



TEN YEARS ON A TIGHTROPE

The Risk of Suspended Dismissal for Dishonesty

by Maserumule Corporate Employment Law

INTRODUCTION

In the reportable judgment of *National Lotteries Commission v Mafonjo and Another*¹, the Labour Court addressed what it described as an “incongruent ruling” on sanction. The Court set aside the chairperson’s decision and substituted it with an order of dismissal with immediate effect.

The employee had been dismissed following a disciplinary enquiry, but the dismissal was suspended for a period of ten years, conditional on her not being found guilty of comparable misconduct. The Court found this outcome incompatible with the Code of Good Practice: Dismissal and the principles of legality and parity.

CASE SUMMARY

The employee, who had joined the National Lotteries Commission (NLC) in 2003 as a cleaner, had worked her way to the position of Client Liaison Officer by 2018, when she was charged with misconduct. Following a disciplinary process, the chairperson found her guilty on two counts of gross dishonesty and two counts of breach of contractual obligations.

In determining an appropriate sanction, the chairperson placed significant weight on the employee’s personal circumstances. He also noted the absence of any financial benefit to the employee or financial loss to the NLC resulting from her misconduct.

The ruling on sanction stated: -

“The employee is dismissed from her employment with the NLC, which sanction is suspended for a period of ten 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.”

The NLC, dissatisfied with this outcome, approached the Labour Court seeking to review and set aside the sanction and to substitute it with a sanction of immediate dismissal. The NLC argued that the mere finding of dishonesty was sufficient to warrant dismissal. The employee, in response, contended that the chairperson had not acted irregularly and that a suspended dismissal is an alternative disciplinary outcome.

JURISDICTIONAL CONTEXT OF THE REVIEW

Although disputes about disciplinary outcomes are typically first adjudicated by the CCMA or a bargaining council and only later reviewed under section 145 of the Labour Relations Act (LRA), this matter followed a different procedural route.

The NLC is an organ of state. Consequently, its disciplinary decisions are reviewable under section 158(1)(h) of the LRA, which provides that the Labour Court may review any decision taken or any act performed by the State in its capacity as employer, on such grounds as are permissible in law.

This explains why the matter proceeded directly from the chairperson’s ruling to a review before the Labour Court. There was no requirement to refer the dispute to the CCMA or bargaining council for arbitration.

REVIEW PROCEEDINGS

The Court noted that the NLC’s disciplinary policy did not make provision for a suspended dismissal and held that retaining an employee found guilty of gross dishonesty undermined both rationality and legality. The chairperson’s failure to consider this policy limitation constituted a reviewable defect.

¹ (JR 48/2020) [2023] ZALCJHB 184]

The Court rejected the chairperson's assessment of the employee's personal circumstances as "exceptional," holding that mitigating factors cannot outweigh the seriousness of gross dishonesty.

Importantly, the Court emphasised that the employee owed a fiduciary duty to the NLC throughout her employment. It found that continued employment of a dishonest employee within a taxpayer-funded institution was indefensible. The breakdown of trust was, in the Court's view, irreparable, rendering continued employment untenable.

In strong terms, the Court warned that the ruling — if left unchallenged — would "open the floodgates of anarchy." Accordingly, the Court upheld the NLC's review application, set aside the chairperson's ruling, and ordered the employee's dismissal with immediate effect.

DISCUSSION AND CONCLUDING REMARKS

The *Mafonjo* judgment is a compelling reaffirmation of a longstanding principle in employment law: dishonesty strikes at the heart of the trust relationship and generally warrants dismissal, regardless of mitigating circumstances.

The Labour Court's decision aligns closely with established case law. In *Hulett Aluminium (Pty) Ltd v Bargaining Council for the Metal Industry and Others*², the Court stressed that dishonesty typically outweighs even strong personal mitigating factors such as long service or a clean disciplinary record. Similarly, in *Kalik v Truworhs (Gateway) and Others*³, the Court held that once dishonesty has occurred, the resultant breakdown in trust is irreparable and cannot be mitigated or cured. This sentiment was echoed by the Labour Appeal Court in *Miyambo v CCMA and Others*⁴, where the Court noted the economic and operational risks posed by dishonest conduct, especially in environments where integrity is foundational.

In *Toyota SA Motors (Pty) Ltd v Radebe and Others*⁵, the principle was taken further—dishonesty may be so serious that no degree of seniority or tenure can justify continued employment.

Perhaps most aligned with the facts in *Mafonjo* is *Theewaterskloof Municipality v SALGBC and*

*Others*⁶, where the Court held that misconduct which undermines the functionality and integrity of a public institution justifies dismissal. That reasoning is particularly relevant given that the NLC is a public entity funded by taxpayers, where public trust and accountability are paramount.

Taken together, these decisions reflect a consistent judicial view: trust is the cornerstone of the employment relationship. Where that trust is breached through dishonest conduct — particularly within public institutions — dismissal is not only justified but often necessary to preserve legality, institutional integrity, and sound governance.

In light of this, the Labour Court's decision to set aside the "suspended dismissal" and substitute it with dismissal with immediate effect was not merely legally permissible; it was essential.

KEY TAKEAWAYS

Suspended Dismissals Are Not Recognised in Law: The Court confirmed that suspended dismissals are not provided for in the Code of Good Practice: Dismissal or in the NLC's disciplinary policy and are thus not legally sustainable.

Dishonesty Justifies Summary Dismissal— But Context Still Matters: Gross dishonesty generally warrants summary dismissal, as it irreparably harms the employment relationship. However, the Code of Good Practice notes that dismissal is recommended for gross dishonesty implying that context and severity remain relevant considerations.

Mitigating Factors Carry Limited Weight in Cases of Gross Dishonesty: Factors such as long service, personal hardship, or lack of financial prejudice are unlikely to displace the serious implications of gross dishonesty.

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² [2008] 3 BLLR 241 (LC) at para 42

³ [2008] 1 BLLR (LC)

⁴ [2010] 10 BLLR 1017 (LAC)

⁵ [2000] 3 BLLR 243 (LAC)

⁶ LC C966/2008, 14 May 2010