



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

4 September 2026

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Case no: 2026-059693

In the matter between:

CHARLES PETERSEN

Applicant

and

COMMISSION FOR CONCILIATION, MEDIATION

AND ARBITRATION

First Respondent

COMMISSIONER STEPHAN CLOETE N.O.

Second Respondent

HOUSE OF CLEANING (PTY) LTD

Third Respondent

Heard: 2 September 2026

Delivered: 4 September 2026

JUDGMENT

DE KOCK, AJ

Introduction

- [1] This is an application in terms of s 145 of the Labour Relations Act 66 of 1995 (the LRA) to review and set aside an arbitration award of the second respondent, Commissioner Stephan Cloete (the Commissioner), issued under CCMA case number WECT1695-26 and dated 27 February 2026.

- [2] The applicant, Mr Charles Petersen, is a cleaner. He acts in person, having drafted the review himself. The first respondent is the Commission for Conciliation, Mediation and Arbitration (the CCMA), under whose auspices the award was made. The third respondent, House of Cleaning (Pty) Ltd, was the applicant's employer and is the only party that opposes the application. The third respondent was represented at the hearing by Mr du Plessis.
- [3] The award dismissed a referral of constructive dismissal on the footing that the applicant had not proved that he was dismissed at all.

Background

- [4] The applicant was employed by the third respondent as a cleaner at the Dunes/Sasko Bokomo site. His gross pay was about R7 100 a month, R6 200 net, at an hourly rate of R31.69 for a 45-hour week.
- [5] In November 2025 an exchange with a team leader over the cleaning of the applicant's section, and a crude remark first made by a colleague and then repeated by the applicant, led to the arrangement of a disciplinary hearing. The hearing took place on 13 January 2026, chaired by Mr Gideon Basson, on a charge of any form of aggressive or improper behaviour towards another employee. The applicant was found guilty.
- [6] Having found the applicant guilty, Mr Basson put him to an election: to resign, or to take the outcome of the hearing. On the applicant's evidence he was told:

'kyk net Mnr Pietersen, die uitslag van die verhoor is dat jy moet gefire word. Maar ons gee vir jou 'n keuse, 'n opsie om te bedank...'

- [7] On Mr Basson's own evidence, the position was the same:

'KOMMISSARIS: U gee hom toe 'n opsie?

MNR BASSON: Opsie om te bedank of uitlewer op uitspraak. Met die bedanking sit ek vir hom in 'n ander werk in, in 'n ander company. En sodoende behou hy dan sy inkomste.'

- [8] That the applicant was, after the finding of guilt, put to an election between resigning and receiving the sanction is accordingly common cause. So is the reason for the offer: on Mr Basson's evidence, the alternative was offered so that the applicant would keep an income. Invited at the close of that evidence to put questions, the applicant said, twice, '*Meneer Basson praat alles reg soos hy praat*', and the Commissioner noted that Mr Basson's version was accepted as correct.
- [9] There is one dispute of fact. The applicant's evidence was that Mr Basson said 'ons gee jou 12 maande final written warning', the company undertaking to telephone the client before confirming. Mr Basson's answer was not a denial that the words were used but an inference: 'As dit die final was dan sou dit mos onmiddellik gegaan het, geissue gewees het en ek sou gesê het hier is jou final, teken.' The award records the dispute at paragraph 12 and does not resolve it. At the hearing the applicant also disputed the Commissioner's statement, at paragraph 14 of the award, that he had been given two days to consider his position; on his account the sequence was a hearing on 13 January, a telephone call on 14 January and the resignation on 15 January 2026. For the reasons that follow, neither dispute affects the outcome.
- [10] On 14 January 2026 the applicant was telephoned and told to take the first option, because the client did not want him on the premises. On 15 January 2026 he returned, said that he did not want to resign, and was dictated the words he was to write. His evidence was that he said 'maar ek willie bedank nie' and was answered 'skryf net daar baie dankie vir die opportunity wat julle my gegee het maar ek bedank', which he then wrote. The founding affidavit says the same and it is not contradicted. He signed a contract with Advanced Cleaning Services (Pty) Ltd the same day and started there on 16 January 2026, on the same premises and on the same Sasko contract. Mr Basson accepted that Advanced Cleaning Services belongs to the same group: '*Dis korrek ja. Ons behoort aan dieselfde HOC group.*'
- [11] The dispute was referred to the CCMA and heard as a con-arb before the Commissioner on 18 February 2026, in Afrikaans, the applicant appearing in

person and Mr Basson for the company. The award was issued on 27 February 2026.

The award

- [12] The award runs to five pages, the analysis being contained in paragraphs 13 to 17.
- [13] At paragraph 13 the Commissioner set out the constructive dismissal principles, citing *Solid Doors (Pty) Ltd v Theron NO and Others* for the three requirements, together with *Loots, Jooste, Lubbe, Strategic Liquor Services* and *Asara Wine Estate*.¹ The statement of the law is orthodox and is not criticised.
- [14] At paragraph 14 the Commissioner held that the applicant had presented no evidence that the employer had made his continued employment intolerable, that he had lodged no grievances, that one cannot pre-empt the outcome of a disciplinary hearing, and that he had been given two days to decide whether to resign or to continue with the disciplinary process. At paragraph 15 he held that the applicant's evidence 'failed to show that the company was a harsh draconian business with no empathy for others'. At paragraph 16 he found that the conduct of the employer did not amount to deliberate intolerable pressure and that the applicant 'resigned on his own accord after considering his options', and at paragraph 17 that the applicant had not proved that he was dismissed.

The supplementary document

- [15] On 28 August 2026, five days before the hearing, the applicant filed a document headed 'Supplementary Affidavit', with 27 pages of annexures. Mr du Plessis objected to it *in limine*: it was filed long after the pleadings had closed and without leave, it raised new factual allegations for the first time, and the third respondent's attorneys had written on 21 May 2026 asking whether the applicant stood by his notice of motion and again on 28 August

¹ [2004] ZALAC 14; (2004) 25 ILJ 2337 (LAC) at para 28.

2026 asking that the document be withdrawn. On examination the document on the court file is neither signed before a commissioner of oaths nor attested; it is not an affidavit. The applicant said that he had taken it to a police station to be commissioned but accepted that the filed copy is not. The Court ruled that it could not receive the document, filed five days before the hearing without leave and in a form to which the third respondent could not have responded, and the applicant accepted that ruling. Nothing in the document or its annexures is before the Court, and the Court has had no regard to it.

The grounds of review as pleaded

- [16] The founding affidavit is an account of the events between November 2025 and January 2026. It does not allege that the Commissioner misconducted himself, committed a gross irregularity, exceeded his powers, or reached a decision no reasonable decision-maker could reach; beyond the applicant's name for the Commissioner in the pro forma space, it says nothing about the arbitration or the Commissioner's conduct.
- [17] The applicant's heads of argument, drafted by him, contain for the first time an account of the arbitration itself. He alleges that the Commissioner asked him whether '*a gun was held against my head to resign*' and, if so, that he should prove it; that Mr Basson was asked to leave the room while the Commissioner spoke to the applicant alone; that the applicant was then asked to leave so that the Commissioner and Mr Basson could speak alone; that the Commissioner told him that if he did not accept what was proposed he would give his decision, and that if the applicant were found guilty he would have to pay the costs; and that the Commissioner and Mr Basson exchanged email addresses while the applicant was not asked for his.
- [18] None of that appears in the founding affidavit, and none of it was given on oath. A ground of review may not be raised for the first time in argument, and its factual foundation must appear in the founding or a supplementary affidavit; a review applicant is bound by the grounds in the review application

(*Kunene v Sithole NO and Others*).² The ‘gun to the head’ question, the costs warning and the exchange of email addresses are, moreover, nowhere in the transcript; the only reference to a gun in the record is the applicant’s own about people being shot at in the early morning. Those allegations, being both unpleaded and unsworn, cannot be established on this record, and the Court makes no finding upon them. Mr du Plessis was right to say so, and right to say that on the papers as pleaded the review discloses no ground of review at all.

- [19] The Court nevertheless allowed the applicant, as an unrepresented litigant, considerable latitude to explain his case at the hearing, and has considered what he said. His case, put simply, is that he did not want to resign, that he was talked into it by being told that he would otherwise be dismissed and would have a bad record, and that he signed because he is the breadwinner in his household. He said that the Commissioner asked him whether a gun had been held to his head and that he answered that it had not, ‘*but they talk[ed] me into resigning*’. The Court has treated that as the applicant’s argument that the Commissioner’s conclusion that he was not dismissed is wrong.

The test

- [20] Whether an employee was dismissed is a jurisdictional fact. If there was no dismissal, the CCMA had no jurisdiction to arbitrate, and a commissioner’s finding on the question is not a matter of discretion or of reasonableness but of correctness. The Labour Appeal Court so held in *Solid Doors*:

‘... the question whether the employee was constructively dismissed or not is a jurisdictional fact that – even on review – must be established objectively. That is so because if there was no constructive dismissal - the CCMA would not have the jurisdiction to arbitrate.’³

² [2021] ZALCJHB 196 at paras 20 to 21; *Mtyala v Motor Industry Bargaining Council and Others* [2023] ZALCJHB 352 at para 12, citing *Northam Platinum Ltd v Fganyago NO and Others* [2009] ZALCJHB 55. See also *Mpe v Polokwane Local Municipality and Others* [2024] ZALCJHB 426 at paras 12 to 16.

³ *Id* fn 1 at para 29.

- [21] The Constitutional Court has recently confirmed the point in *Maleka v Boyce NO and Others (Maleka)*, holding that a finding that an employee has been constructively dismissed is a matter of fact, and that ‘*the test to be applied ... is an objective one that is concerned with correctness and not reasonableness, because the question “whether an employee has been dismissed” rests on the jurisdiction of the CCMA*’.⁴ That is also the position on jurisdictional rulings generally: a tribunal that is a creature of statute cannot decide its own jurisdiction, and on review the question is whether, objectively, the jurisdictional facts existed (*South African Rugby Players Association and Others v SA Rugby (Pty) Ltd and Others; SA Rugby (Pty) Ltd v South African Rugby Players Union and Another*).⁵
- [22] The Court raised the point with Mr du Plessis, whose submissions had been directed to the reasonableness standard in *Sidumo*. He did not contend otherwise, and, as correctly anticipated, the standard makes no difference to the result in this case. The Court has accordingly asked itself not whether the Commissioner’s conclusion was one a reasonable commissioner could reach, but whether it was correct.
- [23] Three requirements must be established for a constructive dismissal under s 186(1)(e) of the LRA: the employee must have terminated the contract of employment; the reason for the termination must be that continued employment had become intolerable for the employee; and it must have been the employer that made continued employment intolerable.⁶ The threshold of intolerability is a high one. Conduct which results in a difficult, unpleasant or stressful situation for the employee is not enough; the employee must show conduct that can objectively be construed as unendurable.⁷

Was the Commissioner correct?

- [24] The first requirement is met. The applicant wrote and signed the resignation.

⁴ [2026] ZACC 7; (2026) 47 ILJ 839 (CC); [2026] 6 BLLR 519 (CC); 2026 (5) BCLR 453 (CC) at paras 54 and 55.

⁵ [2008] ZALAC 3; [2008] 9 BLLR 845 (LAC); (2008) 29 ILJ 2218 (LAC) at paras 39 to 41.

⁶ *Solid Doors*, id fn 1, at para 28.

⁷ *Maleka*, id fn 4, at paras 70 and 73.

- [25] The second and third are not, and the reason lies in the applicant's own case. The applicant did not leave the third respondent because his employment there had become unendurable. On his own evidence, and on what he told the Court, he wanted to keep his job. He had no warnings, he was happy when he thought he had been given a twelve-month warning, and he said that if they had wanted to dismiss him they should have done so. He left because, having been found guilty at a disciplinary hearing on a charge which the record shows was properly brought, he was given a choice between the sanction that would follow and resignation coupled with immediate re-employment in a group company on the same site and at the same rate of pay, and he chose the latter. That is what the Commissioner found at paragraph 16 of the award: the applicant *'resigned on his own accord after considering his options'*.
- [26] Mr du Plessis put the point in a way that the Court accepts. The applicant told the Court that if he were disrespected at a workplace he would stay away and look for other work; and he told the Court, emphatically, that he did not want to leave the third respondent. Both things cannot be true of an intolerable workplace. An employee who wishes to remain has not been driven out.
- [27] The applicant's real complaint is different. It is that the choice he was given was an unfair one; that he was told he would be dismissed and would have a bad record; that the alternative offered to him was not what it was later made out to be; and that he signed under the pressure of having a family to support. The Court has sympathy for that complaint, but it is not a complaint of constructive dismissal. An employer which, after a finding of guilt, tells an employee what sanction is under consideration and offers him an alternative to it does not thereby make his continued employment intolerable; it offers him a way of avoiding the consequences of his own misconduct. The applicant was free to decline the offer, to take the sanction and, had that sanction been dismissal, to challenge its fairness before the CCMA on the strength of his clean record and the nature of the misconduct. That, as the Court explained to him at the hearing, is the case he might have had. By resigning he took a different course, and the question before the Commissioner became whether

he had been forced to do so. He had not. The pressure he describes is the pressure of a hard choice honestly put, not the conduct, characterised by the Constitutional Court as unendurable, that s 186(1)(e) requires.

[28] Neither of the two disputes of fact identified above alters that. If the applicant is right that he was told on 13 January 2026 that he would receive a twelve-month final written warning, and that the company reversed itself the next day after speaking to the client, that goes to the fairness of the employer's conduct and not to whether the applicant's employment had become intolerable; and on either version the applicant was told, before he resigned, that the alternative was dismissal or a warning and that re-employment in the group was available to him. If he is right that he was not given two days to consider, the interval was still overnight, and he returned on 15 January 2026 and signed a new contract of employment the same day. The Commissioner's conclusion that the applicant was not dismissed was, on the record, correct.

[29] The Court records two matters on which it makes no finding. The first is whether a resignation tendered in answer to an election between resignation and sanction, put after a finding of guilt, is properly analysed under s 186(1)(e) at all, or whether the termination in such a case is better characterised as one at the instance of the employer. The second is where the Commissioner, before closing argument, invited the applicant to speak to him alone again, and proposed to do so after going off the record. Neither matter was pleaded, neither was argued, and neither party was asked to address them. The Court raises neither of its own motion, because the applicant confined his case at the hearing to his founding papers and the third respondent was entitled to meet that case and no other. Nothing in this judgment should be read as a view on either.

Conclusion

[30] On the papers as pleaded the review discloses no ground of review. On the case the applicant put at the hearing, the Commissioner's finding that the applicant was not dismissed was correct. The application must be dismissed.

Costs

[31] The third respondent seeks costs against an unrepresented cleaner who earned about R7 100 a month and who is, on his own account, now unemployed. It cites *Zungu v Premier of the Province of KwaZulu-Natal and Others*⁸ and *Long v South African Breweries (Pty) Ltd and Others*⁹ correctly and submits that a costs order is nevertheless warranted. Mr du Plessis added that the third respondent was put to the expense of preparing to meet the supplementary document, which the applicant declined to withdraw when asked. That is so, and the Court has taken it into account. Section 162 of the LRA requires the Court to have regard to the requirements of the law and of fairness. The applicant is a lay litigant who has lost his employment, who pursued a case that the CCMA told him to bring, and whose document of 28 August 2026 was the product of ignorance of the rules rather than of any design to burden the third respondent. It is difficult to see what fairness would be served by a costs order against him, and there will be none.

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

Order

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

C de Kock

Acting Judge of the Labour Court of South Africa

⁸ (2018) 39 ILJ 523 (CC); [2018] 4 BLLR 323 (CC); [2018] ZACC 1 at para 24.

⁹ (2019) 40 ILJ 965 (CC); [2019] 6 BLLR 515 (CC); [2019] ZACC 7 at para 29.

Appearances:

For the Applicant: In person

For the Third Respondent: D du Plessis

Instructed by: JJ Jacobs Attorneys Inc

LABOUR COURT