



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

Signature

7 September 2026
Date

THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Case no: **C54/2024**

In the matter between:

PHUMEZA DINGINTO

Applicant

and

COMMISSION FOR CONCILIATION, MEDIATION

AND ARBITRATION

First Respondent

COMMISSIONER DEAN ISAACS N.O

Second Respondent

ETAFENI DAYCARE CENTRE TRUST (NPO)

Third Respondent

Heard: 2 September 2026

Delivered: 7 September 2026

Summary: An application to review and set aside an arbitration award that found the dismissal, on a single charge of gross dishonesty, of an employee on a final written warning for dishonesty, to be fair. No ground of review demonstrated.

JUDGMENT

GANDIDZE, J

Introduction

- [1] This is an application, in terms of section 145 of the Labour Relations Act¹ (LRA), to review and set aside an arbitration award, dated 29 December 2023 in case number WECT4306-23, which found that the dismissal of Phumeza Dinginto, the applicant herein, for gross dishonesty, was substantively fair. The alleged gross dishonesty concerned a failure to disclose information. The applicant insists that she was not dishonest as alleged and seeks an order substituting the award with an order that the dismissal was unfair, alternatively, an order remitting the matter to the Commission for Conciliation, Mediation and Arbitration (CCMA) for a fresh hearing.
- [2] The application was opposed by the applicant's former employer, Etafeni DayCare Centre Trust (NPO), hereinafter referred to as Etafeni or the employer, depending on the context.
- [3] On the set-down date, the parties approached the court in chambers, and Mr Manqina, for the applicant, informed the court that the matter should be removed from the roll because documents were missing from the record, so the missing portions could be reconstructed. He stated that the transcript was incomplete. This was foreshadowed in the applicant's Practice Note, which did not record that the matter would be removed from the roll for that reason. I expressed the prima facie view that this was not a valid reason to remove the matter from the roll on the hearing date, given that it was known when the record was filed that it was incomplete, yet a set-down date was requested. I maintain that view.
- [4] Mr Guy, for Etafeni, advised that a few pages were not part of the review record and that he wished to upload them to Caselines. The matter was stood down for that purpose. When perusing the record for the purposes of preparing the judgment, the documents uploaded by Mr Guy were already part of the record.

Condonation

¹ Act 66 of 1995, as amended.

- [5] The review application was filed 21 days late, and condonation for the delay was sought. The explanation for the delay was that, after the award was issued on 29 December 2023, the applicant approached her insurer, Legal Wise, in January 2024 for approval to file a review application against the award. In the same month, her attorneys, who had represented her during the arbitration proceedings, also wrote to Legal Wise requesting approval to file a review application. This approval was granted at the end of January 2024, but the applicant was unavailable to sign the affidavit because she had travelled to the Eastern Cape to assist her mother, who had suffered a stroke. Upon her return, she signed the affidavit in March 2024, and the review application was filed.
- [6] A three-week delay is neither minimal nor excessive. The explanation for the delay is reasonable, even though dates have not been provided. It is in the interests of justice that the review application be disposed of on its merits, an issue addressed below. Therefore, condonation will be granted.

Background

- [7] The applicant is a former employee of Etafeni, a non-profit organisation that provides a safe space for children in the community and a support system for mothers. Etafeni cares for about 100 children. The applicant was employed as an early childhood development (ECD) principal, coordinator and Grade R teacher. At the time of her dismissal in February 2023, she had 17 years' service with Etafeni.
- [8] The incident that led to the applicant's dismissal was the Department of Health's (DoH) vaccination of the children at Etafeni, where the applicant is the principal, against measles on 7 February 2023. The employer alleged that the applicant had been grossly insubordinate in allowing the children to be vaccinated without obtaining consent from the parents, the Director, Ms Nontombi Buthelezi (Buthelezi), or the Trustees of Etafeni, who are the custodians and guardians of the children. The second charge was bringing Etafeni into disrepute by vaccinating the children without proper consent, and that this had damaged or had the potential to damage Etafeni's reputation. The third charge was that the applicant was grossly dishonest in an email

dated 9 February 2023, to Buthelezi, in which she created the false impression that the vaccinations still had to be administered, even though the children had already been vaccinated on 7 February 2023.

- [9] She was found guilty on all charges and dismissed. She challenged her dismissal at the CCMA.

The arbitration proceedings

- [10] Buthelezi gave evidence for the employer, and the applicant gave evidence in her own defence.
- [11] The commissioner found the applicant not guilty of gross insubordination or of bringing Etafeni into disrepute, reasoning that there was no evidence that the applicant was aware that she was required to obtain the permission of the Director and the Trustees of Etafeni before the children could be vaccinated, and that no document or written policy set out the protocol for obtaining parental permission for the children to be vaccinated. As no cross-review was filed in the matter, those findings stand.
- [12] However, the applicant was found guilty of gross dishonesty. The sequence of events relating to that finding can be summarised as follows.
- [13] On Friday, 3 February 2023, the applicant emailed Buthelezi about the DoH vaccination campaign, which was set to begin on Monday, 6 February 2023. At the time, Buthelezi was out of the office and only saw the email on Sunday, 5 February 2023.
- [14] On Monday, 6 February 2023, Buthelezi responded to the applicant, explaining the protocol that ought to have been followed, requesting further information and stating that, on receipt of the information, the trustees would sign off.
- [15] Due to other work commitments, the applicant did not read Buthelezi's e-mail until the evening of 8 February 2023. By then, the Etafeni children had already been vaccinated on 7 February 2023.
- [16] On 9 February 2023, the applicant replied to Buthelezi's email. She did not state that the vaccinations at Etafeni had already been completed.

- [17] However, later that day, Buthelezi saw on Facebook pictures of the Etafeni children being vaccinated on 7 February 2023. The employer took the view that, in the email to Buthelezi, the applicant had been grossly dishonest about a serious matter by implying that the children must still be vaccinated, even though they had already been vaccinated. The commissioner accepted that version and upheld the dismissal for gross dishonesty.
- [18] In finding the applicant guilty of gross dishonesty, the commissioner reasoned that the email of 6 February 2023 made it clear that Buthelezi was communicating expectations regarding the vaccine campaign, namely that the Trustees must sign off on the campaign before the children are vaccinated. However, in her response on 9 February 2023, the applicant made no mention of the vaccine campaign having been completed. Instead, she stated, 'I hear you very well, hence I was start hearing from the nurses and sent you the email pertaining this campaign. I will contact Sr. Doda to send written detailed information about the campaign.'(sic). The commissioner accepted that the applicant's email of 9 February 2023 implied that the children's vaccination had not yet commenced and that detailed information about the process would be sent to Buthelezi. The commissioner found that the applicant could have disclosed that the vaccination had already been completed and asked for the way forward. The commissioner found the applicant's email to be intentional, misleading, and hence dishonest. The commissioner also found that the applicant's explanation for failing to disclose that the vaccinations had already been administered was vague and unconvincing.
- [19] Thereafter, the commissioner recorded that, as the person in charge of the school, the applicant was expected to conduct herself with honesty and integrity, but that she had misled the director and the trustees, thereby showing that she could not be trusted as required by the employer.
- [20] In determining the appropriate sanction, the commissioner considered the seriousness of the misconduct and the applicant's prior final written warning for serious misconduct. That warning was for selling preschool uniforms without authorisation, ignoring instructions to hand over school fees the applicant had collected, and fabricating a version of the misconduct. The

recommended sanction was dismissal, but the employer opted to issue a final written warning instead.

The grounds for review

- [21] On review, the applicant submits that the commissioner committed a gross irregularity by failing to properly consider the evidence and merely accepting the evidence or version presented by the employer. The submission further is that the commissioner failed to consider that the email of 9 February 2023 was not misleading, as the applicant's understanding was that the employer was aware of the measles vaccination date of 7 February 2023, that the Western Cape Education Department's vaccination consent forms had been duly completed and signed by the parents of the children, and that the employer never requested that the vaccination be halted. The applicant provided a reasonable explanation for her email, and the commissioner failed to consider it. Accordingly, the commissioner ought to have found the applicant not guilty of this charge, for lack of evidence. Instead, the applicant was found guilty without any verbal or written evidence to support the charge.
- [22] Another submission was that the employer had no rule or standard in place, or that the applicant was unaware of any rule. Yet the Commissioner drew his own conclusions and inferences, finding that the applicant could not be trusted to meet the expectations of honesty.
- [23] The final ground is that, despite being aware of the nature of the dispute, the background and the evidence, the commissioner failed to apply his mind to the evidence, ignored relevant material evidence, fabricated false assumptions and impressions without any corroborating evidence, misconstrued material evidence, committed gross errors of law and/or fact, committed irregularities, took into account irrelevant factors and evidence, ignored relevant factors and evidence, and reached an unreasonable decision.

Discussion of the grounds for review

- [24] In review applications, such as the present one, the trite test, as set out in *Sidumo & Another v Rustenburg Platinum Mines Ltd & Others*², is whether the outcome is one no reasonable decision-maker could reach. The applicant's challenge to the award must be assessed against this test.
- [25] As recorded earlier in the judgment, the transcript of the arbitration proceedings is incomplete. Until the hearing date, the applicant consciously decided to have the application heard on the filed record. The applicant wisely instructed her legal representatives to proceed with the application, as no valid reason had been provided to remove the matter from the court roll.
- [26] It is common cause that the applicant e-mailed Buthelezi on 3 February 2023 regarding the DoH's measles vaccination campaign. Buthelezi read the applicant's e-mail on Sunday 5 February 2023 and responded as follows:

‘Good morning Phumeza

Thank you for the information.

The protocol is that whenever someone comes to Etafeni with matters pertaining to the children, our programmes or campaigns that person first has to speak with the Director. The sister was supposed to speak to me first about this more especially that this is a measles vaccination campaign and it needs to be sign off by both myself and the trustees. Although these vaccinations are generally safe, some children can have side effects hence the trustees have to be knowledgeable about this.

Will you please inform this Sister from the Nyanga Clinic to send me written notification of this. Once I received it, I will speak with the trustees. In future, please anything pertaining to the ECD whether it'd visitors, programmes, food and so forth must come via me first. Last week I also heard that you went to collect food donations and I was not aware of that. This then becomes a problem for us as all items donated have to be signed in as donations in kind by the fundraising office.

² (2007) 28 ILJ 2405 (CC), and the several case authorities that both parties cited in their heads of argument.

PS: We always have to play it safe as some children can be allergic to something in the vaccine itself and can get sick. Hence we always have to cover ourselves.

Kind regards
Nontombi Buthelezi
Director'

- [27] When the applicant read this e-mail late in the day on 8 February 2023, the children of Etafeni had already been vaccinated on 7 February 2023. Knowing this, she responded to Buthelezi's e-mail on 9 February 2023, and stated as follows:

'Good morning sis Nontombi.

Thank you for your response. I hear you very well, hence I was start hearing from the nurses and sent to you an e-mail pertaining this campaign. I will contact sister Doda to send written detailed information about the campaign. As soon as she respond I will let you know.

For food parcel is the continuation from the last years we receive and I was forwarded a voice note talked about the food parcel and ask permission from you. Mandy took pictures for those parcels. This whole this it came via the chairperson of Nyanga forum. Each center receives two food parcels. I thought you will remember. My apologies to... they came and delivery then I told them I need to speak with you first because the money involve for their delivery which center contributed R70.00 for transportation.

Once again my sincere apologies for both what happened and all came in a busy time and I take note from now on moving forward.

Regards'

- [28] The nub of the applicant's case is that her email of 9 February 2023 was not misleading, and that the commissioner's finding that it was is one no reasonable decision-maker could reach.

- [29] The award records that the applicant testified that Buthelezi's email concerned 'donations' rather than vaccinations. The commissioner correctly rejected the version. A reading of the emails in question shows they were about measles vaccinations. The subject of those emails is '*Measles Vaccination Campaign*'. The only thing Buthelezi said about donations was that '*Last week I also*

heard that you went to collect food donations and I was not aware of that. This then becomes a problem for us as all items donated have to be signed in as donations in kind by the fundraising office.' The donations issue was raised to bolster that allegation that the applicant was acting without informing Buthelezi. The '*donations*' version given by the applicant was further evidence of continued dishonesty.

- [30] In these proceedings, it is submitted that when the applicant read Buthelezi's e-mail, she believed Buthelezi was merely requesting additional information, not that Buthelezi wanted the vaccination to be stopped. Buthelezi's e-mail was reproduced above. Although she knew about the vaccination campaign, she made it clear that she required written notification from the sister, after which she would speak to the trustees to 'sign off' because this was required before the vaccination could proceed. The vaccination did not have to be stopped because it had not yet started until the trustees signed off on it. Buthelezi was not informed that the Etafeni children would be vaccinated on 7 February 2023.
- [31] Instead of coming clean and disclosing that the children had already been vaccinated, the applicant said nothing until Buthelezi discovered the information on the Etafeni Facebook page.
- [32] The fact that Buthelezi referred to the procedure that should have been followed and that she referred to what should happen in future did not mean that the vaccination could proceed without the trustees' sign-off. This is precisely why the applicant should have informed Buthelezi that the vaccination was completed and asked for the way forward, as found by the commissioner.
- [33] That the applicant understood Buthelezi's e-mail is evident from the e-mail she sent to the sister on the same day, acting on Buthelezi's instructions. She informed the sister that Buthelezi required full information about the campaign. She went further and stated that 'According to her is stating that before anything happens in premises should been notify so that she can approve go ahead with all the process'. (sic). The statement is not ambiguous. It proves that the applicant intentionally omitted important information in her response

to Buthelezi, namely that the vaccination had already been completed, thereby constituting deceit by omission.

- [34] The submission that the applicant never intended to deceive anyone, and that there appears to have been a misunderstanding of the intent or meaning of the correspondence between the applicant and Buthelezi, was correctly rejected by the commissioner. All that was required of the applicant was to disclose that the children had already been vaccinated. She did not have to be asked whether the vaccinations had been completed. Her intentional failure to disclose that the vaccinations had been completed, in the face of an e-mail requiring further information before the trustees could sign off on the vaccinations, constituted dishonesty.³ The conduct was indefensible.⁴
- [35] It is also worth noting that, although it was submitted that there was a misunderstanding regarding Buthelezi's e-mail, it was also submitted that the applicant apologised for 'both what happened', because she knew that the vaccination had already taken place. Buthelezi testified that she did not know the apology was due to the vaccination having already been completed, as this was not disclosed. If the applicant was apologising for the completed vaccinations, she should have said so. Her failure to disclose this fact was dishonest.
- [36] It was also submitted that Buthelezi misunderstood the applicant's response to her e-mail. This submission lacks substance. The applicant's heads of argument correctly submit that the applicant 'never said the vaccination had not taken place'. It was the failure to disclose that constituted dishonesty. It did not escape the court's attention that, during Buthelezi's cross-examination, it was put to her that, when she sent the applicant the e-mail on 6 February 2023, the vaccination had already taken place. That version turned out not to be true, because the vaccinations happened on 7 February 2023, after Buthelezi's e-mail, although the applicant did not read the e-mail until 8 February 2023.

³ *Nedcor Bank Ltd v Frank & Others* (2002) 23 ILJ 1243 (LAC); *Association of Mineworkers and Construction Union on behalf of Tlhaganyane v Beesnaar NO and Others* (2023) 44 ILJ 2210 (LC).

⁴ See *Toyota SA Motors (Pty) Ltd v Radebe & Others* (2000) 21 ILJ 340 (LAC) para 26.

- [37] The fact that Mandy took pictures of the vaccination on 7 February 2023 does not mean that the applicant was not dishonest in her response to Buthelezi's e-mail of 9 February 2023. The applicant ought to have disclosed that the vaccination had already taken place and that Mandy had photographed it. She informed Buthelezi that Mandy had taken pictures of the food parcels and could have added 'and the vaccination campaign'. She deliberately omitted this information by providing what the commissioner reasonably found to be a vague response. The vagueness was intentional. Buthelezi had to discover for herself that the vaccination was complete by visiting the Etafeni Facebook page. Mr Guy correctly submitted that, instead of taking responsibility, the applicant 'fobbed it off'.
- [38] After Buthelezi learnt from the Facebook page that the Etafeni children's vaccination had already been completed, she requested that the applicant explain herself. The absence of the applicant's explanation from the record until her suspension supports the conclusion that she intentionally concealed the information.
- [39] The submission that the commissioner ought to have found the applicant not guilty of dishonesty due to a lack of evidence, and instead found the employee guilty without any verbal or written evidence to support the charge, overlooks the fact that the emails exchanged between Buthelezi and the applicant were placed before the commissioner. Those emails were the written records of the misconduct. In addition, Buthelezi provided oral evidence by testifying about those emails.
- [40] The commissioner's finding that she was guilty of dishonesty in the email and in the explanation she provided for her email of 9 February 2023 cannot be faulted.
- [41] Yet another submission was that the employer had no rule or standard, that the applicant was unaware of any such rule, and that the Commissioner drew his own conclusions and inferences, finding that she could not be trusted to meet the expectations of honesty. The rule on dishonesty is well known, and employees can reasonably be expected to know it. The applicant's position was worse because she was already on a final written warning for dishonesty

and would therefore have known that one wrong move would put her job at risk. This was her motivation for concealing facts she ought to have disclosed, as Mr Guy submitted. Despite not challenging the final written warning, the applicant insisted that she was not guilty of the misconduct that led to it.

- [42] An employer cannot be expected to retain on its payroll a dishonest employee who is a repeat offender and shows no contrition. Continued employment is intolerable in such a case, as enunciated in *Carter v Value Truck Rental (Pty) Ltd*⁵, which Mr Manqina relied on. Buthelezi also testified that the employment relationship could not continue because the applicant could not be trusted. It is reasonable that even 17 years' service could not save the applicant's job. It cannot be said that the commissioner's decision to uphold the dismissal was one that no reasonable decision-maker could reach, thereby justifying this court's interference with the outcome on review.
- [43] The applicant's papers in the review application suggest that neither the first nor the second disciplinary process could have been fair, as the chairperson of both hearings was Etafeni's legal representative. The argument was not pursued in the heads of argument. In any event, the award was issued by a CCMA commissioner, who is entirely independent of Etafeni.
- [44] The decision in *Moen v Qube Systems (Pty) Ltd & Others*⁶, relied upon in support of the applicant's case, was decided on its own facts, namely the way the charges against the appellant in that matter were formulated as found by the court. The employee in that matter was a director who received information to which he was, in any event, entitled. All he needed to do was inform his co-directors that he was receiving the information, but he did not. This is very different from what the court is concerned with in this current application. In addition, the employee in the cited authority was not on final written warning for dishonesty, as was the applicant.
- [45] The applicant also states that the DoH vaccination consent forms were duly completed and signed by the parents, and that the employer never requested that the vaccination be halted. These submissions are repeated in the

⁵ (2005) 26 ILJ 711 (SE).

⁶ (2017) 38 ILJ 2712 (LAC).

applicant's heads of argument. They relate to the other two charges for which the applicant was found not guilty and are irrelevant to the charge for which she was found guilty, even if all charges arise from the same incident.

[46] The court has been unable to engage with the other grounds of review, which are broadly stated, including the commissioner's failure to take into account relevant evidence and the inclusion of irrelevant evidence.

[47] Taking all the material placed before the commissioner, the award is not one that a reasonable decision-maker could not reach⁷. It stands.

Costs

[48] The parties made no submissions on costs. An order in accordance with the requirements of law and fairness, as contemplated in section 162 of the LRA, is that each party bear its own costs.

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

Order

1. Condonation for the late filing of the review application is granted.
2. The review application is dismissed.
3. Each party pays its own costs.

T. Gandidze

Judge of the Labour Court of South Africa

⁷ This test is not that the award should be so unreasonable that no reasonable decision-maker could reach it, as submitted in the third respondent's heads of argument.

Appearances:

For the Applicant
Instructed by

Advocate A Manqina
Parker Attorneys

For the Respondent
Instructed by

Mr B Guy
Guy and Associates

LABOUR COURT