



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

TDM _____ 09/09/2026
Signature Date

IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case No: JR 859/23

In the matter between

PAPELANG RAMOSA

Applicant

and

STEVEN SHEMA MOLAPO N.O.

First Respondent

COMMISSION FOR CONCILIATION

MEDIATION AND ARBITRATION

Second Respondent

UNIVERSITY OF SOUTH AFRICA

Third Respondent

Heard: 7 May 2026

Delivered:

JUDGEMENT

RAMASHIA, AJ

Introduction

[1] This is an application brought before this Court in terms of section 145 of the Labour Relations Act¹ ("LRA") to review and set aside an arbitration award

¹ Act 66 of 1995, as amended.

dated 23 March 2023 issued by the first respondent in his capacity as Commissioner of second respondent under case number GATW1314-21.

Parties

- [2] The First Respondent is Mr Steven Shema Molapo N. O., an adult male who was appointed by the Second Respondent to arbitrate a dispute between the Applicant and the Third Respondent.
- [3] The Second Respondent is the Commission for Conciliation, Mediation and Arbitration ("CCMA"), a juristic person established as such in accordance with the laws of the Republic of South Africa, with its principal place of business at CCMA House, 345 Pretoria St., Pretoria Central, Pretoria.
- [4] The Third Respondent is the University of South Africa ("UNISA"), a university duly established in terms of the relevant provisions of the Higher Education Act² with its main campus situated at Prella Street, Pretoria, Gauteng Province

Relevant facts of the case

- [5] The Applicant was employed by the Third Respondent in October 2006 as a lecturer until the date of his dismissal on 26 July 2021.
- [6] The Applicant's dismissal was preceded by a disciplinary hearing convened by the employer where the Applicant was charged and found guilty of insubordination, incitement and breach of university policy
- [7] Having been found guilty of misconduct and dismissed, the applicant lodged an appeal against the verdict and sanction with the appeal committee of the university in terms of the university's internal rules governing appeal processes.
- [8] Following the due process of appeal, convened and carried out in terms of the policies of the university, the appeal committee confirmed the decision of the

² Act 101 of 1997, as amended.

chairperson of the disciplinary hearing in relation to both the guilt verdict and the dismissal sanction.

- [9] Following the confirmation of the disciplinary hearing outcome by the appeal committee, the applicant referred the matter to the CCMA, alleging that his dismissal by the university was substantively and procedurally unfair.

Proceedings before the CCMA

- [10] In setting the scene for the CCMA hearing, the commissioner correctly pointed out that his task in the proceedings was that of determining whether the applicant's dismissal was substantively and procedurally fair.
- [11] Professor O Kole, Acting Dean of the College of Law, who testified on behalf of the Third Respondent, informed the hearing that the applicant used the university's email communication system to inform the entire staff of the College of Law to boycott a gathering of the award ceremony of the College of Law.
- [12] He further testified that the Applicant replaced the published college agenda with his own agenda wherein he sought to replace the professor as programme director.
- [13] Professor Kole further testified that the late Professor Basdeo and the former reached out to the Applicant, seeking his co-operation, but the applicant refused to co-operate with them.
- [14] Professor Kole also testified that the circulation of email to members of the law college on 24 June and 13 August 2019 was a direct defiance of the directive and prohibition of email circulation to staff issued on 12 June 2019.
- [15] It was Professor Kole's testimony that the applicant's conduct as articulated above had resulted in damaging the relationship between the Applicant and the Third Respondent beyond repair
- [16] As regard the irretrievable breakdown of the relationship between the Applicant and the University, Professor Kole's testimony was corroborated by

Professor A. Sauromber, the Head of the Department of Criminal Law, who testified that his relationship with the Applicant, which was cordial prior to the applicant's dismissal, was damaged beyond repair following the applicant's refusal to surrender the university's tools of trade, including the laptop which needed to be repossessed and reassigned to another staff member.

[17] In his evidence, the Applicant admitted to having circulated emails to all members of the college, as alleged by the Third Respondent, on the following dates: 4 February 2019; 24 June 2019; 13 August 2019; 14 August 2019; and 28 November 2019.

[18] The main tenet of the Applicant's defence was that the emails he circulated were neither intended to address personal issues nor were they targeted at any specific individual.

[19] It was the Applicant's submission that there was mistrust in the college between colleagues and the college management; and that he was one of the people who voiced displeasure regarding the way the college was being run.

[20] The Applicant also made the following submission to demonstrate alleged procedural unfairness in relation to his dismissal:

20.1 that there was unreasonable delay in prosecuting him for the alleged misconduct

20.2 that certain charges against him were duplicated while others were even vague

[21] The Applicant also made the following submissions aimed at showing that his dismissal was substantively unfair:

21.1 that he did not attempt to replace the dean's programme with his own, as alleged, but that he only made some suggestions

21.2 that he did not defy the university authorities

21.3 that he did not instigate colleagues to boycott the meeting convened by the leadership of the college.

- [22] The Applicant also sought to rebut the assertion by members of the faculty who testified that the relationship between him and the university had irretrievably broken down. In this regard, he relied on Professor Basdeo's testimony which was allegedly adduced at the internal disciplinary hearing, where Professor Basdeo was quoted as having testified that the applicant could be rehabilitated. However, Professor Basdeo was already deceased when the matter served before the CCMA and as such could not testify.

Assessment of the evidence by the CCMA Commissioner

- [23] In assessing whether the applicant's dismissal was substantively fair, the commissioner quoted paragraph 51 of the judgment of this Court in the matter of *City of Johannesburg v Swanepoel NO and Others*,³ where this Court said:

"Insubordination is possibly a more serious offence because it presupposes an intentional breach by the employee of the duty to obey the employer's instructions. The Code requires that defiance must be 'gross' to justify dismissal. This means that the insubordination must be serious, persistent and deliberate, and that the employer should adduce proof that the employee was guilty of defying an instruction. This the Applicant succeeded in proving"

- [24] On paragraph 32 of the award, the commissioner asks the following question:

"In the present matter was the appellant or the applicant's conduct serious, persistent and deliberate?"

- [25] Having posed the above question, the commissioner answers the same question in the same paragraph by saying that after carefully weighing the evidence that was adduced, he is persuaded to accept that the answer to the aforesaid question should be in the affirmative.

- [26] The commissioner then listed the following reasons as the basis for his finding that the applicant's dismissal was substantively fair:

26.1 "It was common cause from the evidence that was adduced that the applicant had addressed an e-mail dated 4th February 2019 to the staff

³ See *City of Johannesburg v Swanepoel NO and Others* [2016] ZALCJHB 80; (2016) 37 ILJ 1400 (LC) at para 51.

of the College of Law. It is also apparent from the testimony of Professor Kole that the Deanery had reached out to the applicant with a view of ensuring that the applicant should refrain from sending emails to the entire staff of the College of Law and that the applicant had declined an invitation to have the aforesaid matter addressed at the Executive management committee meeting”

26.2 “It was also common cause that the Vice Chancellor Professor Makhanya had issued a directive dated the 12th of June 2019 to the staff and students. It was clear from the aforesaid directive that Professor Makhanya was deeply concerned regarding sending unsolicited and unauthorised communication to large groups of stakeholders. It was also evident from the directive that staff members... and students were urged to refrain from using the resources of the respondent improperly and/or for anything other than the purpose for which such resources were provided. The directive further recorded that the sending of such emails fosters an environment of lawlessness, conflict and confusion. It was also trite that his directive clearly stated that the respondent would no longer tolerate the conduct of sending unsolicited and unauthorised communication to large stakeholders.”

[27] Based on the findings stated in sub-paragraphs 30.1 and 30.2, the commissioner concludes on paragraph 32(d) as follows:

27.1 “I am persuaded to accept the respondent’s version, which was that the applicant’s conduct had amounted to insubordination and insolence because hardly two weeks after the directive was issued the applicant addressed an e-mail dated 24th June 2019 to the entire College of Law staff which is titled ‘college capture’. It is also clear that the entire College of law staff constituted the stakeholder that was referred to in the directive issued by Professor Makhanya.”

[28] In arriving at a conclusion that the applicant’s conduct was aimed at defying and undermining the authority of the employer, the commissioner cited the

Applicant's email circulated after Professor Basdeo's email of 13 August 2019, which instructed the applicant not to send the emails to the entire College of Law. In the email in question, the Applicant further claimed that the decision of EXCO to put the college under administration does not deserve their obedience or adherence.

- [29] As regards the applicant's intention to instigate the boycott of the college awards event scheduled for 19 December, the commissioner found that the fact that the university was able to demonstrate that on 28 November 2019, the applicant addressed an email to the entire staff of the College of Law and calling on them to boycott the event scheduled by the university proposed is sufficient for the commissioner to reject the applicant's version that he had no intention to organise a boycott of the event.
- [30] It is in the light of the above assessment of the evidence before the commissioner that he found that the applicant's dismissal was substantively fair.
- [31] As regards the issue of procedural fairness, the commissioner stated in paragraph 38 of the award that the applicant's version that the dismissal was procedurally unfair was not sustainable, as it lacked substance because the applicant was given sufficient time to prepare for his case and that he was legally represented at the hearing. The commissioner also asserted that it was common cause that this representative was afforded an opportunity to cross-examine the witnesses of the respondent and that the applicant was provided with an opportunity to state his case before he was dismissed.
- [32] In view of the above assertions, the commissioner concluded that he was satisfied on a balance of probabilities that the university had discharged the onus to show that the dismissal was procedurally fair.

Summary of grounds for review and assessments thereof

- [33] In his pleadings, the applicant raised the following grounds for review of the commissioner's award.

33.1 Legal representation

33.1.1 Applicant claimed that the commissioner erred by not allowing legal representation and further claimed that the commissioner failed to give reasons for his refusal.

33.1.2 It is trite that the commissioner has a discretion to decide whether legal representation is necessary depending on the complexity of the issues to be ventilated as well as the background of the parties who were to appear before him and came to the conclusion that since both the applicant and the third respondent's representative had law degrees, external legal representation was not necessary. The court is of the view that the commissioner's reasoning in this regard was sound.

33.2 Request for postponement

33.2.1 The applicant submitted that the commissioner erred by failing to grant a postponement when the application requested it.

33.2.2 It is also trite that the applicant was not entitled to a postponement as a matter of course. The commissioner has a discretion to determine whether circumstances on which a party rely in requesting postponement justify such postponement. If having considered all pertinent circumstances the commissioner is of the view that the request for postponement is justified, he may grant such postponement at his discretion. Refusal to grant postponement after applying his mind to the request does not constitute a reviewable irregularity as suggested by the applicant.

33.3 Failure to weigh transcript records

33.3.1 Applicant contends that the commissioner has committed an irregularity by failing to weigh the evidence of Professor Basdeo contained in the transcript of the internal disciplinary hearing.

33.3.2 It is trite that the hearing before the CCMA was a hearing de novo. While nothing prevents parties to agree on the status of the record of the internal disciplinary hearing prior to the commencement of the CCMA hearing, the record of the hearing cannot given prominence over the oral evidence adduced before the commissioner who is hearing the matter anew. It is in the hearing before him where he would be able to assess the probity of the

testimonies and to observe the posture of the witnesses and weight the credibility of the testimonies of witnesses appearing before him. Professor Basbeo did not testify at the arbitration hearing due to his untimely demise and as such could not be cross examined. While the commissioner is expected to assess all evidence before him and is entitled to peruse the record of the hearing, it would constitute a miscarriage of justice if he were to be swayed by evidence contained in the transcript at the point of giving it the weight higher than the testimony of persons who testified before him. Consequently, the court does not accept the argument that the commissioner committed irregularity in the way he dealt with Professor Basbeo's testimony.

33.4 Noncompliance with policy

33.4.1 Applicant submits that the university has violated its own policy by delaying charging him.

33.4.2 Indeed strictly speaking the university was required to discipline the applicant as soon after the commission of the offense as possible and at least within the time parameters stated in the policy. In looking closer into this case, it was clear that circumstances under which the offences were committed it would have seemed like a witch hunt to prosecute the applicant immediately after the first email. The management of the college were correct in attempting to secure the applicant's co-operation and thereby avoid an adversarial process when they thought that the matter could be resolved without rushing into an adversarial process. Unfortunately, the Deanery strategy did not work. In fact, the situation deteriorated, resulting in the disciplinary hearing taking place after the prescribed date. While violation of the policy by management should be frowned upon, the important consideration is whether the interests of the employee were violated or not and whether he suffered any prejudice as a result thereof. The court is of the opinion that the applicant has not demonstrated any prejudice suffered and as such disagrees with the view that the decision of the commissioner to hear a matter after the prescribed period constitutes an irregularity.

33.5 Excessiveness of the sanction

33.5.1 Applicant argues that the sanction of dismissal is excessive and unfair under the circumstances, asserting that he was a first offender and that his

offense was not serious enough to justify dismissal. He further argued that he would be an eligible candidate for rehabilitation.

33.5.2 It is clear from the facts of this case that the offenses committed by the applicant were very serious and that they nearly caused some disruption in the running of the college. The applicant himself does make a begrudging concession in his founding affidavit that his methods may have been reprehensible but seem to justify them by stating that his motives were noble given circumstances which prevailed at the college at the material time. The fact of the matter is that the running of the college would have been disrupted, resulting in lawlessness in the faculty of law, had his colleagues obeyed what he had directed. Despite repeated warnings by the Deanery and even the Vice Chancellor to refrain from his unacceptable conduct, the applicant was unrepentant. Moreover, at least two of his senior colleagues testified that applicant's relationship with the university had been damaged beyond repair. Given all of the above, this the court is of the view that the commissioner did not commit an irregularity by finding that a sanction of dismissal is a suitable one under current circumstances.

- [34] Having failed to persuade the CCMA Commissioner to reverse the finding of the UNISA appeal committee on the ground that the committee's finding of his dismissal was unfair, the applicant brought an application before this Court to review and set aside the CCMA Commissioner's award.
- [35] In his notice of motion, the applicant prayed for reinstatement without any loss of benefit as at the time that he was dismissed by UNISA.
- [36] The applicant further contended that he be paid the sum of back pay equivalent to the salary rate from the date of the dismissal to the date of the court order of this Court.
- [37] In the alternative, the applicant prayed that the arbitration award of the second respondent made under the auspices of the first respondent and a case number GATW13148-21, be reviewed, set aside and referred the arbitration dispute back to the first respondent for re-adjudication by a commissioner other than the second respondent.

- [38] Applicant further contended that the costs for the application be borne by any respondent who opposed the application.

Grounds for review

- [39] The applicant advanced the following grounds for review

- 40.1 “The first ground for review is that the Second Respondent committed gross irregularities in the conduct of the arbitration proceedings in that he failed to consider the nature of the questions of law raised by the dispute and the complexity of the dispute, the public interest and the comparative ability of the opposing parties or their representatives to deal with the dispute prior to arriving at his decision. The Second Respondent further failed to indicate and to provide reasons why he did not grant such application in the award despite such application being brought before him and deciding on the issue raised⁴.”
- 40.2 Applicant constructed the second ground for review in the following fashion: “the consideration of the transcript of the disciplinary inquiry proceedings juxtaposed to the evidence of the witnesses, the second respondent would have been placed in a better position to determine the weight to be given to particular testimonies, the probability of the testimony and the credibility of each witness. Furthermore, I am informed that it is in the interest of justice for such evidence to have been considered. However, the Second Respondent accorded it no weight whatsoever; the result of this being an unfair trial insofar as determining the fairness of the sanction imposed by UNISA is concerned.⁵”
- 40.3 Applicant’s third ground for review is that “the Second Respondent’s “failure to consider all evidence before him instead of only considering the evidence by UNISA despite a clear indication that UNISA was not consistent in applying its disciplinary policy leads to gross irregularity in the arbitration proceedings insofar as the Second Respondent’s

⁴ See paragraph 3.2.3 of Applicant’s affidavit.

⁵ See paragraphs 3.2.8-3.2.9 of Applicant’s Affidavit.

conduct is concerned. In fact, it is difficult to arrive at the conclusion the Second Respondent decided upon when considering the testimonies of all witnesses.⁶

Test for review

- [40] The test this Court must apply in deciding whether the arbitrator's decision is reviewable has been set out in *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others*⁷ ("*Sidumo*"). This groundbreaking Constitutional Court decision requires that, for the commissioner's decision to be reviewable, the court must satisfy itself that the decision made by the commissioner is one that a reasonable decision-maker could not reach. Put differently, the test set by the Constitutional Court is that, for the arbitrator's conclusion to survive the scrutiny of the reviewing court, the award must fall within the range of decisions that a reasonable decision-maker could make.
- [41] The test set by the Constitutional Court as stated in the above paragraph was affirmed by the Labour Appeal Court in *Gold Fields Mining SA (Pty) Ltd (Kloof Gold Mine) v CCMA and Others*.⁸ The significance of this Labour Appeal Court decision is that it protects arbitration awards from being easily set aside on review based on minor technical or process-related errors, provided that the arbitrator's outcome remains reasonable in the light of all the evidence that was before the arbitrator.
- [42] This means that on review, the court's enquiry does not end once it is established that the arbitrator committed a gross irregularity or misconceived the nature of the inquiry but further determines as to whether or not the arbitrator's findings nevertheless fall within the band of decisions a reasonable decision-maker could arrive at. In other words, the question is whether or not the arbitrator's misconduct renders the award unreasonable, considering the totality of the evidence that was before the arbitrator.

⁶ See sub-paragraph 3.2.14

⁷ *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others* [2007] ZACC 22; [2007] 12 BLLR 1097 (CC); 2008 (2) SA 24 (CC); (2007) 28 ILJ 2405 (CC); 2008 (2) BCLR 158 (CC) at para 110.

⁸ *Gold Fields Mining South Africa (Pty) Ltd (Kloof Gold Mine) v Commission for Conciliation, Mediation and Arbitration and Others* [2013] ZALAC 28; [2014] 1 BLLR 20 (LAC); (2014) 35 ILJ 943 (LAC).

Conclusion

[43] Since unreasonableness is the threshold for interference with an arbitrator's award on an application for its review, this Court finds that the applicant failed to establish unreasonableness, particularly given the material connection between the evidence before the arbitrator and the outcome.

[44] This Court is persuaded that the arbitrator's findings that the applicant's dismissal was substantively and procedurally fair fall within the band of decisions which a reasonable decision-maker could make.

[45] Having had regard to the totality of the evidence that was before the arbitrator, the award the arbitrator arrived at is therefore reasonable, in the light of the evidence before the arbitrator.

[46] Therefore, the application is dismissed.

[47] In the premises, the court makes the following order

Order

1. The application to review and set aside the arbitration award is dismissed.
2. The arbitrator's award under case number GATW1314-21 must stand.
3. There is no order as to costs

R Ramashia

Acting Judge of the Labour Court of South Africa

Appearances:

Applicant : K Lefaladi

Instructed by : Monyemorathoe Attorneys Inc

Third Respondent: : T Moneri

Instructed by : Ngeno & Mteto Inc

LABOUR COURT