

SOUTH AFRICA / JUDGMENT

## Irene Country Club v Commissioner for Conciliation, Mediation and Arbitration and Others (JR 07/2020) [2021] ZALCJHB 209 (26 July 2021)

[2021] ZALCJHB 209

COURT

Labour Court Johannesburg

BEFORE

N Cassim

CASE / FILE NUMBER

JR 07/2020

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### Source record

IN

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not

Reportable

Case

No: JR 07/2020

In

the matter between:

IRENE  
COUNTRY  
CLUB Applicant  
and  
COMMISSION  
FOR CONCILIATION,  
MEDIATION  
AND  
ARBITRATION First  
Respondent  
QUEENDY  
GUNGUBELE N.O.  
(cited  
in her capacity as Commissioner  
of  
the Commission for Conciliation,  
Mediation  
and  
Arbitration) Second

Respondent  
XIKOMBISO  
JULIUS MKHAVELE Third  
Respondent  
BONGANI  
CLIFFORD  
CHAUKE Fourth  
Respondent  
Heard: 1  
July 2021  
Delivered: (In  
view of the measures implemented as a result of the Covid-19  
outbreak, this judgment was handed down electronically by circulation  
to the parties' representatives by email. The date for  
hand-down is deemed to be on 26 July 2021)

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## JUDGMENT

CASSIM, AJ

- [1] In this review application, the applicant seeks an order setting aside the award of the second respondent (the commissioner), dated 28 November 2019 and remitting the matter back to the Commission for Conciliation, Mediation, and Arbitration (CCMA) for a de nova hearing before another commissioner.
- [2] At the hearing, there was no representation for the fourth respondent. Mr Kanyoka appeared for the third respondent and submitted that if there was any theft, this was the action of the fourth respondent and not that of the third respondent. Arising from the fact that the fourth respondent did not appear to oppose the matter, the matter cannot be disposed of in its entirety. In short, it would be prejudicial for to the fourth respondent for the Court to substitute the findings of the commissioner as the notice of motion expressly seeks a referral back to the CCMA.
- [3] With respect, the commissioner got it all wrong. She never came to grips with the real issue. She disregarded material evidence and her reasoning regrettably reflects a bias mind having regard to the substantial material evidence placed before her on behalf of the applicant. Prima facie speaking, a theft caused by fraudulent conduct is established by reference to the objective facts. The probabilities support such finding. Therefore, I am persuaded that the matter must be referred to the CCMA for a re-hearing.
- [4] In the result, the following order is made:

### Order

1. The arbitration award under Case nr: GATW15407/19 issued by the second respondent is reviewed and set aside;

2. The matter is remitted to the first respondent for the dispute to be arbitrated de novo by a commissioner other than the second respondent.
3. There is no order as to costs.

N. Cassim

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Ms C Mouton

Instructed by: Vermeulen

Attorneys

For the Respondent: Mr S Kanyoka

Instructed by: S

E Kanyoka Attorneys

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**CASE PAGE**              <https://chat.esheria.ai/case-law/south-africa/irene-country-club-v-commissioner-for-conciliation-mediation-and-arbitration-and-others-unknown-topic-alcjhb-2021--6a3ea5133b1caa912980a88c>

Prepared on 14 October 2026 · Esheria