

SOUTH AFRICA / JUDGMENT

Capitec Bank Ltd v Commission for Conciliation, Mediation and Arbitration (JR1746/19) [2022] ZALCJHB 166 (22 June 2022) [2022] ZALCJHB 166

COURT

Labour Court Johannesburg

BEFORE

Searle AJ

CASE / FILE NUMBER

JR1746/19

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THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: JR1746/19

In the matter between:

CAPITEC BANK LTD

Applicant

and

COMMISSION FOR CONCILIATION, MEDIATION First Respondent

AND ARBITRATION

J NGOBEN N.O.

Second Respondent

NOMUSA THERESA MTSUKI-MAHLANGU Third Respondent

Heard: On the papers.

Date Delivered: 22 June 2022 (In view of the measures implemented as a result of the Covid-19 pandemic, this judgment was handed down electronically by circulation to the parties' representatives by email. The date for hand-down is deemed to be on 22 June 2022)

Judgment

SEARLE, AJ

Introduction

- [1] This is an application in terms of section 145(1) of the Labour Relations Act[1] (LRA) to review and set aside the arbitration award issued by the Second Respondent (Commissioner) under the auspices of the First

Respondent, the Commission for Conciliation, Mediation and Arbitration (CCMA), on 30 July 2019 under case number MP1719-19 (Award).

- [2] The Award relates to an alleged unfair labour practice claim referred by the Third Respondent (Ms Mahlangu) against the Applicant (Capitec) to the CCMA concerning alleged unfair treatment relating to demotion in terms of section 186(2)(a) of the LRA.
- [3] The Commissioner found in his Award that Capitec had subjected Ms Mahlangu to an unfair labour practice relating to demotion when it moved her from the position of Key Accounts Manager for public sector clients at a national level to Regional Manager for Mpumalanga and ordered Capitec to reinstate Ms Mahlangu to her previous position of Key Accounts Manager.
- [4] Capitec has applied to this Court to review and set aside the Award on the grounds that the Commissioner allegedly committed gross irregularities in the conduct of the arbitration proceedings and came to a decision that no reasonable decision-maker could have come to based on the evidence that served before him.

Arbitration in the CCMA

- [5] Ms Mahlangu referred her unfair labour practice dispute to the CCMA on 4 March 2019. The dispute was arbitrated before the Commissioner on 8 and 18 July 2019. Ms Mahlangu testified on her own behalf. Ms Mahlangu did not call any other witnesses. Mr Willie Horn, Head of Workplace Banking, testified on behalf of Capitec. Mr Horn was Capitec's only witness.
- [6] The material facts described below were, for all intents and purposes, common cause (or undisputed) at the arbitration.
- [7] Ms Mahlangu was appointed by Capitec on 2 May 2006 in the position of Sales Manager based in Nelspruit.
- [8] On 9 March 2011, Ms Mahlangu received a letter of promotion from Capitec confirming her promotion to the position of Business Manager: Sales based in Mpumalanga. In this position, Ms Mahlangu was responsible for selling Capitec's products to public and private sector clients in Mpumalanga.

- [9] On 30 April 2015, Ms Mahlangu received a letter from Capitec confirming that her job title would change to Key Accounts Sales Manager with effect from 1 June 2015 and that the remainder of her terms and conditions of employment would remain unchanged. At this stage, Ms Mahlangu reported to the Provincial Manager for Mpumalanga.
- [10] During approximately March 2016, Ms Mahlangu's role of Key Accounts Sales Manager for Mpumalanga was split into a new role of Key Accounts Manager for national public sector clients and the role of Regional Manager for Mpumalanga.
- [11] Pursuant to the above, Ms Mahlangu was moved by Capitec to Gauteng in order to develop business relationships with public sector employers whose head offices were located in Gauteng. In this position,

Ms Mahlangu reported to the Provincial Manager for Gauteng.

- [12] During her tenure as Key Accounts Sales Manager for Mpumalanga, Ms Mahlangu had formed strategic relationships with public sector clients, particularly the Department of Public Service and Administration and the Department of Correctional Services. The rationale for appointing Ms Mahlangu as the Key Accounts Manager responsible for public sector clients on a national basis was to leverage off her ability to "open doors" for Capitec with public sector clients at a national level. Once Ms Mahlangu had opened the "main account" of the relevant public sector employer at a national level, Capitec's Regional Managers would then open accounts for those clients and their employees at a regional or local level.
- [13] By the end of 2018, Ms Mahlangu's position of Key Accounts Manager in the public sector did not achieve the "traction" that Capitec had hoped it would. Capitec considered that it was more effective for Regional Managers and their sales teams to approach public sector clients directly on a regional and local basis.
- [14] On 3 December 2018, Ms Mahlangu was contacted telephonically by Mr Horn who informed her that Capitec had decided to declare her position of Key Accounts Manager redundant and to rather market products to public sector clients on a local and regional (as opposed to national) level. Mr Horn further informed Ms Mahlangu that Capitec wanted to continue to use her skills in the position of Regional Manager: Workplace Banking for Mpumalanga which had become vacant. Mr Horn again confirmed the above information in an email to Ms Mahlangu dated 4 December 2018. In his email, Mr Horn further stated to Ms Mahlangu that "should you feel that this role is not for you, please indicate in which role you would prefer to operate in [sic], knowing that there currently may not be a vacancy in that specific role".
- [15] Ms Mahlangu initially refused to accept her change in position. Thus, on 14 December 2018, Mr Horn sent a further email to Ms Mahlangu stating, inter alia, that "you are going to be transferred to a different position (Regional Manager Workplace Banking Mpumalanga that has the potential for you to earn more than you do now. I wanted to know from you if there

is [sic] any other alternatives that you want me to consider before your transfer, since you did not provide me with alternatives I will inform you of the details of the transfer in due course”.

[16] Ms Mahlangu continued to refuse to accept the change in her position. To that end, Ms Mahlangu sent an email to Mr Horn on 29 January 2019 in which she contended, inter alia, that:

16.1 Capitec had not consulted her regarding the change in her job;

16.2 Capitec had unilaterally decided to “tamper with [her] employment”; and

16.3 Capitec had not provided her with a list of, or the opportunity to choose, any alternative position besides that of Regional Manager: Workplace Banking for Mpumalanga.

[17] Notwithstanding the above, Ms Mahlangu ultimately agreed to her transfer to the position of Regional Manager: Workplace Banking for Mpumalanga with effect from 1 March 2019.

[18] With respect to remuneration, according to Mr Horn, Ms Mahlangu’s salary band as a Regional Manager: Workplace Banking was “a little bit higher” than her previous salary band as a Key Accounts Manager. Ms Mahlangu also had the prospect of earning commission as a Regional Manager which she did not have as a Key Accounts Manager.

[19] With respect to organisational hierarchy, the positions of Regional Manager and Key Accounts Manager are both ranked by Capitec as “Lower D Level” positions.

[20] With respect to the relevant reporting lines, the Regional Manager position has approximately 10 direct reports comprising of Sales Representatives and Sales Consultants (and no indirect reports). The Key Accounts Manager position has no direct or indirect reports but is required to supervise and co-ordinate Capitec’s various regional teams and sales support team members.

[21] In relation to status, according to Mr Horn, Ms Mahlangu’s Key Accounts Manager role required her to “influence strategy” and to “open doors” with public service clients at a “national level”. Ms Mahlangu’s new role of Regional Manager requires her to “open accounts” for private and public service clients in Mpumalanga. According to Mr Horn, this change in responsibilities did not mean that Ms Mahlangu’s new role of Regional Manager was any “more or less significant or more or less junior” than her role as Key Accounts Manager.

[22] Ms Mahlangu’s previous role as Key Accounts Manager for public service clients at a national level remains redundant and has not been filled by Capitec.

Arbitration Award

[23] Based on the above evidence, the Commissioner made the following salient findings in his Award:

“35. There is undisputed evidence that while the applicant worked as Key Accounts Manager: Public Service interacted [sic] with the employers (the Department of Public Service and Administration and the Department of Correctional Services) at a national level. The applicant in her current position of Regional Manager interacts with her Branch colleagues.

36. Horn’s testimony that the applicant moved to a parallel position is unsustainable. My decision is informed by the fact that whilst Key Accounts Manager she [the applicant] worked nationally with people outside her company. In the current position, she deals with internal employees. It is not plausible that the employee in a position of of similar status moved from entertaining clients at a national level to managing employees internally”.

[24] With respect to remuneration, the Commissioner found that:

“40. Horn’s contention that the applicant’s remuneration not adversely affected [sic] does not take the matter any further. The applicant was clear that the basis of her complaint was not salary but the change in responsibilities”.

[25] The Commissioner therefore concluded as follows:

“1. I find that the conduct of the respondent, Capitec Banking Ltd, in moving the applicant, Nomusa Mtsuki-Mahlangu from Key Accounts Manager amounts to demotion.

2. I find the demotion substantively unfair.
3. I order the respondent, Capitec Banking Ltd, to reinstate (retrospectively) the applicant, Nomusa Theresa Mtsuki-Mahlangu to her Key Accounts Manager position on or before 15 August 2019”.

Test on review

[26] The threshold to be met in review applications is a test of reasonableness as established by the Constitutional Court in *Sidumo* and another v *Rustenburg Platinum Mines Ltd* and others[2]. In respect of the reasonableness test, the question to be asked by the review court is whether the decision reached by the arbitrator is one that a reasonable decision-maker could not reach.

[27] In *Heroldt v Nedbank Ltd*[3] the Supreme Court of Appeal (SCA) emphasised the following regarding the review test established by the Constitutional Court in *Sidumo*:

"That test involves the reviewing court examining the merits of the case “in the round” by determining whether, in the light of the issues raised by the dispute under arbitration, the outcome reached by the arbitrator was not one that could reasonably be reached on the evidence and other material properly before the arbitrator....The reasons are still considered in order to see how the arbitrator reached the result. That assists the court to determine whether that result can reasonably be reached by that route. If not, however, the court must still consider whether, apart from those reasons, the result is one that a reasonable decision maker could reach in the light of the issues and the evidence”.[4]

[28] In Herholdt[5], the SCA then summarised the review test as follows:

“In summary, the position regarding the review of CCMA awards is this: A review of a CCMA award is permissible if the defect in the proceedings falls within one of the grounds in s 145(2)(a) of the LRA. For a defect in the conduct of the proceedings to amount to a gross irregularity as contemplated by s 145(2)(a)(ii) the arbitrator must have misconceived the nature of the inquiry or arrived at an unreasonable result. A result will only be unreasonable if it is one that a reasonable arbitrator could not reach on all the material that was before the arbitrator. Material errors of fact, as well as the weight and relevance to be attached to particular facts, are not in and of themselves sufficient for an award to be set aside, but are only of any consequence if their effect is to render the outcome unreasonable”.

[29] More recently, in *National Union of Mineworkers and Another v Rustenburg Platinum Mine (Mogalakwena Section) and Others*[6] the Labour Appeal Court (LAC) stated that:

“[27] A reasonable award is not necessarily a right or correct award. As long as it falls within the range of reasonable decisions that could be made based on the evidence before the decision-maker, there would be no reason to set the award aside. The reviewing court should always guard against substituting its views for those of the decision-maker. It is pre-eminently the task of the CCMA or Bargaining Council commissioners to determine the fairness or otherwise of the dismissal. Commissioners are not expected to give awards that are akin to judgments of the Supreme Court of Appeal or the Constitutional Court. Awards are not meant to be perfect or satisfactory in all respects. The mere fact that an award is unsatisfactory in one or more respects does not mean that it is

unreasonable.

[28] When analysing an award, the reviewing court must look at all the material that was before the commissioner and not only the reasons given by the latter in the award. Where the material before the commissioner shows that there are other reasons, except those mentioned by the commissioner, which render the award reasonable, the reviewing court must consider such evidence.”

Grounds of review

[30] Capitec appears to have based its review application on four purported grounds, namely that the Commissioner “acted unreasonably” by:

30.1 failing to understand or apply his mind to relevant evidence including that:

30.1.1 Ms Mahlangu was never appointed to a Regional Manager position. Instead, the evidence showed that the move from Business Manager: Sales to Key Accounts Manager was not a promotion but merely a change in title;

30.1.2 Ms Mahlangu’s previous position of Key Accounts Manager was on the same level and carried the same status as her current position of Regional Manager which is further supported by the fact that Ms

Mahlangu had the potential to earn higher remuneration as a Regional Manager than she did as a Key Accounts Manager;

30.1.3 Ms Mahlangu's role as Key Accounts Manager had not yielded the impact and results required by the business.

30.2 relying on subjective speculation in finding that it was suspicious that Ms Mahlangu's Key Accounts Manager position was declared redundant while three other Key Account Managers still remain in service after the initial footprint had been created;

30.3 finding that Ms Mahlangu's transfer from Key Accounts Manager to Regional Manager constituted a demotion; and

30.4 exceeded his powers by ordering Capitec to reinstate Ms Mahlangu into a position that no longer exists.

[31] Each of these purported grounds of review is addressed below.

Commissioner's alleged failure to understand or apply his mind to relevant evidence

[32] Capitec contends that the evidence showed that Ms Mahlangu's move from Business Manager: Sales to Key Accounts Manager in 2015 was not a promotion but merely a change in title. This contention is irrelevant to the dispute that the Commissioner was required to determine. The relevant chronology began in March 2016 when Ms Mahlangu's role of Key Accounts Sales Manager for Mpumalanga was split into a new role of Key Accounts Manager for national public sector clients and the role of Regional Manager for Mpumalanga.

[33] Ms Mahlangu assumed the role of Key Accounts Manager for the public sector in 2016 and she was moved to Gauteng to perform this role in order to be closer to the relevant government head offices. Moreover,

Mr Horn testified that the Regional Manager position to which Ms Mahlangu was transferred in 2019 is substantially the same position

that she previously occupied under the title Sales Manager New Business for Mpumalanga. Therefore, the question before the

Commissioner was whether Ms Mahlangu's transfer to Key Accounts Manager for the public sector in 2016 constituted a promotion and, ipso facto, whether her subsequent transfer to Regional Manager for Mpumalanga in 2019 constituted a demotion.

[34] It is clear from the evidentiary analysis at paragraphs 35, 36 and 40 of the Award that the Commissioner reasoned that the status of Ms Mahlangu's previous Key Accounts Manager position was greater than that of her new Regional Manager position.

- [35] The Commissioner reached this conclusion despite evidence that the Key Accounts Manager position had no reports, slightly lower remuneration and was on the same occupational level (Lower D Level) as the Regional Manager position. In doing so, the Commissioner considered that Ms Mahlangu's concern was not with her remuneration or occupational level, but rather with her alleged reduction in status in the organisation.
- [36] In this regard, it was not in dispute that Ms Mahlangu's Key Accounts Manager role required her to "influence strategy" and to "open doors" with public service clients at a "national level". Ms Mahlangu's subsequent role of Regional Manager requires her to "open accounts" for private and public service clients in Mpumalanga.
- [37] The strategic footprint, responsibilities, exposure and influence of Ms Mahlangu's Key Accounts Manager position were 'national' in nature and targeted commercial relationships with the highest levels of government. By contrast, the duties, footprint, and customers associated with the Regional Manager position were provincially (and locally) curtailed.
- [38] The question of Ms Mahlangu's effectiveness in the role of Key Accounts Manager for the public service (and the possible redundancy of that position) was not relevant to the issue of whether or not Ms

Mahlangu was demoted in 2019 and whether the demotion was implemented fairly. That said, the redundancy of the position is relevant to the question of the appropriateness of the relief ordered by the Commissioner. That is an issue to which we return later in this

judgment.

- [39] However, for the above reasons, I do not find fault with the Commissioner's reasoning that Ms Mahlangu's status in the organisation was reduced when she was moved from the position of Key Accounts Manager for the public service to Regional Manager for Mpumalanga. As for the significance of that finding, in *Van Wyk v Albany Bakeries Ltd and others*[AA1] [7], the Labour Court stated that:

"A demotion has therefore less to do with the demoted employee's salary. It would seem the reduction of salary is only a secondary factor, the primary and decisive factor being the reduction in rank, position or status of the employee concerned."

- [40] Similarly, in *Taylor v Edgars Retail Trading*[8] the Industrial Court referred to the concept of demotion, as formulated by Scoble[9] as follows:

"Where a servant is employed to perform a particular class of work and contracts to perform work of a particular character, is thereafter instructed to perform work of a more menial nature, he may be said to have been degraded in his status, and as such action by his employer may in certain circumstances be regarded as tantamount to dismissal."[10]

[41] The above dictum was cited with approval in *Matheyse v Acting Provincial Commissioner, Correctional Services and others*[11]. In *Matheyse* (supra) the Labour Court further elaborated on the issue of demotion and stated:

“In a series of decisions (which predated the LRA) the civil courts have gone further and applied a wider definition to the concept of demotion in the labour relations context, holding that it applies even where employees retain their salaries, attendant benefits, and rank, but have suffered a reduction or diminution in their ‘dignity’, ‘importance’ and ‘responsibility’ or in their ‘power’ or ‘status.’”

[42] On the basis of the above authorities and the relevant evidence, the Commissioner’s conclusion that Ms Mahlangu was demoted due to the reduction in her status is reasonable.

Commissioner’s alleged reliance on subjective speculation

[43] With respect to Capitec’s contention that the Commissioner relied on subjective speculation in finding that it was suspicious that Ms Mahlangu’s Key Accounts Manager position was declared redundant while three other Key Account Managers still remained in service “after the initial footprint had been created”, Capitec has failed to explain, or demonstrate, how this ‘suspicion’ resulted in the Commissioner reaching a decision that no reasonable decision-maker could have come to based on the evidence before him.

[44] As stated by the LAC in *National Union of Mineworkers and Another v Rustenburg Platinum Mine (Mogalakwena Section) and Others*[12]:

“The mere fact that an award is unsatisfactory in one or more respects does not mean that it is unreasonable. When analysing an award, the reviewing court must look at all the material that was before the commissioner and not only the reasons given by the latter in the award. Where the material before the commissioner shows that there are other reasons, except those mentioned by the commissioner, which render the award reasonable, the reviewing court must consider such evidence”.

(Own underlining and emphasis)

[45] There was sufficient undisputed evidence before the Commissioner to justify his decision that Ms Mahlangu was demoted. There was also sufficient undisputed evidence before the Commissioner to justify his

conclusion that Ms Mahlangu was subjected to unfair treatment when she was demoted, which is addressed below.

[46] In any event, Capitec has not explained what distorting effect, if any, the Commissioner’s ‘suspicions’ had on the outcome of the arbitration or the reasonableness of the Award.

Commissioner’s alleged unreasonable conclusion that Ms Mahlangu was demoted

[47] For the reasons already discussed above, the Commissioner’s finding that Ms Mahlangu was demoted was not a decision that no reasonable decision maker could have come to.

[48] Moreover, the Commissioner was confronted with undisputed evidence that Capitec had taken a decision to declare Ms Mahlangu's position of Key Account Manager redundant before she was first informed of that decision on 3 December 2018. This was confirmed in Mr Horn's email to Ms Mahlangu dated 4 December 2018 in which he stated that "it was decided not to continue with the Key Account Manager role in the Public Sector space. This role no longer forms part of our Workplace Banking Strategy for the new financial year starting 1 March 2019".

[49] In this email, Mr Horn further stated that "we can utilise your skills and experience where the business currently has a specific need (Regional Manager: Workplace Banking Mpumalanga)". In relation to other alternatives, Mr Horn simply stated "should you feel that this role is not for you, please indicate in which role you would prefer to operate, knowing that there currently may not be a vacancy in that specific role".

[50] Insofar as Capitec contends that the invitation for Ms Mahlangu to indicate other alternative roles which may not be available constituted some form of consultation with Ms Mahlangu regarding the change in her position, it is clear that all material aspects of the decision to change her position had already been made before she was

consulted. Ms Mahlangu was not engaged in any form of meaningful consultation regarding the redundancy of her Key Accounts Manager

position and the decision to move her to Regional Manager for Mpumalanga. For all intents and purposes, Ms Mahlangu was presented

with a fait accompli which, despite her various protestations as expressed in her email to Mr Horn dated 29 January 2019, she was left with no option but to accept.

[51] In *Van der Riet v Leisuren et t/a Health and Racquet Club*[13] the LAC held that the failure by an employer to consult with an employee prior to their demotion constitutes an unfair labour practice. In *Nxele v Chief Deputy Commissioner, Corporate Services, Department of Correctional Services and others*[14] the LAC further confirmed that an unfair labour practice arises where the decision to transfer the employee is made before the employee is consulted such that the employee is presented with a fait accompli.

[52] In the circumstances, there is no basis to interfere with the Commissioner's reasonable conclusion that Ms Mahlangu was subjected to unfair treatment relating to demotion as contemplated in section 186(2)(a) of the LRA.

Commissioner allegedly exceeding his powers by ordering reinstatement

[53] In relation to Capitec's contention that the Commissioner exceeded his powers by ordering Ms Mahlangu's reinstatement into a position that no longer exists, section 193(4) of the LRA is clear that:

“An arbitrator appointed in terms of this Act may determine any unfair labour practice dispute referred to the arbitrator, on terms that the arbitrator deems reasonable, which may include ordering re-instatement, re-employment or compensation”.

[54] The Commissioner therefore acted within his statutory powers by ordering Capitec to reinstate Ms Mahlangu into her Key Accounts Manager position. Furthermore, once it has been established that an employee was subjected to an unfair labour practice relating to demotion then, irrespective of whether or not the employee's previous position has been declared redundant, the Commissioner has a discretion to exercise any of his or her powers under section 193(4)

of the LRA. In other words, the Commissioner's power to order reinstatement is not curtailed by any evidence that the

employee's previous position has become redundant. However, when exercising such discretion, the Commissioner is still required

to do so reasonably. In that regard, the following issues warranted further consideration by the Commissioner.

[55] Ms Mahlangu ultimately consented to the change in her position with effect from 1 March 2019. Ms Mahlangu did not dispute that her Key Accounts Manager role had not achieved the results that Capitec had hoped for. Ms Mahlangu did not dispute Capitec's evidence that it was more effective for Capitec's sales teams to establish commercial relationships with public sector clients at a regional level as opposed Ms Mahlangu seeking to solicit business

from public sector clients at a national level. Moreover, Ms Mahlangu did not dispute (at least to any credible extent) that her previous role as Key Accounts Manager for public service clients at a national level became and remains redundant.

[56] For the reasons above - and although the Commissioner may have had the power to do so - it was not reasonable for him to order Capitec to reinstate Ms Mahlangu into the redundant position of Key Accounts Manager for the public service. Nevertheless, Ms Mahlangu succeeded in establishing that she was subjected to an unfair labour practice in terms of section 186(2)(a) of the LRA. Thus, while reinstatement was not a reasonable remedy, there was

nothing preventing the Commissioner from awarding compensation to Ms Mahlangu.

[57] In terms of section 145(4) of the LRA, the Labour Court may determine the dispute in the manner it considers appropriate. In *Sajid v Mahomed NO and others*[15] the Labour Court held that the above phrase gives the Labour Court the widest possible powers necessary for it to determine a dispute in whatever manner the court “considers appropriate” although, by implication, such powers are limited to those available to the CCMA in arbitrating the dispute.[16]

- [58] The only power that it was reasonable for the Commissioner to exercise based on the evidence before him was the power to award compensation to Ms Mahlangu. The Commissioner's failure to exercise his powers under section 194(3) in a reasonable manner renders this aspect of the Award reviewable.
- [59] In light of the above, it is incumbent on the court to determine what compensation, if any, the Commissioner ought to have awarded to Ms Mahlangu.
- [60] Section 194(4) of the LRA provides that the compensation awarded to an employee in respect of an unfair labour practice must be just and equitable in all the circumstances, but not more than the equivalent of 12 months' remuneration. The following factors are relevant to the determination of just and equitable compensation in this case.
- [61] Capitec tried to ensure that it could retain Ms Mahlangu in its employ despite the redundancy of her position by offering her the position of Regional Manager for Mpumalanga (which she ultimately accepted). In the position of Regional Manager for Mpumalanga, Ms Mahlangu received an increase in her remuneration. Ms Mahlangu has therefore not suffered financially on account of Capitec's unfair conduct towards her.
- [62] Nevertheless, Ms Mahlangu did suffer a diminution in her status in the organisation when she was moved from the position of Key Accounts Manager for the public sector at a national level to the position of Regional Manager for Mpumalanga. Ms Mahlangu was also presented with a *fait accompli* which tainted any possible fairness of the demotion. It is therefore appropriate that Capitec be ordered to compensate Ms Mahlangu on the basis below.

Conclusion

- [63] The Award was reasonable in all material respects save for the Commissioner's decision to order Capitec to reinstate Ms Mahlangu into the redundant position of Key Accounts Manager. The Award in that regard stands to be reviewed and set aside and to be substituted with an order for Capitec to pay just and equitable compensation to Ms Mahlangu.
- [64] Further, I am not persuaded that the facts and circumstances of this case warrant the granting of a cost order in favour of either party.
- [65] In the circumstances, the following order is made:

Order

1. The arbitration award issued by the Second Respondent on 30 July 2019 under case number MP1719-19 is reviewed and set aside only insofar as the Second Respondent ordered the Applicant to reinstate the Third Respondent into the position of Key Accounts Manager on or before 15 August 2019, and is substituted with the following order:

“Capitec Bank Limited is ordered to pay compensation to Ms Mahlangu equal to three months’ remuneration calculated according to the total cost-to-company monthly remuneration received by Ms Mahlangu in the position of Key Accounts Manager”.

2. There is no order as to costs.

Searle AJ

Acting Judge of the Labour Court of South Africa

[1] No. 66 of 1995, as amended.

[2]

[2007] 12 BLLR 1097 (CC)

[3] 2013 (6) SA 224 (SCA)

[4] Id fn 2 at para 12

[5] Id fn 2 at para 25.

[6]

[2015] 1 BLLR 77 (LAC) at paras 27 and 28.

[7]

[2003] 12 BLLR 1274 (LC) at para 17.

[8]

(1992) 13 ILJ 1239 (IC)

[9] See: C. Norman-Scoble Law of Master and Servant in South Africa (Butterworth and Co (Africa), 1956).

[10] Id fn 9 at 1242J–1243A

[11]

(2001) 22 ILJ 1653 (LC) at para 27.

[12] Id fn 6 at para 27 and 28

[13]

[1998] 5 BLLR 471 (LAC).

[14]

[2008] 12 BLLR 1179 (LAC) at para 66.

[15]

[1999] 11 BLLR 1175 (LC).

[16] Ibid at para 111.

[AA1]Judge – This matter was overturned on appeal. The definition of demotion is still sound. Just wanted to bring it to the attention of the Judge. I have attached the LAC case just in case.
Aisha

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