



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

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: JR 1021/22

In the matter between:

LAWRENCE ALLAN RALFE N.O.

First Applicant

LINSAY MARY MOORCROFT RALFE N.O.

Second Applicant

DENZIL ALLAN GUY RALFE N.O.

Third Applicant

PATRICIA LESLIE RALFE N.O.

Fourth Applicant

and

NTATE MABILE N.O.

First Respondent

THE COMMISSION FOR CONCILIATION,

MEDIATION AND ARBITRATION

Second Respondent

GUGULETHU MILLICENT MHLONGE

Third Respondent

Heard: 14 July 2026

Delivered: 11 September 2026

JUDGEMENT

WHITEAR-NEL AJ

Background

- [1] This is an application for the review and setting aside of the award delivered by the first respondent on 1 August 2022 under case number MPMB 1598-22. The award was to the effect that the applicant had been dismissed and that her dismissal was unfair.

Grounds of review

- [2] The applicant raised three grounds of review.
- [3] The first was that the commissioner had misconceived where the onus rests in cases where the existence of a dismissal is in dispute. The second was that the commissioner had failed to consider material evidence before him. The third was in regard to the manner in which the commissioner dealt with the evidence – in that there was a material factual dispute that was not resolved by the commissioner.

Test for review

- [4] In the case of *Moschinsky v CCMA and others*¹ the court succinctly dealt with the test for review and held as follows:

[11] ... the test on review is now trite. An award will be set aside on any of the grounds set out in section 145 of the Labour Relations Act (LRA). In *Sidumo and another v Rustenburg Platinum Mines Ltd and others*, the Constitutional Court held that section 145 is now suffused by the constitutional standard of reasonableness. In other words, the award will be set aside if it is one that no reasonable decision-maker could have arrived at.'

- [5] This is the test to be applied in *casu*.

Facts

¹ (C706/2021) [2023] ZALCCT 44 (14 July 2023) at para 11.

- [6] The third respondent (the employee) was employed at a farm. The employer had gone on leave and left the employee in charge of some plants. When they returned they discovered that the plants were dead. On 9 June 2022, one Fiona, of the employer, had an altercation with the employee over the state of the plants.
- [7] On 10 June 2022 co-employees Sifiso and Gideon told the employer that the employee had told them that she was leaving the farm. When the employee reported for work on 11 June 2022, along with a sick note for the previous day, she was told to leave as a replacement temporary employee had already been found.

Analysis of arbitration award

- [8] In the award² the commissioner concluded that the respondent claimed that the applicant had resigned, however there was no evidence provided to sustain that version. This suggests that it was the respondent who had to prove that the applicant was not dismissed, whereas the onus as set out in section 192 of the Labour Relations Act³ (LRA) provides that it is the applicant who must prove the existence of the dismissal.
- [9] This speaks to the first ground of review raised by the applicant. However, in the award⁴ the commissioner correctly sets out the provisions of section 192 of the LRA, saying that it is the employee who bears the onus of proving the existence of the dismissal. This shows that the commissioner was alive to the issue of who bore the onus of proving the existence of the dismissal.
- [10] With respect to the second ground of review, the applicant makes the point that in the arbitration award, the commissioner gives no reasons as to why he preferred the applicant's version of events to the respondent's version. The employee's version was that she returned to work after being sick and was told to go because she had been replaced. In argument it was pointed out that the sick note was never handed in as evidence, but the commissioner does

² See: para 31 of the arbitration award.

³ Act 66 of 1995, as amended.

⁴ See: paras 28 and 29 of the arbitration award.

refer to it in his award. The employer's version was that they were told by two of the employee's co-workers (supervisors) that she had resigned, that the employer had tried to phone her to no avail, and that the employer had gone to the 'compound' where she lived and was told by 'everyone' there that she had left. The conclusion by the employer is that the commissioner ignored material evidence which would have convinced him to accept the employer's version.

- [11] The material factual dispute referred to in the third ground of review is that the employee said that she had been sworn at and spoken roughly to about the dead plants, and that this made her frustrated and upset because it had been happening for the last two weeks. The employer denied this and called a witness who testified that she overheard the conversation with the employee and that there was no swearing or rough talk. It was pointed out in argument that the employee was not telling the truth about abuse occurring for the past two weeks because the employer had been away on leave. Also, the employee never asked the employer for access to her room to take her belongings: it was argued by the applicant that the probabilities therefore were that the employee had taken her belongings and left immediately after the altercation. In the commissioner's award he makes reference to the employee's evidence that she had not removed her belongings.
- [12] The applicant was not questioned in cross examination. This is usually taken to mean that the cross-examiner does not dispute the applicant's testimony. This is a significant consideration. In the matter of *S v Xoswa and others*⁵ the court held that if evidence is not challenged it may be accepted without any further ado. In the matter of *President of the RSA and others v SARFU and others*⁶ the Constitutional Court held that if a point in dispute is not challenged, or admitted, in cross-examination, that evidence is accepted as correct. The employee denied resigning and leaving with her belongings. She testified that when she reported to work she was told to leave and that she would be called, which she says never happened.

⁵ 1965 (1) SA 267 (C).

⁶ 2000 (1) SA 1 (CC).

- [13] When the employer was being cross examined, she was asked how it could be that the employee would resign, then come to work the following day with a sick note. The employer replied that Gideon and Sifiso had told her that the employee had resigned. It must be noted that Gideon and Sifiso did not testify. It can only be assumed that the hearsay evidence was admitted by implied consent. It is trite that hearsay evidence is unreliable. Particularly second or third hand hearsay.
- [14] Taking the award, and the transcript into account, my conclusion is that none of the grounds of review find traction.
- [15] The commissioner's award is brief, and he does not traverse all the evidence before him, but that is proper for commissioners who are encouraged to focus only on the salient points and to avoid lengthy and cumbersome awards.
- [16] The commissioner may not have made all the factors relevant to his conclusion explicit, but there is sufficient material in the award to conclude that the evidence supports the commissioner's findings. The probabilities accord with the commissioner's findings.
- [17] My conclusion therefore is that this review application stands to fall as the commissioner's award is unassailable, and reasonable.
- [18] In the premise the following order is made:

Order

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

N. Whitear-Nel

Judge of the Labour Court of South Africa

Appearances:

For the Applicant: J P Prinsloo

Instructed by: Seymore Du Toit & Basson Attorneys

For the Respondent: No Appearance

LABOUR COURT