

**IN THE LABOUR APPEAL COURT OF SOUTH AFRICA, JOHANNESBURG**

**Reportable  
Case No: JA104/2021**

In the matter between:

**BUSCOR (PTY) LTD**

**Appellant**

And

**NTIMBANA, TNO (as Arbitrator)**

**First Respondent**

**THE SOUTH AFRICAN ROAD PASSENGER  
BARGAINING COUNCIL**

**Second Respondent**

**NUMSA obo RD MASHEGO & 1 OTHER**

**Third Respondent**

**Heard: 1 November 2022**

**Delivered: 29 November 2022**

**Coram: Sutherland JA, Coppin JA et Kathree-Setiloane AJA**

**SUMMARY:** Dismissal of employees for giving false testimony at arbitration hearing in unfair labour dispute. Non-success in unfair labour practice claim, does not automatically render testimony of witnesses who testified in those proceedings untruthful or dishonest. Finding to the contrary will have a chilling effect as potential witnesses will be deterred from voluntarily testifying in arbitration proceedings. This is likely to have a corresponding impact on the effective resolution of labour disputes – a primary purpose of LRA.

Arbitrator in unfair dismissal arbitration not provided with record of evidence led in the unfair labour practice arbitration. Absent that record, reviewing court not in a position to set aside arbitrator's award, in unfair dismissal arbitration, on the basis that the witnesses gave false evidence in unfair labour practice arbitration.

## **JUDGMENT**

### **KATHREE-SETILOANE AJA**

[1] This is an appeal against the judgment and order of the Labour Court (Johnson AJ) in which it upheld the decision of the first respondent (Commissioner Ntimbana) reinstating MR RD Mashego (Mr Mashego) and Mr M Gama (Mr Gama) as their dismissal was substantively unfair.

[2] The third respondent, National Union of Metalworkers South Africa (NUMSA), acts on behalf of Mr Mashego and Mr Gama in the appeal.

#### Background

[3] Mr Mashego and Mr Gama (the individual employees) were dismissed by the appellant, Buscor (Pty) Ltd (Buscor). They were employed by Buscor as bus drivers from 1 April 2014 and 1 June 2010, respectively and were stop stewards or employee representatives of NUMSA. Mr Gama was also the Branch Secretary of NUMSA at the plant.

[4] Buscor dismissed the individual employees for giving false testimony at an arbitration hearing in an unfair labour practice dispute, which NUMSA had referred to the South African Road Passenger Bargaining Council (Bargaining Council) on behalf of Mr Gama and 74 other Buscor employees in early 2017.

[5] The unfair labour practice dispute was preceded by the following events. In 2017, there were annual negotiations concerning wages and conditions of employment at central level in the Bargaining Council. Both Buscor and NUMSA (obo its members) were parties to those negotiations. The parties reached a deadlock and a 30-day 'cooling period' followed.

[6] Before the industry-wide protected strike could commence, Buscor's directors held meetings with the employee representatives of the three unions which

represented its employees at plant level, namely South African Transport and Allied Workers Union (SATAWU), Transport and Allied Workers Union of South Africa (TAWUSA) and NUMSA. These meetings were held on 20 March 2017, 27 March 2017 and 11 April 2017. Their purpose was for Buscor to find ways, in engagement with the unions, to encourage its employees to work rather than participate in the strike.

[7] Buscor's case was that the issue of a discretionary bonus was discussed at these meetings, although it was not part of the strike demands. In particular, it was discussed that the discretionary bonus would only be payable to those employees who continued to work and did not participate in the strike. Following these discussions, it reached agreement with all the unions that the discretionary bonus would only be paid to employees who elected not to participate in the strike. As a *quid pro quo* for not participating in the strike, it was agreed that the normal criteria, that the bonus would not be paid to employees who were on a final written warning, would not apply.

[8] According to the testimony of Buscor's witnesses, the employee representatives gave feedback, on 11 April 2017, to their members to the effect that, the unions had reached agreement with Buscor that all employees would continue to work through the nationwide strike which would commence on 12 April 2017. They apparently also informed the employees that, in terms of the agreement reached, only non-striking employees would receive the discretionary bonus and employees that participated in the strike would not. Mr Gama addressed the employees, at this meeting, specifically informing them that those who went on strike would not qualify for the discretionary bonus.

[9] The industry strike commenced on 12 April 2017. A total of 75 employees, including the individual employees, participated in the strike. Buscor, consequently, did not pay these employees the discretionary bonus. NUMSA, on behalf of the 75 employees, pursued an unfair labour practice dispute in which it demanded that Buscor pay the discretionary bonus to all the employees who participated in the strike.

[10] The unfair labour practice dispute proceeded to arbitration before Commissioner Dibden who handed down his award on 2 February 2018. The individual employees testified on behalf of the employees at the arbitration hearing. Their evidence, as summarized in the award of Commissioner Dibden, was essentially that Buscor had acted unfairly as there was no written agreement concluded with NUMSA to amend the qualifying criteria for the payment of the discretionary bonus to the employees. The issue of the qualifying criteria had not been discussed at the meetings of 24, 27 March and 11 April 2017, and although the individual employees attended the meetings, they were not recognized as NUMSA shop stewards and had no mandate to act on behalf of its members at the plant. In terms of a memorandum issued by Buscor, on 11 March 2017, the employees who joined the strike were entitled to the bonus, and in exercising its discretion against paying them the bonus, Buscor acted unfairly and committed an unfair labour practice. Mr Gama denied that he gave feedback to the employees after the meeting of 11 April 2017.<sup>1</sup>

[11] In his award, Commissioner Dibden dismissed the unfair labour practice claim on the basis that the discretionary bonus had been discussed at the meeting with the union representatives, and there was 'general consensus' that it would not be paid to employees that participated in the strike; with the disqualifying requirement of final written warnings being waived. He also accepted the evidence of Buscor's witnesses that feedback on the agreement reached between the parties was given by the employee representatives to its employees.

[12] Commissioner Dibden criticised the evidence of the individual employees on the following basis:

'The [NUMSA's] witness's testimony had some integrity problems. It was more likely that they had engaged in the meetings wearing their NUMSA affiliation, like they do when they come to the bargaining council and when the regional representatives came on the morning of 12 April 2017, they either preferred to remain silent on the issues discussed in the meetings, thereby jeopardizing the trust relationship with

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<sup>1</sup> Commissioner Ntimbana was not provided with a record of evidence that was presented by the parties at the unfair labour practice arbitration before Commissioner Dibden.

management and or they allowed the regional representatives to bulldoze them into going on strike.'

[13] Commissioner Dibden found that Buscor did not commit an unfair labour practice by amending the qualifying criteria for payment of the discretionary bonus and dismissed NUMSA's claim. Buscor, subsequently, charged the individual employees, on the basis of this finding, for giving false evidence at the arbitration hearing before Commissioner Dibden. It dismissed the individual employees on 17 April 2018 following a disciplinary hearing.

[14] The individual employees referred an unfair dismissal dispute to the Bargaining Council. The conciliation failed and the matter proceeded to arbitration before Commissioner Ntimbana. The individual employees testified at this hearing. Their joint testimony amounted to this:

14.1 Of the three meetings which Buscor called to discuss the deadlocked wage negotiations, Mr Mashego attended the first two and Mr Gama attended all of them. During the first meeting on 24 March 2017, Buscor encouraged the unions to engage with their members to accept an offer of an 8.5% wage increase instead of the 9% they demanded.

14.2 Mr Mashego objected to the agenda on the basis that the issue of wage negotiations was taking place at the national level and, as shop stewards, they had no authority to engage in such negotiations at plant level. Buscor responded by advising him that the meeting was not about wage negotiations but was, rather, *"discussions amongst the Buscor family"*.

14.3 At the meeting of 27 March 2017, Buscor again attempted to encourage the unions to persuade their members to accept the wage offer of 8.5%. The individual employees once again raised their concern that this was not the proper platform for wage negotiations. They raised the further concern that the discussion was not being recorded in minutes, nor was the attendance register completed. Buscor responded by stating that the discussions were unofficial engagements as *"Buscor family"*.

14.4 At the conclusion of this meeting, the trade unions undertook to engage their members as well as the officials involved with the wage negotiations at the central level and give feedback. They gave the feedback at the meeting held on 11 April 2017.

14.5 By that stage, the central level negotiations had deadlocked and the notice of the strike action, which was to commence on 12 April 2017, had already been given. To prevent the strike, Buscor issued a memorandum, dated 11 April 2017, that sought to discourage the employees from participating in the legal strike action. This memorandum sought to change the qualifying criteria for the payment of the discretionary bonus due to the imminent strike. In terms of this memorandum, employees who participated in the strike would forfeit payment of the discretionary bonus.

14.6 This was contrary to the memorandum, dated 11 March 2017, which Buscor had circulated, informing its employees that it had decided to pay an *ex gratia* bonus to all of them. In terms of this memorandum, all the employees who were on final written warnings would also receive the discretionary bonus. The memorandum concluded by stating that the bonuses were being processed and would be in the employees' bank accounts on 31 March 2017.

14.7 The memorandum of 11 April 2017 constituted a unilateral decision by Buscor that employees who took part in the legal strike action would forfeit the payment of their discretionary bonuses.

[15] In an award, dated 31 August 2018, Commissioner Ntimbana upheld the unfair dismissal claim of the individual employees on the basis that their dismissal was substantively and procedurally unfair. He made an order reinstating them with back pay in an amount equivalent to five months' salary.

[16] Concerning the substantive unfairness of their dismissals, Commissioner Ntimbana was unsatisfied, on the material before him, that Buscor had proved that the individual employees were guilty of dishonesty or falsifying their evidence. He accordingly held as follows:

'I carefully went through the award in question and found that the commissioner's decision to find in favor of [Buscor] was based on the probabilities in terms of which version between the one presented by [Buscor] and that of the union was most probable. It must be borne in mind that the fact that an employee lost his challenge of unfair labour practice does not automatically follow that such employee committed an act of dishonesty which justifies the charges and dismissal. If this school of thought is to be accepted, it would mean that the existence of section 186 in the LRA will lose its meaning.

Dismissing employees who lost their bid to challenge allegations of unfair labour practice will create a dangerous precedent by preventing them from exercising their right to fair labour practice... It must therefore be understood that employees may be charged for giving false testimony, statements, or evidence in exceptional circumstances where such action is found to be deliberate and malicious.

In this case, there was no record, minutes, or memorandum which expressly excluded employees who participated in industrial action from receiving the discretionary bonus. In the absence of such malice on the part of the [individual employees], I can safely conclude that [their] challenge was bona fide and was based on the memorandum issued by [Buscor] on 11<sup>th</sup> April 2017.

The memorandum provides that an *ex gratia* payment will be paid to all qualifying employees including those who are sitting on final written warnings. It does not specifically exclude employees who will participate in the strike action. The fact that the commissioner after weighing up two conflicting versions happened to believe [Buscor's] witness does not "*per se*" make the other guilty of dishonesty. Allowing [Buscor] to punish [the individual employees] in instances of this nature will lead to a very serious corruption of section 186 of the LRA..."

[17] On the issue of the procedural fairness of their dismissals, Commissioner Ntimbana found that Buscor failed to consult with NUMSA, as required by the Code

of Good Practice on Dismissals,<sup>2</sup> before taking disciplinary action against the individual employees who were shop stewards of NUMSA.

### Labour Court Judgment

[18] Buscor challenged the procedural and substantive fairness of the award on review. It also raised a preliminary challenge to the Bargaining Council's jurisdiction to resolve the dispute on the basis that the true dispute was an automatically unfair one and not an unfair dismissal one. The Labour Court held as follows on this issue:

'[33] The statement by [Commissioner Ntimbana] in paragraph 26 of the Award, that the dismissal of the individual respondents was "mainly informed by their failure to succeed in their claim of unfair labor practice" cannot be construed as meaning that the real reason for their dismissal was that they exercised their rights. What [Commissioner Ntimbana] means is that their dismissal came about because they failed with their unfair labour practice claim, which led [Buscor] to conclude that they had given false evidence during the arbitration hearing. [Commissioner Ntimbana] was not saying that the sole reason that the disciplinary action was taken against them and for which they were ultimately dismissed was that they had pursued the unfair labour practice claim in the first place.

[34] The remarks by [Commissioner Ntimbana] cannot, in my view, be stretched so that they can be interpreted to be a finding to the effect that the actual, approximate, or dominant reason for the dismissal of the individual respondents was that they were exercising their rights in terms of the LRA.

[35] In fact, in paragraph 25 of the Award, the [Commissioner Ntimbana] clearly and expressly sets out what he considers the dispute before him to be i.e., that the individual respondents were dismissed for allegations of dishonesty in that they gave false evidence during an arbitration hearing, while the individual respondents dispute that they gave such false evidence. This is a dispute which the Bargaining Council did have jurisdiction over.'

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<sup>2</sup> Schedule 8 of the Labour Relations Act 66 of 1995, as amended.



[19] In determining whether the dismissal of the individual employees was substantively unfair, the Labour Court was critical of the fact that, although the testimony, which the individual employees gave in the unfair labour practice arbitration before Commissioner Dibden, was pertinent to the reason for their dismissal, the transcribed record of their evidence did not form part of the record of proceedings in the review application before her, and in the unfair dismissal dispute before Commissioner Ntimbana. The Labour Court held, in relation to this aspect, that the absence of that record meant that Commissioner Ntimbana “*had no clear sight of the evidence actually given during the arbitration proceedings in the unfair labour practice claim, for which the [individual employees] were dismissed*”.

[20] In determining whether or not the individual employees gave false evidence before Commissioner Dibden, the Labour Court examined his award and concluded that there was no clear finding in that award that the individual employees gave patently false or dishonest evidence. The Labour Court observed as follows in this regard:

‘Of critical importance is that, in Dibden’s award, he does not actually dismiss the [individual employees] version, in the proceedings before him, to the effect that NUMSA had not agreed to the change [of the criteria for the payment of the discretionary bonus]. He does not find that the [individual employees] were dishonest in relation to whether or not the agreement was reached with NUMSA to change the criteria. In fact he appears to accept that NUMSA may not have agreed to the change, but finds that an agreement was not necessary or required.’

[21] The Labour Court went on to state that:

‘It is only in relation to the issue of the capacity in which the [individual employees] attended the feedback meetings with the employees that Mr Dibden was critical of the [individual employees]’ version. In this specific regard, he makes an *orbiter* comment or remark to the effect that their testimony had some integrity problems. He states, in paragraph 41 of his award, that it is likely that they had engaged in the meetings “*wearing their NUMSA affiliation*”. He does not however make any clear finding in this regard. Moreover, he does not find in this paragraph that the evidence

given during the arbitration proceedings itself resulted in a breakdown in the relationship of trust with management. His comment about the breakdown in the relationship of trust relates to his view that, although they probably attended the meetings in their capacity as NUMSA officials, they appear to have chosen not to have given feedback to the employees that are members of NUMSA to persuade them not to participate in the strike. In this regard he comments that they appear to either have preferred to remain silent about what was discussed at the meeting on 11 April 2017 (about the forfeiture of bonuses) the next day, on 12 April 2017, or they allowed the NUMSA regional representatives to nevertheless “bulldoze” them into going on strike. These comments, on the part of Mr Dibden are purely speculative as to why the NUMSA employees nevertheless went on strike and do not amount to findings on the evidence given.’

[22] The Labour Court concluded, based on the contents of Commissioner Dibden’s award, that Commissioner Ntimbana correctly concluded that Buscor had failed to discharge its onus of proving that the individual respondents had committed an act of dishonesty in terms of the evidence they gave in the unfair labour practice arbitration. She accordingly held that Commissioner Ntimbana’s award was not one that no reasonable arbitrator could have come to on all the evidence before him and that because Buscor had placed *“reliance solely on Dibden’s Award as evidence of the [individual employees] dishonesty, there was in fact no clear and compelling evidence before [Commissioner Ntimbana] that the individual respondents gave dishonest testimony in the proceedings”*.

[23] The Labour Court, nevertheless, upheld Buscor’s review against the finding of Commissioner Ntimbana that the dismissal of the individual employees was procedurally unfair. The Labour Court concluded, on the issue of sanction, that because the individual employees were not dishonest and acted in good faith when testifying at the arbitration hearing, before Commissioner Dibden, there was nothing to indicate that reinstatement was not an appropriate sanction.

[24] The Labour Court consequently reviewed and set aside Commissioner Dibden’s finding that the dismissal of the individual employees was procedurally

unfair, and upheld his findings on the jurisdictional issue and the substantive fairness of the dismissal of the individual employees.

[25] The appeal lies against the latter two findings with leave of the Labour Court.

### Jurisdiction

[26] The jurisdictional point raised by Buscor, in the review application, was that it had emerged from the evidence that was led before Commissioner Ntimbana and from his own findings, in the arbitration award, that the real cause of complaint was that the individual employees were dismissed for having pursued, and lost an unfair labour practice claim. This, according to Buscor, constitutes an automatically unfair dismissal for exercising a right conferred by the Labour Relations Act<sup>3</sup> (LRA) which the Bargaining Council had no jurisdiction to decide.

[27] NUMSA's referral document clearly contemplated a case of unfair dismissal of the two individual employees for misconduct. That this was the real dispute was also agreed to by both NUMSA and Buscor in their pre-arbitration minute. Buscor, however, contends that it only became apparent from the evidence led, at the arbitration hearing before Commissioner Ntimbana, that the real issue in dispute was not the unfair dismissal of the individual employees for misconduct, but rather that their dismissal was automatically unfair.

[28] This contention is unsustainable as the individual employees did not testify, in the arbitration hearing, that their dismissal was automatically unfair as contemplated in section 187 of the LRA. To the extent that Buscor was of the view that the nature of the dispute was different to that which reflected on the referral documents, it was required to lead evidence, at the arbitration hearing, on the real nature of the dispute. Needless to say, it took no such steps.

[29] What ultimately emerged from the testimony of Buscor's own witnesses at the arbitration hearing, is that the individual employees were dismissed for giving false evidence in the unfair labour practice arbitration before Commissioner Dibden. As

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<sup>3</sup> Act 66 of 1995, as amended.

alluded to above, this was common cause between the parties. Thus for Buscor to contend, as it did for the first time in the review application, that the real dispute was not an unfair dismissal, but rather an automatically unfair dismissal, as contemplated in section 187 of the LRA, was disingenuous.

[30] There is also no merit in its contention that, having considered all the evidence before him, Commissioner Ntimbana found that the individual employees were dismissed for exercising rights conferred by the LRA, so what was before him was an automatically unfair dismissal dispute, in terms of section 187(1)(d) of the LRA, which he had no jurisdiction to determine. Nowhere in the award does Commissioner Ntimbana make this finding. He simply states that the dismissal of the individual employees “*was mainly informed*” by their failure to succeed in their unfair labour practice claim and that “*dismissing employees who lost their bid to challenge allegations of unfair labour practice will create a dangerous precedent*”.

[31] As correctly concluded by the Labour Court, these statements cannot be taken to mean that Commissioner Ntimbana “*found that the dominant or proximate cause of their individual dismissal was that they were exercising their rights in terms of the LRA*”. Indeed, counsel for Buscor was constrained to concede, during argument in the appeal, that nowhere in the award does Commissioner Ntimbana mention that the dismissal of the individual employees was automatically unfair, as the real reason for it was that they exercised rights conferred by the LRA.

[32] Properly construed, Commissioner Ntimbana references the unfair labour practice claim to contextualise the unfair dismissal dispute. What he seems to be saying is that it was the employees’ loss in the unfair labour practice claim which led Buscor to charge and dismiss the individual respondents for giving false testimony in those proceedings. Having expressly stated in paragraph 25 of his award, that “*it is common cause that the [individual applicants] were charged and dismissed on allegations of dishonesty in that they gave false evidence*” in the arbitration conducted by Commissioner Dibden, it can hardly be concluded that the real dispute before him was not based on misconduct but was rather an automatically unfair dismissal.

[33] Even if Commissioner Ntimbana somehow conflated an automatically unfair dismissal with that of a misconduct dismissal by making the gratuitous statements, referenced above, in his award, it is clear from the totality of the evidence led at the arbitration, as well as a contextual reading of the award itself, that the real dispute for determination was an unfair dismissal for misconduct.

[34] That NUMSA, on behalf of the individual employees, may have articulated their dispute in the review application as an automatically unfair dismissal, does not somehow transform an unfair dismissal dispute that is clear from the evidence led in the arbitration, into an automatically unfair dismissal. I, accordingly, consider the Labour Court's conclusion, that the Bargaining Council had jurisdiction to determine the unfair dismissal dispute of the individual employees, to be correct.

#### Reasonableness of the Award

[35] As indicated, the Labour Court was critical of the failure of Buscor to provide Commissioner Ntimbana with the record of the unfair labour practice proceedings. Although the Labour Court did not dismiss the review application for this reason, it was certainly a factor which contributed to it dismissing the review application against Commissioner Ntimbana's award.

[36] The Labour Court articulated the issue that Commissioner Ntimbana had to determine as being whether or not he was satisfied that, based on the arbitration award issued by Commissioner Dibden, there was sufficient evidence to demonstrate, on a balance of probabilities, that the individual employees had in fact been dishonest. As held by the Labour Court, without the record of the arbitration proceedings before Commissioner Dibden, all that Commissioner Ntimbana had before him to determine whether the individual employees were dishonest, when they testified before Commissioner Dibden, was his arbitration award. In other words, and as correctly ascertained by the Labour Court in its judgment, given that Buscor had placed sole reliance on Commissioner Dibden's award as evidence of the individual employees' dishonesty, *"there was in fact no clear and compelling evidence before [Commissioner Ntimbana] that the [individual employees] gave dishonest evidence"* in the unfair labour practice proceedings.

[37] The essence of this finding is that more than just Commissioner Dibden's award was needed for Commissioner Ntimbana to conclude, on the probabilities, that their dismissal was substantively fair because the individual employees gave false testimony in the unfair labour practice arbitration. In other words, to reach that conclusion, Commissioner Ntimbana had to evaluate and assess the probabilities of the evidence presented in the unfair labour practice arbitration. Of course, without the record of that evidence, Commissioner Ntimbana was in no position to carry out that exercise.

[38] Buscor argued that the Labour Court erred in "*placing excessive and undue emphasis on the absence of the record of the unfair labour practice dispute and the alleged dishonesty of the individual employees*". What is more startling, is Buscor's contention that "in reality", the absence of the record in the unfair labour practice dispute "*simply did not matter*" as the dispute could competently be decided based on the testimony of the individual employees and the findings, to the contrary, by the Commissioner Dibden. Buscor's proposition, on this score, is that, given the findings of Commissioner Dibden that the discretionary bonus was discussed in the three meetings; that there was general consensus as to the change of the criteria for its payment; and that Buscor's employees were given feedback on the issue at the 11 April 2017 meeting, the testimony of the individual employees to the contrary must be taken to be false or dishonest.

[39] I disagree. Nowhere in the award does Commissioner Dibden categorically reject the evidence of the individual employees as being dishonest or false. At best, he merely states that the testimony of the individual employees had "*some integrity problems*". It is, however, not discernible from the award what aspects of their evidence lacked integrity and the extent to which this was material. Nor does he find that the individual employees gave patently false or dishonest evidence. In the circumstances, Commissioner Ntimbana was justified in concluding that Buscor had failed to discharge its onus of proving that the individual employees had committed an act of misconduct by giving false testimony in the unfair labour practice arbitration.

[40] That Buscor's employees did not prevail in their unfair labour practice claim, does not automatically render the testimony of the witnesses who testified, on their behalf, untruthful or dishonest. A finding to the contrary will have a chilling effect, in that potential witnesses will be deterred from voluntarily testifying in arbitration proceedings. This is likely to have a corresponding impact on the effective resolution of labour disputes which is a primary purpose of the LRA.

[41] Thus, absent the record of evidence that was led by the parties in the unfair labour practice dispute, the Labour Court was in no position to set aside the arbitration award on review, on the grounds that Commissioner Ntimbana failed to find that the individual employees committed an act of misconduct by giving false evidence in the unfair labour practice arbitration. An assessment of that evidence was fundamental to the Labour Court concluding that Commissioner Ntimbana's award is unreasonable based on all the evidence that was before him.

[42] The Labour Court could only assess the unreasonableness of the factual findings made by Commissioner Ntimbana, on the question of whether the individual employees gave false testimony in the unfair labour practice arbitration, by evaluating and assessing the probabilities of the evidence led in those proceedings. Absent the record of that evidence, there was simply no basis on which the Labour Court could set aside the award of Commissioner Ntimbana.<sup>4</sup> I am, accordingly, of the view that the Labour Court did not err in dismissing the review application against the award of Commissioner Ntimbana.

[43] For these reasons, the appeal falls to be dismissed.

### Costs

[44] I consider it to be fair and just not to make a costs order in the appeal.

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<sup>4</sup> See: *Francis Baard District Municipality v Rex NO and others* [2016] 10 BLLR 1009 (LAC) at para 23.

Order

[45] In the result, I order that:

1. The appeal is dismissed with no order as to costs.

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F Kathree-Setiloane AJA

Sutherland JA and Coppin JA concur.

APPEARANCES:

FOR THE APPELLANT:

Mr S Snyman

Instructed by Snyman Attorneys

FOR THE THIRD RESPONDENT:

Mr LK Siyo

Instructed by CN Phukubje Attorneys Inc.