

SOUTH AFRICA / JUDGMENT

Ngubeni v Maluti-A-Phofung Water (Pty) Ltd and Others (JR 623/12) [2013] ZALCJHB 87 (13 May 2013) [2013] ZALCJHB 87

COURT

Labour Court Johannesburg

BEFORE

R Lagrange

CASE / FILE NUMBER

JR 623/12

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REPUBLIC OF SOUTH AFRICA

THE LABOUR COURT OF SOUTH AFRICA,

IN JOHANNESBURG

JUDGMENT

case no: JR 623/12

In the matter between:

JABULANE SIMON NGUBENI Applicant and MALUTI –A-PHOFUNG WATER (PTY) LTD First
Respondent THE COMMISSION FOR CONCILIATION, MEDIATION AND ARBITRATION Second
Respondent COMMISSIONER MOKETE SIDWELL MOLOI (N.O.) Third Respondent

Date: 13 May 2013

JUDGMENT ON LEAVE TO APPEAL

LAGRANGE, J

Introduction

The applicant in this matter has appealed against the judgment handed down on 8 March 2013, in which I dismissed his review application of an arbitration award dated 8 March 2010, in which his dismissal by the third respondent was found to be substantively

fair. This application like his review, is unopposed by the third respondent.

In perusing the judgement it has come to my attention that the case number of the original judgement is incorrectly stated as "JR 2812/10" whereas it should have been "JR 623/12", and that paragraph [11] of the judgement incorrectly refers to "William", which should have read "Viljoen". These patent errors are accordingly corrected.

The applicant's application for leave to appeal is late but is condoned.

Grounds of appeal

First ground of appeal

The applicant contends that the court failed to consider the fact that some of the petrol receipts submitted in his claims did not bear his vehicle registration or signature, and thereby failed to consider that he was probably "framed" for offences he did not commit. In respect of the receipts which were the subject matter of the enquiry into his trips to Durban and Tshwane, the applicant provided justifications why he had filled up with petrol or paid a toll-free on those occasions and the question whether those were falsely included by the employer to implicate him was not an issue, and was not necessary for the conclusions reached in respect of those offences.

Second ground of appeal.

The applicant's second ground of appeal concerns the way in which the arbitrator allegedly allowed the third respondent to handle its case in the way thought was proper, which entailed amongst other things allowing it to lead irrelevant evidence and this demonstrated bias on the part of the Commissioner.

This was not one of the grounds of review raised by the applicant in his founding or supplementary affidavits, nor was it something he pursued in the hearing before me. Accordingly, this is not a matter that should be raised in appeal.

Third ground of appeal

The applicant contends that the Court heard in failing to notice that the arbitrator committed reviewable misconduct in stating in his award that the purchases that were made were purely personal in nature and he was not entitled to claim them. In considering the reference in the arbitration award at paragraph 56 of that award, it appears to me that the arbitrator was simply saying that since he did not accept that the expenses in question were legitimately related to the applicant's UNISA studies, and that they were personal in nature and nothing decisive in that case turned on the use of the term. Moreover, this was also not an issue pursued by the applicant in the review hearing.

Fourth ground of appeal

This ground of appeal to some extent repeats the applicant's complaint that he had disowned receipts and slips which did not bear his signature or vehicle registration number. In particular, he disputes the relevance of the fact that the court noted the arbitrator's finding that he did not dispute the evidence that slips which did not bear his signature or registration number were

submitted by him as part of his claim for reimbursement. The applicant states that by 'participating' in the calculation of his claim she had not repudiated his right to defend himself of misconduct in a disciplinary enquiry.

I do not understand such a conclusion to have been an implication of the arbitrator's finding, nor can such a conclusion be attributed to the judgement on review. The point of the arbitrator's observation, with which the court agreed, is that if the applicant did not regard slips with out his signature or car registration number as provided by him, he would never have submitted them as part of his reimbursement claim. As the arbitrator observed, "I do not hear applicant explaining this remarkable coincidence between the totals of his claim and that of the slips he knows nothing about."

Fifth ground of appeal

The applicant claims that the court also erred by failing to find that the arbitrator committed reviewable misconduct in confirming

the decision of the chairperson of the internal enquiry when the chairperson had found him guilty of an alternative charge which did not appear on the charge sheet. This appears to be a reference to the internal chairperson's written note in respect of the trip to Tshwane that he was guilty of misuse of company time. The arbitrator said that those words should not be read in isolation but together with the finding and the charge found in the typed minutes of the internal enquiry concerning the events of 29 July 2009. The minute stated:

"But the times on the receipts show that there is no way that the accused went to Pretoria and back. The times only indicate he might have misused the day for something else. He is therefore found guilty."

Clearly, the essence of the charge remained the same namely, that the applicant had not been attending a UNISA seminar as he claimed. Accordingly, there is no substance to this point.

Sixth ground of appeal

The applicant draws other things to the Court's attention which were not part of his review application and accordingly do not fall for consideration in appeal.

Seventh ground of appeal

The applicant filed a supplementary affidavit which strictly speaking the court is not required to consider, but nonetheless as the applicant is a layperson, the additional grounds mentioned in it are addressed below.

The first supplementary ground raised once again relates to the fact that the applicant contends he could not be expected to answer questions or give plausible answers in receipts and slips which did not bear his signature or vehicle registration. I have already dealt with why those slips were relevant notwithstanding the fact that he sought to disown them above.

Eighth ground of appeal

The eighth ground of appeal reiterates what is stated already in his second and fourth grounds of appeal which has been dealt with above.

Ninth ground of appeal

This ground again is merely a repetition of the applicant's fifth ground of appeal and no further discussion of this is

necessary.

Order

In light of the above, I am not satisfied that the applicant has provided any reason why another court might come to a different

conclusion and accordingly the applicants leave to appeal is dismissed.

R LAGRANGE, J (in chambers)

Judge of the Labour Court of South Africa

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Prepared on 13 October 2026 · Esheria