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THE LABOUR APPEAL COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No: JA90/2022

In the matter between:

WOOLWORTHS (PTY) LTD **Appellant**

and

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

COMMISSIONER DAVID MAILA N.O. **Second Respondent**

**EL SHADAAI WORKERS UNION OF
SOUTH AFRICAN ("ESWUSA")** **Third Respondent**

LORAIN MASEKO **Fourth Respondent**

Heard : 20 March 2024

Delivered: 13 June 2024

Coram: Molahlehi AJP, Nkutha-Nkontwana JA et Jolwana AJA

JUDGMENT

JOLWANA, AJA

Introduction

- [1] The appellant, having been granted leave to appeal by this Court, appeals against the judgment and orders of the Labour Court (per Mahosi J) in which the appellant's review application was dismissed, thus confirming the arbitration award of the second respondent (commissioner). The court *a quo* concluded that the arbitration award was a reasonable award that a commissioner, applying his mind to the evidence and the material before him, could reach. The commissioner had determined that the two medical certificates submitted by the fourth respondent (Ms Maseko) were valid and regular. As a result of that finding, the commissioner found that her dismissal was substantively unfair and granted consequential relief to Ms Maseko.

The facts

- [2] Ms Maseko was an employee of the appellant holding the position of a store specialist at the Emalahleni branch at the time of her dismissal. The appellant's case is as set out below.
- [3] On 26 June 2018, Ms Maseko submitted a medical certificate issued by a Dr Frempong. Fortuitously, some of the appellant's stores including the one in which Ms Maseko worked had received an email warning them about suspicious medical certificates issued by Dr Frempong. The issuing of Ms Maseko's medical certificate prompted the appellant to review her employee file and the appellant discovered that another medical certificate from the same doctor had been issued in March 2016. However, when Ms Maseko was questioned about those medical certificates, Ms Maseko said that those medical certificates were not from the same doctor.
- [4] This led to a suspicion that those medical certificates might be irregular, as, on the face of them, they were issued by the same doctor. As a result, an investigation was conducted, the results of which were regarded by the appellant as giving credence to its suspicion that Dr Frempong was selling medical certificates. Those investigations resulted in Ms Maseko being charged with the misconduct of being in breach of company policies and procedures in

submitting an irregular medical certificate on 26 June 2018 to justify her absence from work. She was found guilty and ultimately dismissed.

- [5] Ms Maseko referred an unfair dismissal dispute to the Commission for Conciliation, Mediation and Arbitration (CCMA). That referral culminated in the impugned arbitration award at the CCMA.

The arbitration proceedings

- [6] The appellant's first witness was Mr Malaka, one of the appellant's managers and Ms Maseko's immediate supervisor. His evidence was that he was Ms Maseko's line manager and that he had investigated the case against her. On 26 June 2018, Ms Maseko submitted a medical certificate which was found to be questionable. When she was asked if she had submitted a medical certificate from the same doctor before, her response was in the negative. When Ms Maseko was asked if the medical certificate of the 26th of June 2018 was the first time she had submitted a sick note from the same doctor, her response was in the affirmative. When she was confronted with a medical certificate that was in her file which was issued by the same doctor in March 2016, she said that that medical certificate was from a Dr Zanele. The medical certificate issued in March 2016 had some similarities to the one dated 26 June 2018.
- [7] Following the above, Mr Malaka instituted an investigation into the veracity of the medical certificate issued by "Dr Zanele". The investigation revealed that Zanele was not a medical practitioner but a nursing assistant to Dr Frempong, who appears to have had two surgeries operating in different areas. It further revealed that Ms Maseko attended one of the surgeries in 2016 and was attended to by Zanele who issued her with a medical certificate. According to Zanele, Ms Maseko attended the surgery again on 26 June 2018. On that occasion, Zanele issued her with the medical certificate booking her off sick for three days. There was apparently a disagreement as to whether she was entitled to four days of sick leave. She then informed Zanele that she would be approaching Dr Frempong at his other surgery.

- [8] Mr Malaka and his colleague Ms Nkambule visited Dr Frempong's surgery where they were attended to by two ladies from whom they asked to see Dr Frempong. While they were waiting to see Dr Frempong, they observed people speaking with those ladies appearing to be negotiating what they concluded was the buying of medical certificates. People would go into Dr Frempong's consultation room and would be out in less than a minute with medical certificates. There was no privacy hence they were able to observe what was happening inside Dr Frempong's consultation room. Based on what they observed, they concluded that Dr Frempong might not be a real doctor and they suspected that he was selling fake medical certificates.
- [9] When they were ushered into Dr Frempong's consultation room, they found copies of medical certificates and a stamp. They also observed that his table was untidy. When they spoke to him, he took them through his processes and showed them a notebook in which he wrote the names of the people who came to see him on 26 June 2018. They produced Ms Maseko's medical certificate and asked him if she had come to see him. Dr Frempong checked his notebook after which he confirmed that indeed she had come to see him on that day.
- [10] Mr Malaka explained that the medical certificate of 26 June 2018 was irregular because, when it was compared with the one Ms Maseko submitted in March 2016, they appeared to be from the same doctor and yet her explanation was that the sick note issued in March 2016 was from "Dr" Zanele and the 2018 one was from Dr Frempong. The sick notes had the same letterhead and appeared to have the same signature. Additionally, according to Zanele, she had given Ms Maseko three days of sick leave which she did not accept and said that she would go to Dr Frempong. Mr Malaka was of the view that Ms Maseko was not sick on 26 June 2018 and that she just wanted days off, which was dishonest behaviour on her part and brought her integrity into question.
- [11] Further, there was a discrepancy about the person who called the appellant to report that Ms Maseko was sick and would not be coming to work. The person who phoned said she was Ms Maseko's sister-in-law. However, when the appellant asked Ms Maseko who reported her sick, she said it was her mother. This also showed that she was not being honest and could not be trusted.

According to the appellant's policies, once an employee proves to be dishonest, the relationship of trust breaks down and it is a dismissible offence. Mr Malaka played a recording of their meeting with Zanele which he had secretly recorded. The recording confirmed some of his evidence. The utterances which were attributed to Zanele in the recording suggested that, according to Zanele, Ms Maseko had gone to see her first before going to see Dr Frempong. He also testified about the company's honesty code on which it was made clear that employees should not falsify, misrepresent, or alter company documents and medical certificates. That conduct was considered dishonesty and was a dismissible offence.

[12] The next witness for the appellant was Ms Nkambule who testified that she was the foods department manager. On 26 June 2018, she was at work when she received a call from a person who introduced herself as Ms Maseko's sister-in-law. She reported that Ms Maseko was not coming to work on that day as she was not feeling well. Later, a doctor's note was received. She checked the doctor's note as she was suspicious about Dr Frempong's medical certificates after they had received an email from their sister store in Highveld Mall warning them to be cautious about Dr Frempong's medical certificates. She retrieved Ms Maseko's employee file from which she found a medical certificate submitted in March 2016 also from Dr Frempong. She then reported her suspicions to other department managers and store managers. She, together with Mr Malaka decided to go and pay Dr Frempong a visit at his medical practice.

[13] They went to Dr Frempong's consulting rooms where they found two ladies sitting at a table. The place did not look like a doctor's surgery to them. There was gym equipment that was not working, the curtains were in poor condition and the doctors' posters were torn. They went to the two ladies sitting at the table and asked to see Dr Frempong. They were told to wait. They sat down to wait, and one of the two ladies went to the doctor's consultation room which was just a door away from where they were sitting. Ms Nkambule explained that it was not even a proper consultation room but some form of makeshift partition wall that separated it from the reception. While they were waiting, a gentleman came in and sat next to Ms Nkambule. The lady who went to the

doctor's consultation room, returned a few minutes later and took a piece of paper and left. There were no files around and the doctor's clerks did not ask the usual questions like whether a person was on medical aid or was a cash patient. There were no filing cabinets that one normally sees in doctor's rooms.

[14] While waiting for their turn to be seen by Dr Frempong, Ms Nkambule started a small conversation with the gentleman that was sitting next to her. During that conversation, the gentleman said that it was a Monday and he was there to get a sick note. While Ms Nkambule was sitting there, two other gentlemen came into the room and went to the receptionist. She heard the receptionist asking them how many days they wanted and the men responded that they wanted two days. The receptionist then said that that would be R250.00. At that stage, Dr Frempong invited Ms Nkambule and Mr Malaka into his consultation room. When they arrived at his table, they observed that the doctor did not look like a doctor. He was not wearing a dustcoat and did not have a stethoscope. His table was cluttered with a lot of papers, there were plates, cups and an old computer monitor on the table. The doctor's appearance was unhygienic, and he had long nails. He just did not look like a doctor.

[15] Ms Nkambule confirmed that she and Mr Malaka questioned Ms Maseko about the March 2016 sick note that they had found in her file after being presented with the one dated 26 June 2018. This was when she came back to work after the sick leave which was after they had been to see Dr Frempong. In particular, they asked her if she had been to Dr Frempong's place before. She told them that when she went to see him on 26 June 2018 it was her first time. She then showed Ms Maseko the previous doctor's note which was also from Dr Frempong. She explained that on 26 June 2018, she had gone to see Dr Frempong, a male doctor but the one she saw previously was a female doctor. This struck them as strange because both sick notes had the letterhead of Dr Robert Yeboah Frempong. This suggested that she had been seen by a female doctor but her sick note was issued by a male doctor. It appeared to them that there was dishonesty and misrepresentation of sick notes. She testified that Dr Frempong and Zanele had been arrested for illegally operating a surgery, dispensing medicine and issuing illegal sick notes.

- [16] The evidence of Ms Maseko was that in March 2016, she went to see Dr Zanele who attended to her and gave her medication and a medical certificate giving her some days to stay at home and recover. Zanele examined her as a normal doctor does after which she gave her medication. On 26 June 2018, she went to see Dr Frempong at 07:00 because she had not been feeling well the previous night. When on 17 August 2018 she was asked at work how many times she had been to Dr Frempong's surgery, she told them that she had seen him once. She was then asked about the two medical certificates from Dr Frempong. Initially, she did not agree that the two medical certificates were from the same doctor and explained that in 2016 she was attended to by Zanele who was a female doctor and in 2018 she was seen by a male doctor. When she submitted both sick notes, she did not suspect anything amiss about them and submitted them innocently in line with the appellant's policies.
- [17] When she was charged with misconduct, Mr Malaka and Ms Nkambule asked her to compile her evidence. She then went to Dr Frempong on 24 August 2018 and asked him for her files. Dr Frempong gave her some documents to show that he was a qualified doctor. He also told her to go to Zanele. She did not know that Dr Frempong and Zanele were working together because they operated from different premises. It was during the process of obtaining her files that she became aware that Zanele was Dr Frempong's assistant and not a doctor. When she went to see Dr Frempong on 26 June 2018, she did not ask him for sick leave. He asked her about her work environment and then gave her some days off. She denied going to see Zanele first on 26 June 2018. She denied asking her for four days' sick leave and further denied that she went to Dr Frempong only after Zanele did not give her the four days of sick leave she had asked for. She only went to see her on 24 August 2018 when she was putting together her evidence. She testified that in both files, the one from Dr Frempong and the one she got from Zanele there was nothing suggestive of her having been seen by Zanele on 26 June 2018.
- [18] Ms Maseko referred to a list of the people that were seen by Dr Frempong on 26 June 2018 which she had obtained from Dr Frempong. Her name was on that list proving that she had gone to Dr Frempong on that day as did other people. She testified that her dismissal was unfair because she had given her

evidence and files from the doctor. When she said that she had been attended to by Dr Zanele in March 2016 she was not being dishonest because at that stage she had been attended to by Zanele and she did not know that she was not a doctor. She did not consult with Dr Frempong in 2016 and she did not even know him at the time.

[19] Under cross-examination, she testified that the person who called at work notifying the appellant about her sickness was her mother and that her name was Sister. Her sister-in-law was in Standerton which was far. The March 2016 sick note was given to her by Zanele who was the one who examined her, not Dr Frempong. She testified that it was not unusual to go to a doctor's room and find another doctor there who would give one a sick note that did not reflect the details of the doctor that had attended to the patient. She denied that her March 2016 sick note was irregular. On 26 June 2018, she went to see Dr Frempong after 07:00 that morning. She found the doctor already there as he operated on a 24-hour basis. On that day, she never went to see Zanele.

[20] The next witness for Ms Maseko was Dr Frempong. He testified that he qualified as a doctor in England at Cambridge University. He is a fellow of the College of Surgeons. He also has qualifications in obstetrics and gynaecology. He spent some time as a brain surgeon in England, America and Saudi Arabia. He was invited to South Africa to work at MEDUNSA as a lecturer in neurosurgery. At some stage, he worked as a locum for a doctor in Kriel. He has two offices in Emalaheni. In one office he employed a lady who had been with him for 10 years, Zanele, who worked with him as his assistant. Zanele looked after his second practice. When she had a patient, she would call him. In the 10 years she worked with him, Zanele had gotten to know about the management and treatment of patients. She would see a patient when it was urgent, and he was not available, and she would refer the patient to the hospital.

[21] Dr Frempong explained, with reference to Ms Maseko's March 2016 sick note, that Zanele was not a doctor. He would leave her with about four signed sick notes and when he was not there, she would call him. She would then write the dates that should be reflected on the patient's sick note. He testified that it was a common practice among doctors for their experienced assistants to give sick

notes to patients. On 26 June 2018, Ms Maseko came to his doctor's rooms at about 07:00 in the morning. He operated on a 24-hour basis and he decided to give her four days' sick leave based on her condition at that time. He gave her medication and told her that if her condition did not improve, she should call him. He denied selling sick notes saying he gave sick notes to sick people who needed some time off work to recover. He did not give sick notes to people who were not sick. He confirmed that he saw Ms Maseko himself on 26 June 2018. The sick note of 26 June 2018 was done by him, and it was in his own handwriting, and he signed it himself. His evidence under cross-examination confirmed that Zanele was his assistant. He confirmed that she did not have a medical qualification, but he gave her permission to deal with patients. He explained that the distance between his two surgeries was about two kilometres. She could see a patient and call him when he was not in the surgery in which Zanele was based. He confirmed that he was registered with the Health Professions Council of South Africa (HPCSA).

Arbitration award

[22] Ms Maseko was dismissed consequent upon being found guilty on a misconduct charge that on 26 June 2018 she breached company policies and procedures by submitting an irregular medical sick note to validate her absence from work. The charge went on to indicate that the said conduct could have resulted in Ms Maseko claiming wages not due to her. In addition, she was said to have been dishonest when she was asked about her previous consultation with Dr Frempong in March 2016. The commissioner correctly identified the key issue before him as whether or not the medical certificate submitted by Ms Maseko on 26 June 2018 was irregular. He found that there was no evidence to show that Ms Maseko was not sick in March 2016 and June 2018 during the days on which she submitted medical certificates. He concluded that the medical certificates submitted by Ms Maseko to the appellant were valid and regular having been issued by a qualified and registered medical practitioner. They therefore complied with the appellant's policies and procedures. On those bases, he found Ms Maseko's dismissal substantively unfair.

Before the Labour Court

[23] The appellant sought to have the arbitration award reviewed and set aside. The appellant relied on the following grounds of review:

'11.1 It is submitted that the arbitrator, in conflict with the behests of the Act, handed down an award which was not an award of a reasonable and objective decision maker, failed to apply his mind, misconducted himself, committed a gross irregularity, exceeded his powers by acting unreasonably or unjustifiably in:-

11.1.1 failing to consider the glaring and obvious dishonest version of the applicant when she alleged that she had never been to Dr Frempong's surgery;

11.1.2 failing to consider the evidence of Aubrey Malaka concerning the discussion that Aubrey had with "Dr" Zanele *vis a vis* her refusal to issue a sick note for 4 days as opposed to 3;

11.1.3 failing to accept the version of Aubrey Malaka and the audio clip which was played at the proceedings.'

[24] The Labour Court found, on a consideration of all the evidence that was before the commissioner, that the submission that the commissioner failed to apply his mind to the evidence and the material that was before him was not supported by the reading of the record and the award. The court *a quo* concluded that the decision of the commissioner was not a decision that a reasonable decision maker could not reach and that it was a reasonable decision which was justified by the evidence that was placed before him.

On appeal

[25] The appellant's gripe with the arbitration award and therefore the finding of the Labour Court is succinctly captured in very clear terms in the appellant's heads of argument as follows:

'Central to the proper determination of the dispute at arbitration was the evidence of two witnesses of the appellant Mr Malaka and Ms Nkambule. Both gave evidence of untoward happenings at Dr Frempong's medical practice in

respect of the issuing and buying of sick notes. This was denied by the Fourth Respondent and Dr Frempong. Mr Malaka also gave detailed evidence (albeit hearsay) about his discussions with "Dr" Zanele about the issuing of pre-signed sick notes and the events of 26 June 2018. Whilst this evidence was hearsay, it was corroborated by other evidence (see for example the 2016 sick note that was solely issued by "Dr" Zanele yet contains Dr Frempong's signature and the fact that Dr Frempong's diary confirms that he only met with the fourth respondent later in the morning and not at 07:00 as alleged.'

[26] The appellant's case on appeal was, for the following reasons set out below, unsustainable. It seems to me that the appellant's approach to this matter was that, because of what it calls 'untoward' happenings at Dr Frempong's medical practice in respect of the alleged but unproven issuing and buying of sick notes, Ms Maseko was not sick on the 26 June 2018. Therefore, Dr Frempong's medical certificate must have been irregular. Put differently, a properly qualified doctor, even one whose conduct may be dubious in the manner in which they conducted their medical practice and issues sick notes to their patients, must result in all the employees who may genuinely be sick, who may not even be aware of the doctor's alleged unconventional methods and the alleged illegal issuing of sick notes being subjected to a disciplinary process for using that doctor. This, on the appellant's approach, would be regardless of the employees' unawareness of the irregularities or illegal activities which may very well be taking place such as the selling of sick notes.

[27] Based on the evidence and the material that was before him, the commissioner found that there was no evidence on the basis of which it could be concluded that when Ms Maseko visited the doctor's surgeries in March 2016 and in June 2018, she was not sick when she consulted and was issued with medical certificates. He also found documentary evidence of Dr Frempong's qualifications and extensive experience as a doctor. Furthermore, he found that Dr Frempong was registered with the HPCSA, the South African Medical and Dental Council and had a Dispensing Certificate issued by the Health Science Academy. None of this evidence was put into question or in any way gainsaid. With these findings, amongst others, it is difficult to understand the appellant's

contentions about the findings of the commissioner, which in my view, are unassailable.

[28] It is important to note that the basis on which Ms Maseko was alleged to have submitted an irregular medical certificate on 26 June 2018 was not in relation to Mr Malaka and/or Ms Nkambule having given evidence of Ms Maseko having knowingly obtained an irregular medical certificate and submitting it to validate her absence from work. It was not in relation to her having tampered with a proper medical certificate by altering it or doing anything to change it from what the doctor intended it to communicate to the appellant. It was not even a case of Ms Maseko having somehow and by sheer pretence misled or convinced the doctor that she was sick when she was not so that instead of being at work, she was seen somewhere else doing her other business when she had reported sick at work. None of these possible scenarios arose from the evidence.

[29] Her charges emanated from Mr Malaka and Ms Nkambule's dissatisfaction with how a properly qualified Dr Frempong chose to run his medical practice. These included their impressions about the clutter in his consultation room, the general untidiness of the surgery, the length of his nails and what they allegedly heard, which seemed to them to be people buying medical certificates. The hearsay evidence about other people allegedly buying medical certificates had nothing to do with Ms Maseko. It had nothing to do with her even if it was true that indeed those other people were sold medical certificates by Dr Frempong or his staff when they were not even sick.

[30] Surely it cannot be that a doctor who is otherwise a qualified doctor who dabbles into some or other illegal activity of selling medical certificates is somehow assumed to be disqualified from examining people and book them off sick untainted by the issues of illegally selling medical certificates. The idea that an employee who happens to go to a doctor who is not trusted by an employer must be subjected to a disciplinary process for using that doctor is troubling. At the very least, the employer should investigate their suspicions about the contraventions of standard operating procedures by that doctor and if the suspicions are well founded, the employees should be warned about using that particular doctor once some valid grounds have been established. That

investigation would necessarily include state entities such as the HPCSA and other similar regulatory bodies.

[31] It is even concerning that an employee who may unknowingly go to what appears to be a doctor's normal medical practice and is booked off sick could be dismissed if it turns out that that doctor was either not qualified or unregistered. Ordinary people including workers surely cannot be expected to conduct an investigation into which doctor is qualified, which one is on suspension, and which one is for some or other reason not entitled to practise as a doctor. That is the function of the regulatory bodies. It was common cause that Dr Frempong was assisted by his staff in running his two medical practices. The extent of their responsibilities and in particular whether those doctor's assistants can assist him in issuing medical certificates is a matter between that doctor and his regulatory body, not members of the public. It is not unusual for a person to go to their usual doctor's rooms and find another doctor, usually referred to as a locum, being there and not the person's usual doctor. Many people including workers in South Africa do not have the wherewithal to determine between a qualified doctor, an unqualified doctor and one who is operating illegally. That is why there are regulatory and law enforcement bodies to whom suspicious practices by doctors should be reported.

[32] In this case, Dr Frempong's qualifications as a qualified medical doctor were not seriously placed in issue and Mr Malaka and Ms Nkambule's suspicions about his qualifications were put to rest at the arbitration proceedings. He testified at the arbitration proceedings and confirmed that he issued the medical certificate dated 26 June 2018 after having seen Ms Maseko on that day. Whether it was 07:00 or 09:00 is, in my view, irrelevant. Once Dr Frempong gave evidence at the arbitration proceedings, the utterances by Zanele and what she was alleged to have said were all irrelevant more so that she was not called to testify or even subpoenaed. The real issue was whether or not Ms Maseko saw Dr Frempong on that day and whether he booked her off sick for four days. Once these questions were answered in the affirmative by Dr Frempong, I fail to see what else was required of Ms Maseko. The issues around the March 2016 medical certificate are even more tenuous. This is so because her evidence was that on that occasion she was assisted by a female

doctor. Indeed, Zanele is a female person and there was no dispute that she saw her on that day. The discrepancy in the information on the letterhead of Dr Frempong, which reflected information different from that of the “doctor” who saw Ms Maseko in March 2016 did not assist the appellant’s case.

[33] In the final analysis, the question in review proceedings, as the court *a quo* correctly restated, was not whether the arbitrator’s decision was correct but whether, on the basis of all the material placed before her or him, the commissioner’s arbitration award was one which could reasonably be made. In this case, the Labour Court correctly pointed out that the question was, in the main, whether the commissioner considered and applied his mind to all the evidence presented before him and arrived at a conclusion that was reasonable. The court *a quo* relied for this trite legal position on the *Head of Department of Education v Mafokeng and Others*¹ in which this Court said:

‘Irregularities or errors in relation to the facts or issues, therefore, may or may not produce an unreasonable outcome or provide a compelling indication that the arbitrator misconceived the inquiry. In the final analysis, it will depend on the materiality of the error or irregularity and its relation to the result. Whether the irregularity or error is material must be assessed and determined with reference to the distorting effect it may or may not have had upon the arbitrator’s conception of the inquiry, the delimitation of the issues to be determined and the ultimate outcome. If but for an error or irregularity a different outcome would have resulted, it will *ex hypothesi* be material to the determination of the dispute. A material error of this order would point to at least a *prima facie* unreasonable result. The reviewing judge must then have regard to the general nature of the decision in issue; the range of relevant factors informing the decision; the nature of the competing interests impacted upon by the decision; and then ask whether a reasonable equilibrium has been struck in accordance with the objects of the LRA. Provided the right question was asked and answered by the arbitrator, a wrong answer will not necessarily be unreasonable. By the same token, an irregularity or error material to the determination of the dispute may constitute a misconception of the nature of the enquiry so as to lead to no fair trial of the issues, with the result that the award may be set aside on that ground alone. The arbitrator however must be

¹ [2014] ZALAC 50; [2015] 1 BLLR 50 (LAC) at para 33.

shown to have diverted from the correct path in the conduct of the arbitration and as a result failed to address the question raised for determination.'

Conclusion

[34] The evidence of Mr Malaka and Ms Nkambule that there may have been certain untoward happenings in the running of the medical practice of Dr Frempong, even if that was true, was patently irrelevant. So is the hearsay evidence, even if corroborated as the appellant contended, about other people buying medical certificates. It would still be irrelevant to the key question of whether Ms Maseko's medical certificate dated 26 June 2018 was irregularly sought and issued. Nor could it be said that she used an irregular medical certificate to validate her absence from work without it being shown at the very least that her medical certificate was fake or tampered with in circumstances in which she was not even sick. With all of this being said, it is clear from the record of the arbitration proceedings that the commissioner considered and correctly rejected the appellant's witnesses' evidence. The court *a quo* correctly found that the appellant failed to discharge the onus of establishing that the commissioner either committed a misconduct in relation to his duties as an arbitrator, a gross irregularity in the conduct of the arbitration proceedings or exceeded his powers. As a result, the Labour Court correctly concluded that there was no reason to interfere with the award. In all the circumstances, the appeal stands to be dismissed.

Order

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

PP Emotetlaha
Jolwana AJA

Molahlehi AJP *et* Nkutha-Nkontwana JA concur.

Appearances:

FOR THE APPELLANT:

J. Jones

Instructed by MacGregor Erasmus Attorneys

FOR THE RESPONDENTS:

A. Goldberg

Instructed by Goldberg Attorneys

LABOUR APPEAL COURT