IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: JR 1466/18

In the matter between:

THANDANANI UMLAW **Applicant**

and

COMMISSION FOR CONCILIATION, MEDIATION AND ARBITRATION **First Respondent**

LARRY SHEAR *N. O* **Second Respondent**

SOUTH AFRICAN INSTITUTE OF CHARTERED ACCOUNTANTS **Third Respondent**

Heard: **11 May 2021**

Delivered: **This judgment was handed down electronically by circulation to the parties' legal representatives by email, publication on the Labour Court's website, and released to SAFLII. The date and time for hand-down is deemed to be 13 May 2021 at 18:30**

JUDGMENT

TLHOTLHALEMAJE, J

Introduction:

[1] The applicant was alone in an elevator at work when a female colleague (Ms S) entered and complimented him on his newly grown beard. Ms S added that the beard looked good on him. After the applicant had thanked her, Ms S asked him why he had kept his beard long. The applicant's response was that he uses it to *'tickle'*, and he then proceeded to demonstrate what he meant by holding

Ms S, and rubbing his bearded face against her face in a tickling manner, giving her a bear-hug, and a kiss on the neck and face. On his own version, and for good measure, a further kiss on Ms S' forehead followed.

[2] For demonstrating the tickling prowess of his grown beard and other related conduct whilst in the elevator with Ms S, the applicant was charged and dismissed for sexual harassment. He had then referred an alleged unfair dismissal dispute to the first respondent, the Commission for Conciliation Mediation and Arbitration (CCMA), and when conciliation failed, the matter came before the second respondent (Commissioner) for arbitration. The Commissioner confirmed that the dismissal was procedurally and substantively fair.

[3] In this opposed review application, the applicant seeks an order reviewing and setting aside the arbitration award. He brought the matter before the Court on his own, and also represented himself in these proceedings. He alleged that the SASLAW Pro Bono Clinic, the Legal Aid Board and other attorneys declined to assist him in pursuing the review. As the facts of this case will demonstrate, it is no surprise that the applicant did not get any legal assistance in pursuing this review application.

Preliminary point:

[4] Prior to dealing with the merits of the review application, it was common cause that the review application was launched on time, as well as the filing of the transcribed record. The third respondent (SAICA), however sought the matter to be dismissed on account of the applicant's non-compliance with the provisions of Rule 7A(8)(a) and (b) of the Rules of the Court.

[5] The applicant having delivered the transcribed record on 12 July 2018, he had not as at 30 January 2019, filed his Notice in terms of Rule 7A(8)(a) and (b) of the Rules, leading to SAICA to send him correspondence to remind him of non-compliance. When no response was received, SAICA then filed an application to dismiss the review, which the applicant had opposed, by also filing an application for condonation.

[6] It is not necessary to traverse all the issues raised in the application for condonation, other than that the applicant claimed ignorance of the Rules, and had made attempts at getting assistance from a variety of sources as already mentioned, and from including Officials in the Office of the Registrar. I further accept that the application for condonation falls short of the acceptable standards set in regards to these applications, inclusive of the failures to address the length of the delay and the prospects of success. To the extent however that the review application was filed on time, inclusive of the transcribed record of proceedings, and further to the extent that it cannot be said that the applicant had not taken all reasonable steps to have the review determined, I am of the view that the interests of justice dictate that condonation be granted. Even if I may be overly generous in my findings in regards to condonation, this ill-considered application ought to be finally disposed of on its merits.

The evidence before the Commissioner:

[7] The applicant was employed since December 2011, and was dismissed on or about 6 October 2017. At the time of his dismissal, he occupied the position of Project Manager. The events leading to the charges and ultimate decision to dismiss are to the extent not placed in dispute, summarised as follows;

7.1 The incident leading to the dismissal took place in the Friday afternoon of 28 July 2017. The initial incident as described in the introductory part of this judgment in the elevator is not in dispute.

7.2 Ms S is employed as Manager of Academic Programmes. She testified that after the initial incident of hugging and kissing took place following her compliment, the elevator reached level B2 where the applicant's vehicle was parked and as she was closest to the elevator door, she had moved out of the way to let him out.

7.3 Before the applicant went out, he then held the elevator doors and asked Ms S personal questions including whether she stayed with her parents, whether she had a boyfriend, and then proceed to make revolving hand gestures, which according to Ms S, insinuated whether she was gay. He

further asked Ms S whether she had been hurt before (In past relationships).

7.4 Ms S's testimony was that the applicant did not exit the elevator and had continued to hold its doors open and stepped back inside, telling her that there were no cameras in the elevator, and had proceeded to hold the elevator button preventing it from opening. The applicant according to Ms S then held and kissed her again, telling her that '*had never done this to a white lady before*'. Ms S then said to the applicant; '*I feel uncomfortable. This is enough'*. At the that time, the elevator door opened at a parking level B3 where Ms S's vehicle was parked, and it was then that the applicant had stopped holding and kissing her. She exited the elevator, repeating that she was uncomfortable and telling him that she did not want to speak to him, and then proceeded toward her vehicle. Upon reaching her vehicle, she sat inside feeling threatened and worried that the applicant might have waited for her to drive to the ground level.

7.5 Ms S was driving out from level B3 towards the exit and upon reaching level B2, the applicant then in his vehicle approached her and blocked her path. Through his open vehicle window, the applicant had then apologised to her about the *'white lady'* comment. Again Ms S told the applicant that she did not want to talk to him.

7.6 Having initially left the building after her encounter with the applicant, Ms S, who was shaken, then turned back and went back to her office, and reported the incident to her superior Ms Mandy Olivier. After an hour with Olivier who had calmed her down, Ms S then went home.

7.7 Ms S did not report for duty the following Monday, and had informed the HR department of what took place, and enquired what steps to follow in laying a grievance. She testified that she had felt violated, and was scared to go back to the office. On the Tuesday she reported for duty and met with Ms Mandey Mendes from HR, where the grievance

procedure was explained to her. On 1 August 2017, she made a written statement about the incident, and had also submitted her grievance.

7.8 Ms S had testified that she had an amicable relationship with the applicant, and when he started hugging and kissing her without her consent, she had turned her face in an attempt to prevent him from kissing her on the mouth. The applicant had instead kissed her on the other side of her face. Throughout the experience she had remained numb and silent in shock and disbelief. She had not responded to the personal questions the applicant had asked her, as she was extremely surprised at what had just occurred.

7.9 Ms S was also given a copy of the applicant's statement, and upon reading it, she testified that she was not in agreement with its contents and the applicant's apology. She testified that she was angered by its contents as it was not a true reflection of what took place.

7.10 She denied that the applicant had asked her if he could tickle her with his beard before he did. She also denied that he had asked her about her weekend plans. She conceded that he had asked her whether she stayed with her parents, and whether she had a boyfriend, and reiterated that he made hand gestures asking whether she was gay, and whether she had been hurt before (in her past relationships). He had asked all these questions at the time that he was holding the lift doors open. She insisted that the applicant had on the second occasion and whilst at the parking level where his vehicle was, came back into the lift, held her and started kissing her, and it was at that point that he had said; '*I've never done this to a white lady before'*.

7.11 She testified that she did not see any humour in what the applicant had said. She disputed the applicant's version that she was at all times fine, and reiterated that she told him that she was uncomfortable, and that it was enough. She denied that the applicant had apologised about his physical contact and what had happened when they were getting out of

the building in their vehicles, but conceded that he had apologised about the *'white lady comment'*.

7.12 She refused to accept the applicant's apology as contained in his written statement. She testified that he had had behaved inappropriately and without invitation, was not honest about what took place, and had still not apologised for what he had done.

7.13 Ms S further testified that she did not expect the applicant's actions as they had never had problems before and had always worked amicably together. The incident had left her shocked, feeling violated, and traumatised, necessitating that she seek assistance from SAICA's employee wellness support group. She further had to consult a medical practitioner for anti-anxiety medication and anti-depressants. The incident had also affected her work performance, resulting with her having to consult a psychologist. She further testified that she had no reason to target the applicant, but that she would not be able to work with him should he be reinstated.

[8] Ms Mendes confirmed that Ms S had on 31 July 2017 asked her to assist in lodging a grievance. When she came to Mendes' office, she was in a state, crying and telling her that something terrible had happened to her the previous Friday. Mendes also spoke to the applicant about the incident, and he was equally upset and sought to apologise directly to Ms S. Mendes had however dissuaded him from doing so, and advised him to instead write a statement relating what took place, and to include his apology therein if he so wished. Mendes denied having told the applicant what to write in his statement.

[9] Ms Olivier's testimony was to confirm that Ms S came to see her immediately after the incident took place on the Friday in question. Ms S was hysterical and shaking profusely, telling her that she was violated by the applicant's conduct. Olivier confirmed that Ms S' work performance had deteriorated after the incident, and that since then, she was now one of the under-achievers, when initially she used to be a top performer.

[10] The applicant's case was that;

10.1 He and Ms S had a cordial relationship, had shared cell phone numbers, and had spoken about social issues in the past. After being confronted about the incident, he had on 2 August 2017, submitted a written statement after being asked by HR to do so.

10.2 In his written statement, he had conceded that after Ms S had complimented him on his grown beard, and after the latter had asked why he had grown his beard, he told her that the beard was meant '*to tickle'*, and had proceeded to rub or tickle her face with his beard. He further stated that he had asked her if he could tickle her again as she turned her face to the other side. Ms S according to the applicant, had smiled throughout and had not protested or indicated that his conduct or comments were unacceptable.

10.3 In his evidence before the Commissioner, he however added that having initially tickled Ms S with his beard, he had then held back and asked her whether he could tickle her again. Ms S had smiled and said yes. According to the applicant, Ms S had when tickled, turned her head to the other side, and he had tickled her again. Throughout this, Ms S was *'smiling'* and *'warm'*, and never at any stage said that she felt uncomfortable or said *'no'*, nor did she suggest that he should move away from her.

10.4 In his statement, he stated that when the elevator reached level B2 where his vehicle was parked, he had asked Ms S about her weekend plans. Her response was *'same old', just home with my parents'*. He had asked her whether she had someone special, and her response was that she did not, as she had been hurt in the past. He then decided to console her and he had moved back into the lift to hug her, telling her that everything will be alright, as he also kissed her on her forehead. Again, Ms S according to the applicant did not object. At the time, Ms S according to the applicant had kept the elevator doors open by pressing its open button.

10.5 At some point the elevator reached B3 where Ms S' vehicle was parked. The applicant conceded to having hugged her again, describing it as a *'bear-hug'*, or '*big hug'*, and '*not just a pat*' . He confirmed having kissed her on the forehead, further saying to her; '*hey I have never kissed a white lady before, …. It's gonna be alright'*. According to the applicant, he meant that as a joke, and that Ms S had laughed as she left the elevator towards her vehicle. He however realised at some point that his joke was inappropriate.

10.6 The applicant conceded having met Ms S as they were both driving out of the building, and had apologised for the racial joke, telling her that he meant no offence. Ms S was according to the applicant not upset, and her response was; *'okay, no problem'*, *'Thandanani please don't hug me again, I am literally shaking'*, holding out her arms to show him how her hands were shaking. It was at that point that it had dawned on the applicant that he had offended her and had apologised. According to the applicant, after his apology, Ms S nodded and drove away. He denied that he had blocked Ms S's path as she was driving out of the building.

10.7 On being asked by the Commissioner why he thought Ms S was shaking at the time that she showed him her hands, the applicant's response was that she was probably *'overwhelmed by his hug or even maybe the kiss itself, as she may have been upset or caught off guard'*. She conceded that Ms S did not give him permission to hug or kiss her.

Commissioner's findings:

[11] The Commissioner's starting point in the light of the above evidence was the definition of sexual harassment as contained in SAICA's Policy. He concluded that there was a dispute in regards to the events that took place in the elevator between the parking levels, and after the applicant and Ms S had made their way in their vehicles towards the exit.

[12] The Commissioner had on a conspectus of the evidence, accepted that the applicant had rubbed his beard against Ms S' face, kissed her on the face and forehead, re-entered the elevator at level B2, and hugged her after asking her

personal questions. The conduct of the applicant constituted unwarranted and uninvited conduct of a sexual nature, that had left Ms S shaking. The mere fact that Ms S had immediately returned to the premises after the incident evinced that she was in an emotional state, and to that end, the conduct of the applicant fell squarely within the definition of sexual harassment in terms of SAICA's policy, making the dismissal substantively fair.

The grounds of review and evaluation:

[13] In seeking to have the arbitration award reviewed and set aside, the applicant submitted that the Commissioner failed to consider the evidence presented at the hearing; failed to have regard to the CCTV material; failed to conduct the proceedings with 'integrity and honour'; and acted unfairly.

[14] The test on review is fairly settled. The primary enquiry is whether the decision reached by the commissioner is one that a reasonable decision-maker could not reach[1]. Further in assessing the reasonableness of a commissioner's award, the enquiry as enunciated in *Goldfields*[2] is whether the commissioner in terms of his/her duty to deal with the matter with the minimum of legal formalities, afforded the parties a full opportunity to have their say in respect of the dispute; properly identified the dispute he/she was required to arbitrate; understood the nature of the dispute he/she was required to arbitrate; dealt with the substantial merits of the dispute; and most importantly, arrived at a decision that another decision-maker could reasonably have arrived at based on the evidence that was placed before him/her.

[15] The starting point in considering whether the award is reviewable is to have regard to SAICA's own policy on sexual harassment, which the applicant is clearly familiar with. The policy is contained in the HR Manual[3]. In accordance with the policy, sexual harassment in whatever form is viewed as wrongful and a disciplinary offence, as it impinges on a proper and productive working

[1] *Sidumo and Another v Rustenburg Platinum Mines and Others* (2007) 28 IJL 2045; [2007] 12 BLLR 1097; 2008 (2) SA 24; 2008 (2) BCLR 158 (CC)
[2] *Gold Fields Mining South Africa (Pty) Ltd (Kloof Gold Mine) v Commission for Conciliation Mediation and Arbitration and Others* (JA 2/2012) [2013] ZALAC 28; [2014] 1 BLLR 20 (LAC); (2014) 35 ILJ 943 (LAC) at para 20
[3] Page 93 of the Bundle of Documents

environment; it is a direct contravention of the Employment Equity Act; is a form of discrimination; a contravention of culture and values of the organisation; and violates the right to integrity of body and personality. The policy further defines sexual harassment as an infringement of the 'victim's' dignity and respect, and further as unwanted conduct of a sexual nature.

[16] The SAICA policy on sexual harassment obviously must be read together with other statutory provisions and prescripts. This so in that section 138(6) of the Labour Relations Act (LRA)[4] places an obligation on Commissioners to take into account any code of good practice that has been issued by NEDLAC or the guidelines published by the CCMA that are relevant to a matter being considered in the arbitration proceedings. Equally, in terms of section 203(3) of the LRA, any person interpreting or applying that Act must take into account *any relevant code of good practice.* In this regard, the 1998 Code of Good Practice on the Handling of Sexual Harassment Cases in the Workplace[5], as well as the 2005 Amended Code are of importance. Item 3 of the 1998 Code defines '*Sexual Harassment'* as;

> (1) '...unwanted conduct of a sexual nature. The unwanted nature of sexual harassment distinguishes it from behaviour that is welcome and mutual.

[17] It has long since been held in *Motsamai v Everite Building Products (Pty) Ltd*[6] that;

> 'Sexual harassment is the most heinous misconduct that plagues a workplace; not only is it demeaning to the victim, it undermines the dignity, integrity and self-worth of the employee harassed. The harshness of the wrong is compounded when the victim suffers it at the hands of his/her supervisor. Sexual harassment goes to the root of one's being and must therefore be viewed from the point of view of a victim: how does he/she perceive it, and whether or not the perception is reasonable...'

[4] Act 66 of 1995, as amended
[5] Notice 1367 Of 1998 Issued by NEDLAC under section 203(1) of the Labour Relations Act 66 of 1995 (LRA)
[6] [2011] 2 BLLR 144 (LAC) at para [20]

[18] In accordance with the provisions of the above codes, an examination of whether sexual harassment took place involves a consideration of whether sexual conduct or attention complained of is persistent, even though a single incident of harassment is sufficient to constitute sexual harassment. Furthermore, the recipient of the unwelcome conduct must have made it clear that the behaviour in question is considered offensive; and/or further that the perpetrator should have known that the behaviour is regarded as unacceptable.

[19] In some instances, however, it is appreciated that the recipient of sexual harassment may be unable to immediately express his or her revulsion at the conduct in question, and it is not uncommon for recipients to process what had just happened, gather their thoughts and then act on the conduct in question at a later stage. In other words, the mere fact that the recipient has not immediately made it clear that he or she is taking offence to the conduct in question, should not lead to a conclusion that there was consent.

[20] The facts of this case illustrates the point made above. In addressing the question whether the finding that the dismissal was substantively fair is reviewable, the starting point is to ask a rhetorical question, which is; since when is being complimented on one's looks an open invitation to give a bear-hug, or reciprocate the compliment with a kiss, or even ask the person giving the compliment personal questions? The obvious answer is that it has never been, nor can it ever be. Normal and civilised citizens will ordinarily reply with a simple *'thank you'* and carry on with their lives.

[21] In this case however, nothing was normal nor civilised after Ms S' compliment. This matter in my view ought to be disposed of purely on the applicant's own version before the Commissioner, as also supported by his own written statement, which was made not so long after the incident took place. It is therefore not even necessary to deal with any other disputed facts arising from the incident in question, which the applicant sought to make a meal out of.

[22] The compliment by Ms S was clearly innocuous and did not deserve any response other than a simple *'thank you'*. Even if further questions arose after the compliment, this did not deserve the response she got. In the end, her

innocuous compliment turned out to be her undoing. The applicant had instead, viewed the compliment as an invitation to demonstrate the powers of his new long grown beard by without warning and consent, tickling Ms S' face with it, adding the tickle with a bear-hug and a kiss. As if that was not enough, and on his own version, he then asked Ms S whether he could repeat his self-indulgent invasion of her personal space and violation of her bodily integrity.

[23] Just on the first occasion that the incident took place and based on the applicant's own version, this was without more, sufficient to attract the severest of penalties by SAICA, as the conduct in question clearly constituted sexual harassment in its most reprehensible form. Any doubt as to the probable events as they unfolded was put to rest by the applicant's own version and response when asked by the Commissioner why he thought Ms S was shaking at the time that she showed him her hands as they were driving out. His unashamed response was that it was probably because she was *'overwhelmed by his hug', 'or even maybe the kiss itself, as she may have been upset or caught off guard',* and, '*the fact that she did not give him permission to hug or kiss her*'. In my view that response put the matter to rest, as it was clearly an acknowledgement that the applicant's conduct had clearly upset Ms S.

[24] The most disconcerting part of this entire incident is that the applicant failed at the time and even in these review proceedings, to appreciate the enormity of the consequences of his reprehensible conduct. He had persisted with his contentions that Ms S had not complained, or pushed him away. He further alleged that throughout that episode Ms S was *'warm'*, and *'smiling'*. In these proceedings, the applicant further added that she was *'in a good mood'*, and '*did not say anything'*. He further submitted that when he wrote his statement after the incident, he merely sought to explain his version of events, and did not want to paint a picture that Ms S had *'asked for* it', hence he insisted that she did not '*protest*'. Clearly the applicant's approach and misreading of Ms S' response to his conduct at the time it took place and subsequent thereto, is in line with the typical misogynistic, and patriarchal alpha male, who holds the view that females are there at his disposal and for his pleasure. To say that this approach is perverse is indeed an understatement.

[25] It is apparent that the applicant mistook Ms S' numbness out of shock and paralysis which was caused by his own conduct, as further invitation and acquiescence to inflict more harm on her. As already indicated, it is not unusual for recipients of sexual harassment to be dumbfounded by such conduct when it takes place, especially from people that they would ordinarily trust, know and interact with on a daily basis, and thereafter fail to react immediately, and to take time to process and reflect of what took place. In this case however, Ms S, despite her emotional state at the time as attested to by Olivier, had mustered the strength to drive back to the premises, and reported the incident as soon after it took place.

[26] Even worse is that the conduct in question was sudden and took place in an elevator, which is the most of confined spaces in the workplace. Ms S' testimony was that when the conduct had persisted into level B3, she told the applicant she felt '*uncomfortable, and that this is enough'.* It is of no consequence that Ms S said this some moments after the initial conduct took place. All it does demonstrates is that the applicant's conduct was never at any stage invited nor welcomed. In more ways than imagined, the applicant through his conduct violated not only Ms S' personal space and bodily integrity, but also broke her trust in him.

[27] The mere fact that the applicant had continued with his reprehensible conduct by asking Ms S questions of a personal nature, with an unsolicited retort that *'he had never kissed a white woman before',* clearly displayed a person bent on fulfilling his fantasies, even if he had denied that he had such fantasies. The fact that he had apologised for the *'white woman'* comment, is clearly further indicative of his failure to appreciate that his conduct on the whole, was grossly reprehensible, and that it did not merely end with an apology in reference to Ms S' colour. No person, irrespective of colour, creed, race, age or gender, deserves such conduct, especially in response to a simple and innocuous compliment on one's looks, and even moreso at a workplace. To the extent that the applicant had stated in his written statement that he felt shame, he clearly should be. However, that feeling of shame and self-pity is of little or no comfort

to Ms S, given her testimony in respect of the long term effects of what she was subjected to.

[28] Equally of concern and as is typical of employees failing to own up to their actions, the applicant in his heads of argument accused Ms S of having had a vendetta or an agenda, and to make him pay and suffer, for something that he 'suspect', could have happened to her in the past. Equally dumbfounding and irrelevant was his statement that the two had shared cell phone numbers or that Ms S was older than him. The insinuation from these comments is either that Ms S was taking out her 'personal issues' on him, or that he was entitled to conduct himself in the manner he did because they shared cell phone numbers and spoke about social issues, or that he could not have sexually harassed her because of her age. This logic is twisted, so far-fetched, and completely unwarranted under the circumstances. The applicant is clearly clutching at straws and blaming the recipient of his unwanted and unwelcome conduct of a sexual nature for the predicament he finds himself in. I fail to see the relevance of Ms S' age and the exchange of telephone numbers *vis-à-vis* the conduct in question. His comments about Ms S 'taking out her personal issues on him' is further adding insult to injury, and clearly demonstrates that the applicant has shown no contrition for his actions, nor would he ever own up to them. If on his and Ms S' version, the two of them had a cordial relationship, I fail to appreciate how she would suddenly fabricate her version of events, and even so, for what end.

[29] In line with what was stated in *Motsamai v Everite Building Products (Pty) Ltd,*[7] the conduct of the applicant had not only violated and traumatised Ms S, but also had the effect of demeaning her, and undermining her dignity, integrity and self-worth. The applicant, being fully aware of SAICA's sexual harassment policy, and further having professed to have been involved in community campaigns against such conduct, gender-based violence, and femicide, reasonably ought to have known that his conduct towards Ms S was unacceptable and would be frowned upon. He can therefore not escape the

[7] *Supra*

consequences of his reprehensible actions. It follows that the Commissioner's findings that the dismissal was substantively fair is unassailable.

[30] The applicant's contentions in regards to the Commissioner's findings on procedural fairness of his dismissal are equally without merit. His complaint was that in accordance with SAICA's disciplinary code, parties were not allowed to be legally represented and yet it elected to have legal representatives in the disciplinary enquiry.

[31] The Commissioner had accepted SAICA's submissions that given the sensitivity of the matter, it was compelled to engage the services of legal representative as independent chairperson and initiator, and that the applicant was equally afforded an opportunity to be legally represented. It was common cause that the applicant was given seven days' notice to prepare for the enquiry and had brought a legal representative to represent him. The fact that his legal representative did not have sufficient time to prepare for the matter cannot be blamed on SAICA given sufficient notice the applicant was given. In any event I fail to appreciate how given his own concessions and the evidence before the Commissioner in the *de novo* proceedings, any legal representative or legal argument could have made a difference to the outcome of his case.

[32] In the end, I am satisfied that in terms of his duty to deal with the matter with the minimum of legal formalities, the Commissioner afforded the parties a full opportunity to have their say in respect of the dispute; properly identified the dispute he was required to arbitrate; understood the nature of the dispute he was required to arbitrate; dealt with the substantial merits of the dispute; and most importantly, arrived at a decision that another decision-maker could reasonably have arrived at based on the evidence that was placed before him.

[33] SAICA sought an order of costs. I agree that this matter ought to have seen its end at the CCMA. The applicant had however persisted with this review, in circumstances where the Commissioner's findings are unassailable, and where he ought to have fully taken stock and reflected on his conduct and the consequences thereof. He hopelessly failed to do so, and had instead persisted with his almost self-righteousness approach. To even proceed in this matter

and cast aspersions on Ms S as to why she laid a complaint against him, and further mount a personalised attack on her in these proceedings is inexcusable, especially after what he had done to her as per his own version.

[34] This Court is ordinarily loath to order costs against employees who lost their jobs and are self-representing in review applications. The Court's reluctance to order costs against such litigants cannot however be extended to circumstances where employers are compelled to defend hopeless and meritless review applications, and where this Court's processes are abused. This is one of those cases, and in my view, the requirements of law and fairness dictate that the applicant be burdened with the costs of this application, *albeit* on a limited scale.

[35] Accordingly, the following order is made;

Order:

1. The late filing of the Notice in terms of Rule 7A(8)(a) and (b) of the Rules of this Court is condoned.

2. The application to review and set aside the arbitration award issued by the Second Respondent acting under the auspices of the First Respondent is dismissed.

3. The Applicant is ordered to pay the Third Respondent's costs, which costs shall be limited to appearance on the hearing date .

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Edwin Tlhotlhalemaje

Judge of the Labour Court of South Africa

REPRESENTATION:

For the Applicant:	In Person
For the Third Respondent:	Adv S Radebe, instructed by Madiba Motsai Masitenyane & Githri