LRA) whereby the applicant sought this court to review and set aside the arbitration award (“the award”) dated 20 October 2021, issued by a Commissioner of the Commission for Conciliation, Mediation and Arbitration (the CCMA) under case number DATW 54995-21.

Factual Background

- [2] The Applicant, Mr. Oliver Phefong Tsebane (“the employee”), was employed by Third Respondent as a practicing attorney. On 9 November 2020, the Third Respondent served the employee a notice to attend a disciplinary hearing scheduled for 11 November 2020, wherein the employee was required to answer to the following charges of misconduct to be brought against him²:

“1st Charge : Gross Misconduct- Fraud

The intent to mislead (defraud), resulting or calculated to result in some prejudice, harm or loss to another or undue benefit to the employee. On 27th August 2020, you changed the directorship of the company’s holding company Mathipane Tsebane CC with the intention to fraudulently attempt to take up ownership of the legal practice

2nd Charge : Gross Insubordination

When an employee is given an instruction and fails to carry out the instruction resulting in damage to the company. Gross insubordination in that on 26th September 2020 you refused to obey a reasonable and reasonable instruction relating to the request for documents for the RAF tender process. As highlighted to you , failure to submit these documents is detrimental to the tender process

3rd Charge : Gross Insolence

A serious act of insolence that has an element of wilful contempt of the employer’s authority. A challenge by an employee.

¹ Act 66 of 1995, as amended.

² SEE Pages 3-4 of Index and paginated bundle E

Gross insolence in that you have repeatedly refused to comply with instructions sent to you by the new director of the company as well as attending any meetings, or provide any work or documentation as requested by her, during the periods of September and October 2020

4th Charge: Gross Misconduct- Disharmony

Conduct that has the effect of being detrimental to the morale of the company and its employees. Normally associated with continuous behaviour of the kind that leads to disharmony in the workplace and behaviour that is aimed at challenging the authority of the company. Conduct detrimental to the maintenance of good order within the workplace in that on 27th August 2020 you showed disrespect to the company director by coming into the office at the Midrand location and occupying the late director's office and informing employees that you were the new owner of the company despite a new director already having been appointed that day.

5th Charge: Gross Misconduct- Broken Trust

Acting contrary to the best interest of the employer in an attempt to willfully discredit the company and its authority figures.

Broken trust in that the action of the employee mentioned in the above charges have led the company to believe that it cannot continue a normal working relationship with the employee.

- [3] On the day of the scheduled hearing the accused employee failed to attend the scheduled hearing without tendering any apology or giving any prior explanation. According to the independent chairperson, Mr. Dewald van der Schyff, who was appointed to preside over the hearing, the employee was called on his mobile phone at 12h45, in the presence of other participants to the hearing but the employee did not answer the call. Whereafter the chairperson left a message on the employee's mobile phone³.
- [4] Having not heard any response from the employee, the hearing proceedings took place in the absence of the employee. At the end of the hearing proceedings the chairperson summarized the proceedings as follows:

³ See page 10 of the INDEX AND PAGINATION BUNDLE -E

“18. Having regard to the evidence before me, which were submitted in a bounded file with the Company having the required copies and taking into account the factors presented to me during this short enquiry, I find that summary dismissal is a fair and reasonable disciplinary measure.”

“19 In conclusion I can find no factors which would mitigate against imposing the ultimate sanction of summary dismissal in the presence instance⁴.”

[5] On 12 November 2020 the company formally terminated the employee’s contract of employment through a letter dated 12 November 2020. The letter in question concluded as follows:

“Should you wish to appeal the findings please complete the attached Appeal Form, within 3 days of the day of the finding. You are reminded of your right to refer any dispute to the CCMA⁵

Proceedings before the CCMA

[6] Following his dismissal at the internal hearing, the Applicant referred the matter to the CCMA, alleging that his dismissal was substantively unfair. Condonation for late referral to the CCMA was sought and the matter was set down.

[7] On 13 September 2021 the matter was heard at the CCMA before Commissioner Morgan Maimane who characterised the task before him as follows:

“I am required to determine whether the dismissal of applicant was substantively fair. I have to determine the appropriate relief. The applicant sought relief for compensation.”

[8] During the CCMA hearing the employer called two witnesses, namely Mica Newman (“Newman”) and Gugu Dlodlo (“Dlodlo”), respectively.

⁴ See page 14 of the INDEX AND PAGINATION BUNDLE -E

⁵ See page 16 of the INDEX AND PAGINATED BUNDLE-E

- [9] Newman testified that she was appointed HR consultant of Third Respondent in October 2020 and was tasked with the implementation of HR policies. She further referred to a report in the Third Respondent's Bundle which was a detailed report from the South African Police Services indicating that documents were forged in an attempt to change the company's name.
- [10] In reply, the Applicant testified that he did not deny that he took positive steps calculated at changing the company's name but denied that the reason he did so was to take over the company.
- [11] Dlodlo's testimony, on the other hand, dealt extensively with the charge relating to the Applicant's insubordination, insolence and lack of co-operation with management.
- [12] She testified that she was the one who sent emails to all professional staff requesting them to submit their credentials to enable the practice to tender for RAF matters. She confirmed that Applicant refused to co-operate without the decency to explain why he was failing to obey management instructions.
- [13] Dlodlo further testified that at some stage she requested Applicant to provide a comprehensive report of work carried out by Applicant over a specified period, but Applicant failed to respond.
- [14] Dlodlo also testified that when Applicant's incidents of insubordination became the norm, Applicant was given a warning and asked to account for his unacceptable behaviour but Applicant just ignored the warning and never responded.
- [15] Applicant's version regarding the reason for not attending the internal hearing was that the notice he was served was withdrawn and therefore could not be regarded as a valid invitation to the hearing.
- [16] Applicant further testified that 'failure' by the Third Respondent to issue a valid notice inviting him to the hearing meant that he was never afforded an opportunity to defend himself and this resulted in an unfair dismissal.

- [17] Applicant further submitted that the person who invited him to the disciplinary hearing and eventually dismissed him did not have the authority to do so

Commissioner's analysis of the evidence

- [18] The commissioner was satisfied that proper notice was given to the Applicant to attend the internal disciplinary hearing, having regard to follow-up SMS messages and calls to the Applicant's mobile phone by the independent Chairperson of the internal disciplinary hearing.
- [19] The Commissioner outlined in detail factors to be taken into consideration to determine if an employee's dismissal was substantively fair⁶.
- [20] Having had regard to Newman's uncontested testimony regarding the fraudulent and unauthorized act by the Applicant to change the Closed Corporation's name and Dlodlo's uncontested testimony regarding Applicant's consistent refusal to carry out the employer's lawful and reasonable instructions, the Commissioner came to the decision that the applicant was guilty of charges proffered against him and that his dismissal was substantively and procedurally fair.

The matter before this court

- [21] There are two applications brought before this court
- 21.1 The first application is the application for condoning the late filing of the review application;
- 21.2 The second application is an application to review and set aside the award issued on 20 October 2021 under case number GATW 5495-21 by a CCMA Commissioner, Morgan Maimane N.O.
- [22] Both applications were opposed and set down for hearing in one sitting on 6 May 2026.
- [23] Having heard submissions from both counsel, regarding the condonation application, the court came to the determination that it was in the interest of

⁶ See: Arbitration award at para 42.

justice⁷ to grant the applicant condonation and go ahead to hear the substantive application brought in terms of section 145 of the LRA.

Applicants' grounds for review.

[24] A thorough perusal of the applicant's notice of motion as well as his heads argument can only lead to the following distilled summary of the applicant's grounds for a prayer to review and set aside the commissioner's award.

24.1 that the commissioner erred in accepting the Third Respondent's version regarding proper notice of his invitation to the internal disciplinary hearing.

24.2 that the commissioner misdirected himself in accepting Newman's testimony regarding the existence of the policies which applicant was alleged to have violated when he was charged and dismissed⁸.

24.3 that the commissioner committed a gross irregularity in the conduct of the arbitration proceedings in that he *'deliberately and obstinately kept out of consideration the issue of locus standi on the part of the person who dismissed Applicant'*⁹.

24.4 that the commissioner mischaracterized the nature of the dispute¹⁰

24.5 that the commissioner committed a gross irregularity, in that he failed to analyze the evidence before him properly.¹¹

24.6 The Applicant concluded by submitting that *"the above renders the award irrational as well as one that does not fall within the bounds of reasonableness."*¹²

Test for review

⁷ See: *Grootboom v National Prosecuting Authority and another* [2014] 1 BLLR 1 (CC).

⁸ Applicant's heads of argument (heads of argument) filed on 16 April 2025 at para 32.

⁹ Applicant's heads of argument at para 36.

¹⁰ Applicant's heads of argument at para 46.

¹¹ Applicant's heads of argument at para 47.

¹² Applicant's heads of argument at para 78.

- [25] The Applicable test for review proceedings, to the extent that it does not involve a jurisdictional challenge has been settled by the Constitutional Court in *Sidumo and Another v Rustenburg Platinum Mines Ltd*¹³, where it was held that section 145 of the LRA is now suffused by the constitutional standard of reasonableness.
- [26] *Sidumo's* decision requires the review court to ask the question: "*is the decision made by the arbitrator one that a reasonable decision maker could not reach on the available material?*"¹⁴
- [27] The essence of the *Sidumo* judgment was further elucidated in *Gold Fields Mining South Africa (Pty) Ltd (Kloof Gold Mine) v Commission for Conciliation, Mediation and Arbitration and Others*¹⁵, where the Labour Appeal Court clarified that *Sidumo* does not postulate a test that require a simple evaluation of the evidence presented to the arbitrator and based on that evaluation, a determination of the reasonableness of the decision arrived at by the arbitrator.
- [28] The court in *Sidumo* was at pains to state that arbitration awards made under the LRA continue to be determined in terms of section 145 of the LRA but that the constitutional standard of reasonableness is '*suffused*' in the application of section 145 of the LRA.
- [29] This implies that an application for a review sought on the grounds of misconduct, gross irregularity in the conduct of the arbitration proceedings, and /or excess of power will not lead automatically to the setting aside of an award if any of the above grounds is found to be present.
- [30] Where gross irregularity in the proceedings is alleged, the enquiry is not confined to whether the arbitrator misconceived the nature of proceedings, but extends to whether the result was unreasonable, or put another way, whether the decision that the arbitrator arrived at is one that falls within a band of

¹³ (2007) 28 ILJ 2405 (CC)

¹⁴ Ibid at para 110.

¹⁵ [2013] ZALAC 28

decisions to which a reasonable decision-maker could come to upon evaluating the available material.

- [31] What is required is first to consider the gross irregularity that the arbitrator is said to have committed and then to apply the reasonable test established by *Sidumo*. The gross irregularity is not a self-standing ground insulated from or standing independent of the *Sidumo* test.
- [32] That being the case, it serves no purpose for the reviewing court to consider and analyze every issue raised at the arbitration and regard failure by the arbitrator to consider all or some of the issues (albeit material) as rendering the award liable to be set aside on grounds of processes-related review.
- [33] In short: a review court must ascertain whether the arbitrator considered the principal issue before him/her; evaluated the facts presented at the hearing and arrived at a conclusion which rationally falls within the bounds of decisions which a reasonable decision-maker could make, based the totality of the evidence before him/her

Analysis

- [34] The first question that this court must ask itself is whether the way the commissioner dealt with evidence constituted a gross irregularity or material error and the second question is whether the decision arrived at is of nature that falls within a band of decisions which a reasonable decision-maker could not make.
- [35] More specifically this court must determine whether the applicant's dismissal was substantively and procedurally fair or not.
- [36] It is trite that in applying for the setting aside of an arbitrators' award, it is not enough for the Applicant to just repeat the grounds for review listed in section 145 of the LRA without providing substance as the applicant did *in casu*. Instead, it was expected of the Applicant to at least provide evidence of how the commissioner's conduct fell short of the standard expected of a reasonable decision-maker

[37] Evidence provided by the applicant to support his allegations in relation to the grounds listed as a basis for the Application for review of the commissioner's award is, with respect, insufficient, irrelevant and spurious.

[38] The Applicant has thus failed to meet the standard required to support allegations made against the commissioner's conduct in handling the arbitration.

Conclusion

[39] Based on the totality of the evidence before him the arbitrator arrived at a conclusion which falls within the band of decisions which a reasonable decision maker could make. Put differently, the arbitrator did not make an award which falls within the bounds of awards which a reasonable decision maker could not make.

[40] Therefore, the arbitrator was correct in finding that the dismissal of the Applicant was substantially and procedurally fair.

[41] In the premise the following order is made:

Order

1. The application for condonation for late filing of the review application is granted;

2. The application to review and set aside the arbitration award dated 20 October 2021 issued under case number GATW 5495-21 is dismissed;
3. There is no order as to costs.

R. Ramashia

Acting Judge of the Labour Court of South Africa

Appearances:

For the applicant : ZD Maluleke

Instructed by : Fish Letsoalo Attorneys

For the respondent : E Nhutsve

Instructed by : Mathipane Tsebane Attorneys Inc

LABOUR COURT