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

Signature

09/09/2026
Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: JR1324/20

In the matter between:

TSHIDISO DUMANE & ANOTHER

Applicants

and

MASHOODA PATEL

First Respondent

SAFETY AND SECURITY SECTORAL

Second Respondent

BARGAINING COUNCIL

MINISTER OF POLICE

Third Respondent

Heard: 13 August 2026

This judgment was handed down electronically by circulation to the parties' representatives by email, published on the Labour Appeal Court website, and released to SAFLII. The date for hand-down is deemed to be on 09 September 2026

JUDGMENT

HEIDEMAN, AJ

Introduction

- [1] This is an application to review and set aside the award of the First Respondent (the panelist) dated 9 November 2017 (the award). The award was handed down following arbitration proceedings held by the Second Respondent under case number PSSS 868-16/17. The application is opposed by the Third Respondent.
- [2] There is also a condonation application before this court concerning the late filing of the review application. The review application was filed on 9 October 2020, almost 3 years after the date of the award.

Factual Background

- [3] The applicants, Messrs Dumane and Tage, had been employed as constable police officers with the South African Police Service (SAPS) from 2010 until their dismissal on 30 January 2017.
- [4] The applicants were dismissed from their employment following a disciplinary hearing in which they were both found guilty of charges which the panelist has captured as follows:

“The applicants were charged with contravening regulation 20(a) and 20(q) of SAPS Disciplinary Regulations 2006... It states that they were alleged to have Contravened Regulation 20(a) of the said Regulations, at or near Vaal Maseru Road (near Oleander Park Old Age Home), Klerksdorp, on approximately the 18th day of September 2015 at about 19:20 in that you: failed to comply with or contravened an Act, regulation or legal obligation, namely Robbery with a firearm, in that you unlawfully and intentionally robbed Mr Jonathan Stamper and Mr Petrus Seitatolo (Monnealwa) at gunpoint of the amount of R15950-00 (Fifteen Thousand Nine Hundred and Fifty Rand) cash. They were further charged with contravening the prescribed code of conduct for the service, by refraining to act in a manner that is honest and accountable, in that you robbed Mr Jonathan Stamper and Mr Petrus Seitatolo (Monnealwa) at gunpoint of the amount R15950-00 (Fifteen Thousand Nine Hundred and Fifty Rand) cash by using a state motor vehicle with registration number H[...] Nissan LDV and brought therefore the Police in disrepute with your actions.”

- [5] I have underlined the portions above in order to highlight that both charges turned on a finding that the police officers committed the crime of robbery at gunpoint.
- [6] The common cause facts in this matter are that the applicants were driving a police vehicle on the night of 18 September 2015 on the Vaal Maseru Road when they encountered a truck which was travelling without working tail lights. The applicants indicated to the truck to pull over. The truck did not pull over initially, but eventually it did. The applicants parked the police vehicle in front of the truck, and informed Messrs Seitatolo and Stamper (the complainants) who were driving in the truck that their tail lights were out.
- [7] What happened next is the subject of some debate. On a general level, the applicants allege that, after having informed the complainants about their lights and showing them the non-working light, they then got back into the police vehicle and drove off. The complainants allege that, whilst the applicants were present, the complainants were assaulted and robbed by individuals who arrived in a Toyota Tazz and possibly came out of the bush, although their stories of what exactly transpired are neither coherent nor consistent.
- [8] The complainants agree that the applicants themselves did not assault or rob them. They both allege that the applicants must have been involved by virtue of common purpose in that they must have been conspiring with the robbers and pulled the truck over so that the complainants could be robbed. As to the detail of what took place during the alleged incident, this remains disputed, even between the complainants themselves.

The award of the panelist

- [9] After hearing the evidence, the panelist acknowledges (twice) that she is faced with two conflicting versions and she must make a finding on a balance of probability.
- [10] The panelist's finding in paragraphs 75 and 76 of the award is essentially that, because the applicants could not adequately explain why they were in

the area in a police vehicle at the time, the most likely explanation is that the applicants had been informed that the complainants would be in the area. The applicants had the intention to pull the complainants over so that they could be robbed. The fact that the actual robbery was carried out by other individuals did not change the fact that the applicants were guilty of the crime by common purpose.

- [11] The panelist therefore found the applicants guilty of both charges of robbery on this basis.

Analysis

- [12] The panelist's reasoning in coming to the above conclusion is problematic in a number of respects. Most glaringly, the manner in which she has captured the evidence before her in the award is not an accurate reflection of the evidence that was before her.

- [13] According to the panelist, Mr Seitatolo's version is that he was driving the truck and initially did not want to stop. When Mr Stamper indicated to him that they were police, he pulled the truck over and stopped. The applicants then approached him and enquired about the lights that were not working. He knew that the lights were not working. The applicants then asked Mr Stamper to exit the vehicle and come see the lights at the back of the truck. He did so, and then another vehicle appeared behind the truck:

"The occupant of the vehicle approached him, while the police and his partner were talking outside the truck. The occupant got into his vehicle and asked him a couple of questions and got out and then returned and began hitting him. At that time he pressed the hooter to alert his partner and the police and indicated to the police "that because you stopped me this person is fighting with me". There were other people that came from the grass and went to attack his partner, he attempted to start the vehicle, but the police vehicle was blocking his path (sp). The occupant hit him with a gun and another demanded the money, when they found the money, they ran away.

It was indicated by him that he asked Investigator Van Niekerk who was driving the Nissan Vehicle and she gave him the registration numbers of the vehicle driven by the applicants.

The driver confirmed that the applicants did not assault him or his partner or pull out a firearm, neither did they rob him of any money.

It was put to him that the applicants never saw the person/occupant get into his vehicle or carry money away with him, he stated that he does not know if they saw him or not by they were there.

It was confirmed by him that the applicants were not known to him prior to the incident.”

- [14] That is the sum total of the panelist’s description of Mr Seitatolo’s evidence. The latter part is quoted in order to present it as accurately as possible, particularly given that the panelist’s initial description of Mr Stamper’s evidence is “He confirmed the testimony of the 1st witness”. The only further description of Mr Stamper’s evidence is the following:

“It was further indicated by him that he ran to the Police officer’s car after being attacked by the assailants. The one police officer pushed him into the car, but he managed to kick him and run into the bush.

It was confirmed by him that the applicants never hit him or pointed a firearm at him.”

- [15] But the record reveals that, apart from a broad allegation that they were robbed while the police officers were nearby, the version of Mr Seitatolo was not confirmed by Mr Stamper to any meaningful extent. Mr Seitatolo’s version is also internally inconsistent.

- [16] Initially, Mr Seitatolo testified that his partner (Mr Stamper) was at the back of the truck talking to the police when the second vehicle stopped behind the truck and men got out. These men passed the police officer and got into the truck with him. Mr Seitatolo hit the hooter when his partner was with the police. He states as follows: “When I was about to move the truck, my partner was together with the police and they wanted to start the fight with my partner.”

- [17] Mr Seitatolo then says that he said to the police officers that he was being attacked because the police officers had stopped him. He says the police officers were with them in the truck. But then Mr Seitatolo says that he made

the police officers aware that he was being robbed by hitting the truck hooter, implying that the police officers were neither in the truck nor within shouting distance.

[18] Then Mr Seitatolo again says that the police officers were at the back of the truck when he was being robbed.

[19] Under cross-examination, Mr Seitatolo insisted that both police officers were following each other and both showed them their identity cards. In other words, both of the applicants were out of their vehicle and around the truck at the time of the incident.

[20] Then, also under cross-examination, Mr Seitatolo admitted that the police might not have seen the robbers at all. He stated that the police were in their vehicle busy calling for an escort for the truck at the time of the robbery. Then he again testified that the police officers would have seen at least one of the assailants because he walked by them. He also testified that the police pushed Mr Stamper and took out a pepper spray, implying that at least one of the applicants was directly involved in the scuffle and assaulted Mr Stamper.

[21] Mr Stamper, by contrast, testified that only one police officer came to the truck and identified himself. The other remained in the police vehicle.

[22] Mr Stamper also testified that the police officer he was with behind the truck went back to the police vehicle to call for back-up, was grabbed by one of the assailants, managed to get free, and then ran back to the police car. Mr Stamper testified that he too ran to the police car. His evidence seems to suggest that there was a major scuffle that took place around the police car – which was parked in front of the truck, so Mr Seitatolo would have seen it and been able to confirm that at least one of the applicants saw the robbers. Then, according to Mr Stamper, he ran into the bush.

[23] Under cross examination, Mr Stamper conceded that his statement says that he was dragged to the police car, which is not the same thing as running to the police car.

- [24] There are also material problems with the complainants' versions with regard to what occurred at the police station on the Monday following the incident when they went to report it.
- [25] According to Mr Seitatolo, he and Mr Stamper identified the police officers on a phone that they were shown at the police station on the Monday morning. They did not have the vehicle registration number when they arrived at the police station, but, after having identified the applicants, Captain Anina Van Niekerk gave them the vehicle registration number.
- [26] During his testimony, Mr Stamper only confirmed that the police vehicle did not have number plates and that they did not have the vehicle registration when they went to the police station on the Monday morning.
- [27] However, according to the evidence of Captain Van Niekerk, Mr Stamper came into her office on the Monday morning saying that he had passed by Vaal Fisheries and recognized the bakkie and the driver as the person who robbed him on the Friday night. Mr Stamper had taken down the registration number of the vehicle. He handed a piece of paper to Captain Van Niekerk with the registration number on it. Mr Stamper then identified Mr Dumane when he walked past Captain Van Niekerk's office.
- [28] Captain Van Niekerk also confirmed that there is no way that the complainants could have identified the applicants on a phone. The police use physical identity parades or the NPIS system in order to identify suspects. The NPIS system does not work on a phone – only on a computer.
- [29] Commander Francois Jacobs confirmed the testimony of Captain Van Niekerk. He said that when he saw the complainants at the police station on the Monday morning, they had a vehicle registration number written on a scrap of paper and it was definitely not Captain Van Niekerk's handwriting. He also confirmed that the NPIS system can only be accessed via a computer, and it was impossible that the complainants could have identified the applicants on a phone in the police station.

- [30] The evidence of Captain Van Niekerk and Commander Jacobs on this issue may not be material to what allegedly took place on the night of 18 September 2015, but it has direct implications for the credibility of the complainants as witnesses. The panelist did not even consider these glaring inconsistencies in their evidence in her award.
- [31] As mentioned above, the panelist's finding that the applicants were complicit in armed robbery is based solely on the fact that she found their explanation for why they were in the area to be inadequate. She does not consider that the applicants may have breached another, less serious rule. But the evidence before her was simply not sufficient, even on a balance of probabilities, for a reasonable commissioner to find that the applicants were complicit in armed robbery.

The case for review

- [32] The applicants have argued that the award falls to be reviewed and set aside because the award of the panelist was one that a reasonable panelist could not have reached.¹ Specifically, the panelist misconstrued the nature of the inquiry,² or the result was unreasonable in the sense that it was disconnected from the evidence, unsupported by the evidence and/or involved speculation.³
- [33] I tend to agree. The panelist's award proceeds on the assumption that the complainants' evidence is consistent. As outlined above, this simply is not true. The panelist also failed to engage critically with the evidence before her and make proper findings on credibility. While this court is not hearing the evidence first hand, it has been furnished with a complete record of the proceedings before the panelist.

¹ Sidumo and another v Rustenburg Platinum Minds Ltd and others 2008 (2) SA 24 (CC) para 144.

² Herholdt v Nedbank Ltd 2013 (6) SA 224 (SCA) para 25.

³ Quest Flexible Staffing Solutions (Pty) Ltd (a division of ADCORP Fulfilment Services (Pty) Ltd v Lebogate (2015) 36 ILJ 968 (LAC) para 12.

- [34] As the Labour Appeal Court stated in the case of *Amathole District Municipality v Commission for Conciliation, Mediation and Arbitration and others*:⁴

“It is correct that as a general rule, a judicial officer who has sight of the witnesses giving evidence and is able to assess their evidence from nearby, is the best person to gauge their demeanour. However, the record of such evidence must speak for itself. The record will always show if a witness’ evidence was contradictory or evasive. The justification for the criticism of a witness will normally appear from the record itself. A credibility finding against a particular witness, which is not justified by the record, cannot prevent a court of appeal from evaluating the evidence afresh.”

- [35] This is such a case where the record does not justify a finding that the complainants’ version(s) were credible. Yet the panelist proceeded to make her findings on the assumption that not only were the complainants credible witnesses, but that they confirmed each other’s versions – when the record shows that they did not.
- [36] The answering affidavit of the third respondent proceeds on the assumption that it had been proved that the applicants were present at the scene of the alleged incident and that when the complainants were robbed, they did nothing. The deponent to the third respondent’s answering affidavit alleges that this in itself is cause for concern (implying that dismissal was warranted, even if the applicants had not been involved in the crime).
- [37] In substantiating this point, the deponent quotes the evidence of Mr Stamper from the disciplinary proceedings, where Mr Stamper alleges that the applicants were inside their vehicle doing nothing for the duration of the alleged incident. This is clearly at odds with the evidence given by Mr Stamper before the panelist, as outlined above, and therefore does not serve to assist the third respondent in opposing the review. The third respondent’s heads of argument proceed on a similar assumption.

⁴

(2023) 44 ILJ 109 (LAC) para 38.

- [38] The applicants have therefore succeeded in showing that the award of the findings of the panelist cannot be sustained by the evidence before her. It therefore falls to be reviewed and set aside.

Condonation

- [39] Having dealt with the merits of the review, it now remains to consider the issue of condonation. It is common cause that the application for review has been brought almost 3 years after the award was made. In the normal course of events, this would be an unacceptably long period of time.
- [40] During the oral hearing, the applicant's legal representative referred the court to the transcript of the criminal trial in which the applicants had been found not guilty on the charge of robbery with aggravating circumstances with respect the alleged incident on 18 September 2015. The matter appears to have been heard over a number of days between 2022 and 2024, and they were found not guilty on 1 November 2024.
- [41] Clearly this transcript was not before the panelist, and I indicated to the applicants that it cannot be considered in these proceedings for review. However, in the applicants' founding affidavit, it was indicated that their legal representative had advised them on 25 October 2018 to wait until the criminal matter had been finalised before launching this application. By 1 September 2020, the criminal matter was still not finalised, and a decision was taken to launch this application. The existence of the transcript in the criminal case substantiates that allegation, at least.
- [42] The advice given to the applicants by their legal representative was misguided. But the fact that the applicants accepted that advice makes a lot of sense: they wanted to clear their names in the criminal court before proceeding further with their civil claim.
- [43] As to the applicants' explanation for what transpired for the 11 months prior to appointing their legal representative, they indicate that they felt let down by their union who refused to assist them after they were dismissed as they were no longer fee-paying members. The applicants then approached Legal

Aid but could not get assistance. Their current legal representative appears to be acting on contingency. As two unemployed individuals who were prioritising their defence in the criminal proceedings, finance was clearly also a factor informing their tardiness in bringing this application.

[44] I have already dealt with the merits above, and it is apparent that the applicants' prospects are very good. This also informs the inquiry into prejudice and the interests of justice: having found that the panelist's award cannot be supported by the evidence that was before her and a reasonable panelist could not reach that decision, it would be of great prejudice to the applicants and contrary to the interests of justice if their application were to fail due to well-meaning but ill-conceived legal advice.

[45] It is therefore my finding that the applicants have shown good cause for condonation to be granted.

Costs

[46] When this matter came before me on 11 August 2026, the third respondent's counsel indicated that he had only recently been brought on brief and had not adequately prepared. He asked for a postponement, tendering costs, which postponement was agreed to by the applicants' legal representative. The matter was postponed and subsequently heard on 13 August 2026.

[47] Apart from this postponement, there is no compelling reason to deviate from the practice of this court that each party pay its own costs.

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

Order

1. Condonation for the late filing of the review application is granted.
2. The award of the First Respondent dated 9 November 2017 is reviewed and set aside.
3. The dispute is remitted to the Second Respondent for determination *de novo* before a panelist other than the First Respondent.

4. The Third Respondent is to pay the wasted costs occasioned by the postponement granted on 11 August 2026.
5. Apart from the costs referred to in 4. above, each party is to pay their own costs.

V. J. Heideman

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicants : Russia Langa

Instructed by : Russia Langa Attorneys

For the Third Respondent : Adv T Kwape

Instructed by: State Attorney

LABOUR COURT