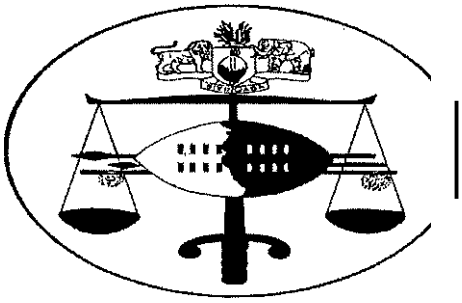

IN THE INDUSTRIAL COURT OF APPEAL OF ESWATINI

Case No. 13/2021

In the matter between

ESWATINI CIVIL AVIATION AUTHORITY Appellant

And

SABELO DLAMINI Respondent

NEUTRAL CITATION: ***Eswatini Civil Aviation Authority v Sabelo Dlamini [2021] (13/2021) SZICA 01 { 9 Febro.ary 2022)***

CORAM: NSIBANDE JP, VAN DER WALT and NKONYANE JJA

HEARD: 20 October 2021

DELIVERED: 9 February 2022

Summary

Procedure - urgent enrolment of appeals - requirements stated - substantive application under certificate of urgency fully setting out facts and/or circumstances which render the matter urgent; why the applicant cannot be afforded substantial redress in due course; and prospects of success on appeal.

Dismissal - distinction between unfair dismissal and invalid dismissal - invalid dismissal a nullity and reinstatement accordingly not required

JUDGEMENT

Cur adv Vult
(Postea: 9 February 2022)

VANDERWALT, JA

INTRODUCTION

[1] It is common cause that:

1.1 The respondent (hereinafter refe1Ted to as the "Employee") was employed by the appellant (hereinafter refe1Ted to as the "Employer") on fixed contract, due to expire on the 30th November 2021.

1.2 In 2019 the Employer instituted disciplinary proceedings against the Employee and the evidence phase thereof was concluded in or around February 2021, after which the parties filed written submissions in March 2021. Both parties enjoyed legal representation.

1.3 On the 10th June 2021 the second respondent *a quo* (hereinafter refe1Ted to as the "Chairman") by way of electronic mail, proposed to deliver a verdict without any reasons, to which the Employee's attorneys objected, likewise by way of electronic mail, insisting on reasons to be provided.

1.4 The Chairman also unilaterally imposed a date for delivery of the verdict to be on the 16th June 2021. The Employee had been booked off sick

and his attorney already was engaged in Court, facts of which the Chairman had been made aware of but the Chairman proceeded, on that date, in the absence of the Employee and his attorney, to deliver a verdict of guilty on one count and acquittal on the remainder, without providing any reasons for his decision and stating:

> *"However, in the obtaining circumstances, with both the Respondent and his representative not in attendance the presentation of aggravating and/or mitigating/actors will be deferred to a later date to be communicated to the parties through the normal mode of* ***communication.*** "

1.5 Item 6.(d) of the Disciplinary Code governing the relationship between the parties, stipulates that:

> *"If the employee is found guilty, he/she shall be given an opportunity to present evidence in mitigation to the Chairman at the hearing.* "

1.6 On the same day as the date of the verdict, i.e., the 16th June 2021 the Employer issued a letter dismissing the Employee and sought to serve it at the employee's residence at night and in his absence.

1.7 Upon learning of these developments and on the 17th June 2021, the Employee's attorneys wrote to the Employer to the effect that the letter of dismissal was viewed to have been invalidly issued in that the Employee was yet to present submissions on mitigation and the Employer was requested to withdraw the letter of dismissal.

1.8 The Employer declined to withdraw the letter of dismissal.

[2] The above culminated in an urgent application launched on the 23rd June 2021 in the Court *a quo,* wherein the Employee as applicant sought the following main relief, coupled with a prayer for punitive costs:

2.1 That the letter of dismissal be set aside;

2.2 That the Chairman's decision to hand down a verdict in the absence of . the applicant and without reasons, only promising the parties to hand down same in 10 weeks, be reviewed and/or set aside;

2.3 That the Chainnan be ordered and/or directed to provide a complete record of the proceedings of the hearing and a judgement spelling out full reasons for his verdict first before calling the parties to address him on aggravating and mitigating factors.

[3] The Employer raised points *in limine* pe1iaining to urgency, hearing of issues of procedural and substantial unfain1ess on motion proceedings

and lack of jurisdiction absent compliance with the dispute procedure contained in Part VIII of the Industrial Relations Act, 2000 (hereinafter referred to as the "Act.) The Court *a quo* delivered its judgment on the 28th September 2021. None of the points *in limine* were upheld and the relief set out in [2] above was granted, with an ordinary costs order in favour of the Employee.

[4] The Employer filed a Notice of Appeal on the 5th October 2021, the grounds contained therein reading as follows:

"1. The Court erred in law and in fact, in assuming jurisdiction on a matter where the employer had terminated the Respondent's services and by further re-instating the Respondent as an injunctive relief without the Respondent following the mandatory provisions of Part 8 of the Industrial Relations Act. The Court can only re-instate once a finding of unfair dismissal has been made in accordance with Section 16 of the Industrial Relations Act. The Court aqua re-instated without following the provisions of Section 16 of the Industrial Relations Act as amended,

Alternatively

2. The Court erred in fact and in law by re-instating the Respondent without any justification and/or identification of exceptional circumstances which might have led to gross miscarriage of justice, in that the Respondent would not have redress at a hearing in due course. No exceptional circumstances were identified by the Honourable Court warranting such a departure from the well-established principles of the law relating to unfair dismissals, re-instatement and re-engagement.

3. At worst, the Respondent's complaints at Court a quo would have given rise to procedural unfairness and re-instatement would not have been an appropriate remedy in terms of Section 16[2J[d} of the Industrial Relations Act 2000 as amended."

[5] The Employer sought to have the appeal heard on urgent basis *via* Correspondence to the Registrar of this Court.

5.1 Before Court, the parties' legal representatives were *ad idem* that no clear guidelines as to such urgent enrolment appear to exist although, naturally, the party seeking urgent enrolment should at the very least demonstrate why the matter is urgent and why substantial relief cannot be afforded in due course.

5.2 The Court proceeded to hear the matter on the merits on the basis that the consideration of the merits shall not be construed as a finding, implied or otherwise, that the matter is indeed urgent, and further, that the Court would examine and subsequently pronounce on the requirements for urgent enrolment.

A AD URGENT ENROLMENT OF APPEALS

[6] Neither the Rules of this Court nor those of the Supreme Court expressly provide for this contingency. This is an evident *lacuna*, which requires the Court to seek the most appropriate format for regulating and

articulating its internal procedures in respect thereof, in the interests of the proper administration of justice. [1]

[7] As for case law:

7.1 Cases have been located wherein ordinary civil law and labour law appeals had been entertained on an urgent basis, but without clear requirements having been spelled out in the relevant judgments.

7.2 As regards criminal matters and in particular in respect of urgent bail appeals, the Supreme Court judgment in ***Bhekithemba Shongwe and Sifiso Sipho Mnisi v The King2*** sets out requirements deemed apposite in respect of bail matters. To the extent that bail as an interlocutory and inherently urgent step is possessed of peculiar requirements, the application of this judgment would be of limited application to other matters.

[1] This also is an important exercise for purposes of the current ongoing review of the existing 1997 Industrial Court of Appeal Court Rules

[2] /19/2020 and 20/2020) {SZSC} 1 {2020] {13 th January 2021)

7.3 The only other judgment located by the Court which appears expressly to allude to urgent appeal requirements, is the 2004 Supreme Court civil case of ***African Echo (Pty) Limited and The Minister of Finance and Others,3*** wherein a substantive application for urgent enrolment had been made under a certificate of urgency and wherein it was held as follows per Leon JP (as he then was)4:

> *"Rule 17 provides that the Court of Appeal may on application and for sufficient cause excuse any party complying with any of the Rules. The Court of Appeal may also give such directions in matters of practice and procedure as it considers just and expedient. I am of*
> *the view that Rule 17 is wide enough for this Court to enrol and hear an urgent appeal."*

[8] It can be safely accepted, the Rules of this Court and the Supreme Court being similar and this Court enjoying, within its field of specialty, the same powers as the Supreme Court, that the findings in the ***African Echo*** case above would apply *mutatis mutandis* to this Court.'

[9] In ordinary applications for condonation, it is trite that *"sufficient cause"* requires a reasonable explanation for the delay and prospects of success

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[3] ***Civil Appeal Case No 46/2004***

[4] At p.6 and further of the judgment, Beck and Zietsman JJA concurring

[5] Rule 17 of the Supreme Court Rules reads;" *17.The Court of Appeal may on application and for sufficient cause shown, excuse any party from compliance with any af these rules and may give such directions in matters of practice and procedure as it considers just and expedient"* and **Rule 17** of the Rules of this Court reads: *"17.The Industrial Court of Appeal or any Judge thereof may, on application and for sufficient cause shown, excuse any party from compliance with any of these Rules and may give such directions in matters af practice and procedure as it considers just and expedient."*

on appeal. Logic would dictate, in the case of urgent enrolment, that the delay aspect be reversed and be substituted with the urgency aspect i.e., the applicant for urgent enrolment must clearly set out and demonstrate:

9.1 The facts and/or circumstances which render the matter urgent; and

9.3 Why the applicant cannot be afforded substantial redress in due course; and

9.4 Favourable prospects of success on appeal.

[10] The above requirements are not cast in the alternative; all three requirements must be met. Also, there does not appear to be any legal impediment to a respondent, as applicant, seeking an urgent enrolment.

[11] As for fonn and in order to accommodate procedural fairness, a substantive application is required: -

11.1 Under a certificate of urgency;

11.2 With a notice of application setting out the relief sought and affording the respondent/s the opportunity to file a notice of intention to oppose and an answering affidavit/s should they elect to do so; and

11.3 Supported by an affidavit/s setting forth explicitly the circumstances which the applicant avers render the matter urgent and the reasons why he/she claims that he/she could not be afforded substantial redress at an appeal hearing in due course, as well as setting out why it is averred that there are favourable prospects of success on appeal where the applicant is the appellant, or where the applicant is a respondent in the appeal, why it is averred that there are no favourable prospects of success on appeal.

11.4 Should opposing papers be filed, the applicant may file a replying affidavit.[6]

[12] Further, taking into account the *forum,* a ruling on urgency has to issue first. Should the matter be held to be urgent, an urgent date and/or time

[6] In the ***Bhekithemba Shongwe and Sifiso Sipho Mnisi*** matter reference to replying papers evidently was inadvertently omitted

for hearing would be allocated; should the matter be held not to be urgent, the appeal shall await its tum in the ordinary course i.e., there should not be a *"hybrid hearing."*

B AD APPEAL

B.1 CENTRAL LEGAL ISSUE

[13] Fair or unfair dismissal is statutorily defined in **sections 35** and **36** of the **Employment Act, 1980.** Invalid dismissal, on the other hand, is a common law concept. The instant appeal is understood to be based on the premise that there was reinstatement, which may be ordered, in

accordance with **section 16** of the (Industrial Relations) Act pursuant to a finding of unfair dismissal, but that there had been no requisite finding of unfair dismissal *in casu.*

[14] In the Founding Affidavit, the case painted by the Employee was that there had been an incomplete disciplinary hearing *contra* the provisions of the Disciplinary Code and the Employee submitted that the Employer therefore had unlawfully dismissed him. The Employee

further repeatedly referred to the letter of dismissal and/or the dismissal as being *"invalid.* "

[15] The relief sought by the Employee and eventually granted by the Court *a quo* was setting aside the letter of dismissal, and not reinstatement. The Employee's cause of action was invalid dismissal and in Employee's heads of argument it was submitted, with reference to the

South African Labour Court judgment in **Solidarity and Others v South African Broadcasting Corporation**[7]**,** that an invalid dismissal, in the eyes of the law, never occurred and an employee whose dismissal was invalid, does not need an order for reinstatement. Paragraphs [70],

[71] and [72] of this judgment read as follows:

"[70} The appropriate relief in this instance given that the claim rests on unlcmfulness is that the dismissals should be nullified. As the court stated in Steenkamp[8] *(paras 189 and 192): '**An invalid dismissal is a nullity. In the eves of the law an emplovee whose dismissal is invalid has never been dismissed. If. in the eves of the law, that employee has never been dismissed, that means the employee remains in his or her position in the employ of the employer....***

It is an employee whose dismissal is unfair that requires an order of reinstatement. *An employee whose dismissal is invalid does not need an order of reinstatement. ff an employee whose dismissal has been declared invalid is prevented by the employer fom entering the workplace to perform his or her duties, in an appropriate case a court may interdict the employer ji'om preventing the employee from reporting for duty or from pe1forming his or her duties. The court may also make an order that the employer must allow the employee into the workplace for purposes of pe1forming his or her duties. However, it cannot order the reinstatement of the employee.'*

[7] **2016 (6) SA 73 (LC)**

[8] i.e., **Steenkamp and Others v Edcon Ltd 2016 (3) SA 251 (CC) ((2016) 37 IU 564; [2016] ZACC 1**

[71] Consequently, an order declaring the applicants' dismissals invalid, will have the legal effect that their dismissals never took place and can be accompanied by an order that the SABC must allow them into their workplaces for the purpose of performing their duties.

[72J There is *also the question of the suspensions and the incomplete enquiries which were initiated prior to the applicants' dismissals. It was argued by the SABC that those would fall away as the fact of the applicants' dismissal would have that effect. However, if the legal consequence of the final relief is that the dismissals did not happen, it does not seem to follow in my view that eve,ything preceding them has no application. As those enquiries were essentially initiated for the same reason as the dismissal or because of the applicants' disagreement over adopting the policy, it would follow from the analysis above that those instructions and steps were unlawful because they were premised on the enforcement of an unlawful policy."* (Own emphasis and underlining[9])

[16] The substance of the above exposition was restated as follows by the South African Constitutional Court in **Maswanganyi v Minister of Defence And Military Veterans and Others:**[10]

"{46] I am fortified in this conclusion by this court's reasoning in Steenkamp [Para 118] where it clarified the distinction between unlawful, unfair and invalid dismissals. The court stated:

"The common law which gives us the concept of the invalidity of a dismissal is rigid. It says that if a dismissal is unlawful and invalid, the employee is treated as never having been dismissed irrespective of whether the only problem with the dismissal was some minor procedural non-compliance. It says that in such a case the employer must pay the employee the whole back-pay, even if. substantivelv, the employer had a good and fair reason to dismiss the emplovee.'

It *stated further:*

'The distinction between an invalid dismissal and an unfair dismissal highlights the distinction in our law between lawfulness and fairness in general and, in particular, the distinction between an unla\1ful and invalid dismissal and an unfair dismissal or, under the 1956 Labour Relations Act a dismissal that constituted an unfair labour practice. At common la\11 the termination of a contract of employment on notice is la\1ful but that termination may be unfair under the Labour Relations Act if there is no fair reason for it or if there was no compliance with a fair procedure before it was effected. This distinction has been highlighted in both our case la\11 and in academic writings.

[9] *Ditto* emphasis and underling in further extracts from cases below

[10] **2020 (4) SA 1 {CC)**

> ***<u>It is an employee whose dismissal is unfair that requires an order of reinstatement</u>. <u>An employee whose dismissal is invalid does not need an order of reinstatement</u>.*** *If an employee whose dismissal has been declared invalid is prevented by the employer from entering the workplace to perform his or her duties, in an appropriate case a court may interdict the employer from preventing the employee from reporting for duty or fi·om performing his or her duties. The court may also make an order that the employer must allow the employee into the workplace for purposes of pe1jorming his or her duties. However, it cannot order the reinstatement of the employee.'" [Steenkamp Paras 191-192]"*

[17] During the course of consideration of its judgment, it became evident to the Court that the concept of *"invalid dismissal"* lies at the centre of the controversy and the Court invited the parties through the Registrar to submit supplementary heads of argument thereon if they so wished. Mr Gamedze for the Employer responded by submitting firstly, that the **<u>Maswanganyi</u>** <u>judgment</u> related to the South African Defence Act, 2002, that the Eswatini Industrial Relations Act does not apply to the armed forces and that the High Court has jurisdiction over the armed forces. Secondly, that it is evident from the **<u>Steenkamp</u>** case referred to, that the South African Labour Relations Act (hereinafter referred to as the "LRA") does not contemplate invalid dismissals. Mr Jele for the Employee abided by the arguments already advanced on behalf of the Employee.

[18] From the outset, the Court must echo the prudent caution that one should not summarily superimpose foreign legislation onto Eswatini law. As

for labour law, there are significant differences in the hierarchy, composition, jurisdiction and powers of the South African labour courts, which includes that the Labour Court does not enjoy exclusive jurisdiction over labour matters, as is the case with the Eswatini Industrial Court. Also:

18.1 **Section 193** of the LRA provides only for reinstatement, reemployment or compensation for unfair dismissal or unfair labour practice. It was

held in the **Solidarity** matter[11] that it did not follow, because the LRA did not provide for a remedy, that a remedy did not exist at all in that the Labour Court had certain powers under another statute to grant orders for specific performance compelling employers to honour contractual obligations to hold disciplinary hearings; and to set aside dismissals in breach of such obligations; consequently the Labour Court was entitled to ente1iain claims based on any alleged invalid termination of their employment contracts and to make the competent orders. [12]

[11] Paragraphs (44] to (47]

[12] See also Paragraph [52] of the **Steenkamp** iudgment

18.2 The position in Eswatini is quite different. **Section 16** of the Act at first glance appears to be restricted to unfair dismissals. However, **subsection 8** leaps to the eye, reading:

"(8) Where the Court, ***in settling any dispute or grievance, finds that the employee has been disciplined or otherwise disadvantaged or preiudiced*** *contrary to a registered collective agreement or any other law relating to employment,* ***the Court shall make an order granting such remedy as it may deem iust.****"*[13]

18.3 Moreover, further unlike in South Africa, express and specific provision is made for jurisdiction over common law matters, which would include

invalid dismissal, in that **section 8(1)** of the Act which sets out the jurisdiction of the Industrial Court, includes:

" ..., *or in respect of any matter which may arise at common law between an employer and employee in the course of employment* .... "

[19] It then follows that the common law concept of invalid dismissal forms part of our law and is justiciable by the Industrial Court.

[13] Read with§§ **8(3)** and **(4)** i.e. *"/3) In the discharge of its functions under this* Act, the *Court shall have all the powers of* ***the High Court, including the power to grant injunctive relief/*** **and** ***"(4 } In deciding a matter, the Court may make any other order it deems reasonable which will promote the purpose and objects of this Act."***

[20] Reverting to the case under consideration, the Disciplinary Code, which fonns part of the terms and conditions of employment, requires certain steps to be followed; the starting point of most cases involving dismissal is the prevailing Code. [14] The failure by the employer to comply with the dictates of the Code prior to a dismissal may constitute a procedurally unfair dismissal but a dismissal may be both procedurally unfair and invalid, in which case it is. for the aggrieved party to elect which cause of action and consequent remedy to pursue.[15]

[21] In casu the Employee elected to rely on invalid dismissal, and there being no dispute that the Employer had jumped the gun in dismissing without prior submissions on sanction, contrary to the Code, the Employee was entitled to rely on invalid dismissal as his cause of action in the Court *a quo,* and to seek appropriate relief in the fom1of the letter of dismissal being set aside (as opposed to unfair dismissal and reinstatement), the dismissal itself being a nullity in the circumstances. [16]

[14] See also, in broad terms, § 4 of the Act

[15] See for instance POPCRU v SACOSWU and Others 2019 (1) SA 73 {CC) at Paragraph [145)

[16] *En passant:* a prayer for an order declaring a dismissal to be invalid, or valid, as the case may be, would also have been appropriate (compare NTE Ltd v SA Chemical Workers' Union and Others 1990 (2) SA 499 (N) at 501) and would serve as a springboard for any subsequent steps or documents, *ex lege,* to be devoid of any legal force or effect

[22] It then follows that the *"unfair dismissal"* and *"reinstatement"* bases of the appeal were misplaced and cannot be considered and as such, that the appeal is bound to fail.

B.2 NATURE OF GROUNDS OF APPEAL

[23] Within the current prevailing legal parameters, this Court is seized with adjudicating not only the merits of an appeal but also, usually as a preliminary exercise, the oft th01ny and vexing determination whether or not a particular ground of appeal constitutes a question of law, as is required by the Act in its existing form.

[24] *In casu* a question of law had been posed in the context of the correct application of the law relating to unfair dismissal and reinstatement and as such an appeal to this Court was permissible in the circumstances.

[25] However, the matter does not end there in that recent legal pronouncement prompts the following observations which, I must emphasise, are *obiter* only:

25.1 The Industrial Court (created in 1980) and this Court (created in 1996) are creatures of statute and the Industrial Court was vested with exclusive original jurisdiction in labour matters in 1996. Neither Court has been declared by the Legislator to be *"subordinate"* courts; the only legislation creating or defining subordinate courts was the **Subordinate Courts Proclamation *(Cap.* 20)** which became the Magistrate's Courts Act, 1938. [17]

25.2 On the contrary, in **section 32** of the Constitution, workers' rights for the first time are recognised to be fundamental human rights. For purposes of this judgment possibly oppressive past practices and/or historical legacies pre-2005 need not be considered; suffice it to express the view that there no longer is room to portray a breach of employment contract as being inferior or subordinate to say breach of a building contract (where, ironically, the person ordering the construction generally is referred to as the *"Employer")* or to maintain unequal playing fields between ordinary civil law, and labour law litigants.

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[17] See the End Note to the **Magistrate's Courts Act, 1938** reading: *"{NOTE: This Act was formerly styled the Subordinate Courts Proclamation {Cap. 20) and the courts established under it were known as subordinate courts.]"*

25.3 In the recent judgment of the Supreme Court in ***Cashbuild Swaziland (Pty) Ltd vs Thembi Penelope Magagula*** [18] it was held by way of a majority judgment that the Industrial Court and the Industrial Court of Appeal, respectively, are specialised courts operating in a parallel plane to the High Court and the Supreme Court respectively, and that the High Court has no revisional jurisdiction over the industrial courts. It then follows, the judgment continued, that **section 19(5)** of the Act which refers to a review by the High Court is unconstitutional and as such, it was struck down.

25.4 Many such reviews previously laid before the High Court, on closer reading of those judgments, appear to be but thinly disguised appeals on questions of fact or judicial discretion, resorted to in the review arena by litigants because only a right to appeal on a question/s of law is provided for.

25.5 Labour law is but a specialised field of civil law, equipped with its own courts. The ordinary civil law litigant enjoys a right to a *"full"* appeal in the sense of an um·estricted challenge on questions of fact and/or law

[18] (26B/2020) [2021] *SZSC* 3 I (09/12/2021)

and/or judicial discretion. In contrast, the aggrieved labour law litigant is confined to an appeal on a question oflaw only and as a consequence, suffers from a distinct disadvantage *vis-a-vis* his or her or its ordinary civil law counterpart.

25.6 This inequity *prima facie* impacts on the right of labour litigants to equality before the law, with reference to **section 20(1)** of the Constitution which reads: ***"All persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law"*** as well the ***"right to a fair hearing"*** under **section 21(1).**

25.7 In the Supreme Court a right to a *"full"* appeal exists, as an appeal as of right against all final High Court judgments, and with leave as regards costs, *ex parte* and interlocutory orders. Further, the High Court has the power to submit a stated case on a question of law to the Supreme Comi. [19]There does not appear to be any rational impediment to the Legislature stipulating and implementing the same in respect of this

[19]§§ **14** and 17 of the Appeal (Supreme) Court Act, 1954

Court and the Industrial Court; in terms of **sections 8(3)** and **20(1)** of the Act these Courts are to have the same powers as their civil counterparts and the spirit of these provisions should be given proper effect to.

25.8 It is trusted that the current reviewers of the Act under the auspices of the Labour Advisory Board, will take these remarks to heart and give serious consideration to amending the Act accordingly and with reference to the possible constitutional implications, to do so with all expediency.

C CONCLUSIONS AND ORDER

[26] In the result, it is held that:

26.l The common law concept of invalid dismissal forms part of our law and is justiciable by the Industrial Court; [20]

[20] *Vide* again§ 16(8) of the Act and Paragraphs [18] and (19] *supra*

26.2 A dismissal may be both procedurally unfair and invalid, in which case it is for the aggrieved party to elect which cause of action and which remedy to pursue; [21]

26.3 An invalid dismissal is a nullity; in the eyes of the law an employee whose dismissal is invalid has never been dismissed and remains in his or her position in the employ of the employer. It is an employee whose dismissal is unfair, who requires an order of reinstatement;[22]

26.4 *In casu,* the case of the Employee had as its cause of action invalid dismissal, which is a valid cause of action. (For purposes of this judgment, it is not to be decided whether, *de facto,* there had been an invalid dismissal or not.)

26.5 The Employer's appeal was predicated on unfair dismissal supposedly resulting in reinstatement and the legal basis of the appeal, in the circumstances, therefore was inapplicable and misplaced.

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[21] POPCRU v SACOSWU and Others 2019 (1) SA 73 (CC) - Paragraph [20] *supra*

[22] Steenkamp and Others v Edcon Ltd 2016 (3) SA 251 (CC) ((2016) 37 IU 564; [2016] ZACC 1; Solidarity and Others v South African Broadcasting Corporation 2016 (6) SA 73 (LC); Maswanganyi v Minister of Defence And Military Veterans and Others 2020 (4) SA 1 (CC) - Paragraphs [15] and [16] *supra*

[27] Accordingly, the following order is made:

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

2 The Registrar is requested to make available a copy of this judgment to the Attorney-General for consideration of amendment of the Industrial Relations Act, 2000, with reference to Paragraph 25.7 *supra*.

J. WALT
JUSTICE OF APPEAL

I agree

.....Je
S.NSIBANDE
JUDGE PRESIDENT

I agree

L
.NONYANE
JUSTICE OF APPEAL

For the Appellant: Mr B Gamedze of Musa M. Sibandze Attorneys
For the Respondent: Mr ND Jele of Robinson Bertram Attorneys