

Employment Law ALERT

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CLIFFE DEKKER HOFMEYR

INCORPORATING
KIETI LAW LLP, KENYA

IN THIS ISSUE

A classic incongruent ruling on sanction

The matter of *National Lotteries Commission v Mafonjo and Another* (JR 48/2020) [2023] ZALCJHB 184 (23 June 2023) sets out what the Labour Court has termed an incongruent ruling on sanction.



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A classic incongruent ruling on sanction

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Facts

Mafonjo commenced her employment with the National Lotteries Commission (NLC) in 2003 as a cleaner. At the time she was charged with misconduct in 2018, she held the position of Client Liaison Officer In Mafikeng.

Following a disciplinary process, Mafonjo was found guilty on two counts of gross dishonesty and two counts of breaching her contractual obligations.

In considering the mitigating and aggravating factors, the chairperson of the enquiry placed much reliance on Mafonjo's personal circumstances, and remarked that there was no evidence illustrating that Mafonjo financially benefitted from the misconduct or that the NLC suffered financial loss flowing from her misconduct.

The ruling on sanction recorded that:

"... the employee is dismissed from her employment with the NLC which sanction is suspended for a period of 10 years on condition that she is not found guilty of any act of misconduct similar to the ones which she was charged and found guilty of."

Dissatisfied with the ruling, the NLC approached the Labour Court and sought an order reviewing and setting aside the ruling based on a material reviewable defect.

The review proceedings: Section 158(1)(h) of the Labour Relations Act 66 of 1995

Having had due regard to the grounds of review, the court stated that the NLC's disciplinary policy made no provision for a sanction of a suspended sentence, and that for the NLC to keep Mafonjo in its



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Njeri Wagacha

A classic incongruent ruling on sanction

CONTINUED

employ for 10 years with the tag of gross dishonesty on her forehead was contrary to rationality and legality in every respect.

The court further held that a civilized system of jurisprudence does not have room for any dishonest employees, and that the chairperson's ruling on sanction would open the floodgates of anarchy which the court was compelled to close.

The court therefore upheld the review, set aside the ruling on sanction and replaced it with an order to the effect that Mafonjo be dismissed with immediate effect.

Conclusion

In delivering his judgment, Sethene AJ remarked that " *legal research must not be compromised at the altar of expediency for it is an essential lawyering skill. It is the cornerstone of legal practice. Those privileged to preside over disciplinary hearings must know that theirs is to serve justice without fear, favour, bias and prejudice. They must not lower their guards for justice always needs valorous helpers. For the sake of the rule of law, a chairperson of an internal hearing ought to be fearless. The pursuit of justice needs stout-hearted men and women*".

**Thabang Rapuleng,
Malesale Letwaba and
Buhle Duma**



Cliffe Dekker Hofmeyr

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BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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