

Commissioner: **Ronnie Bracks**
Case No: **PSHS999 -24/25**
Date of ruling: **5 May 2025**

In the matter between:

PSA obo Maseko, Sifiso Goodwood

Applicant

and

Department of Health- Gauteng

Respondent

DETAILS OF HEARING AND REPRESENTATION

- 1 The arbitration was scheduled for hearing at the Respondent's office at 45 Commissioner Street in Johannesburg on 3 April 2025.
- 2 The Applicant was represented by Bongane Qankase the Labour Relations Officer of the union. The Respondent was represented by Osborne Molatudi from Malatji and Co. Attorneys.
- 3 At the commence of the Arbitration the Respondent brought an application for the Consolidation of the matter, for it to be heard as a stated case and for a senior commissioner to be appointed.
- 4 A ruling was then issued allowing the parties to make submissions in respect of this application which they accordingly did, and this is the ruling in respect thereof.

ISSUE TO BE DECIDED

- 5 I need to determine whether the present case can be consolidated with a case referred to the GPSSBC under case number GPBC303/2025, as well as other cases that were referred for which case numbers are still to be allocated.
- 6 I also need to determine whether the case can be heard as a stated case.
- 7 Thirdly, whether a senior commissioner should be appointed to hear the matter.

SUBMISSIONS

Respondent's Submissions

- 8 The Respondent filed an application of approximately 472 pages and submitted that the matter involves the Gauteng Department of Infrastructure and Development and the Department of Health. As this is a matter of record the content will not be repeated save to state that:
- 9 The Applicants Mokhele Raseboka, Sipho Makhumisani and Trevor Tabane were all employees of the Gauteng Department of Infrastructure and Development. The Applicant in this matter was employed as the Chief Director Infrastructure Management for the Gauteng Department of Health.
- 10 They were all subjected to a disciplinary hearing in which an investigation unearthed irregularities with procurement and there was also a prima facie case of financial misconduct and gross financial misconduct in relation to a refurbishment project. This resulted in the cost skyrocketing from an initial estimate of R50 million to R588 million without them having received approval from the budget holder which was the Gauteng Department of Health.
- 11 The Applicants were placed on precautionary suspension around February 2022. They were issued with notices to attend disciplinary enquiries which were held jointly by the two departments under the auspices of an independent chairperson. The chairperson handed down a ruling on 28 November 2022 finding the Applicants guilty of gross financial misconduct and other related offences. The outcome consisted of about 274 pages and recommended the dismissal of the Applicants.
- 12 The Applicants referred their disputes to the two respective bargaining councils.

- 13 The application was brought in terms of section 27(1) & (2) of the General Public Service Sector Bargaining Council rules and rule 29 of the Public Health and Social Development Sectorial Bargaining Council. The application is premised on the fact that the four affected employees are seeking relief premised on the same cause of action arising from a joint disciplinary enquiry which was presided over by the same presiding officer.
- 14 With reference to the matters that are before the two bargaining councils, the departments seek consolidation of the two councils i.e. GPSSBC and the PHSDSBC in order to deal with the matters on one forum.
- 15 The departments are also seeking an order for the joint and consolidated arbitration disputes to be dealt with by way of a stated case in order to save time and money since it will be a repetition of the same facts and testimonies about the same or similar acts of misconduct through oral evidence in these proceedings.
- 16 The witnesses who testified at the joint hearing were sworn in and gave evidence under oath and were cross-examined and re-examined. One Hundred and Thirty volumes of transcripts were produced by a credible transcriber who attested to this through a certificate at the end of each volume.
- 17 Only the substantive fairness is challenged by the Applicant, so it is therefore possible for parties to continue with the transcripts containing the sworn evidence.
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- 18 The Respondent also made substantive submissions supporting the Application for a senior commissioner to be appointed. This is a matter of record and will not be repeated.

Applicant's submissions

- 19 The Applicant appointed Maluleke Macema Attorneys who presented the Answering Affidavit which in summary raised the following points:
- 19.1 The Application for the consolidation in the General Public Service Bargaining Council does not find application in Rule 27(1) & (2) as these rules relate to disclosure of information in that Council;

- 19.2 Disputes involving the Department of Health must be dealt with by this Council and this Council alone and rule 29 of the Council deals with consolidation of matters falling under the jurisdiction of this Council and not of other councils and such consolidation would be prejudicial to the Applicant.
- 19.3 The appointment of a senior commissioner will not be objected to.
- 19.4 Hearing the matter as a stated case is objected to as it will be prejudicial to the Applicant.
- 19.5 In addition, the issues of fact and law are not the same as the charges were different.
- 19.6 Arbitrations are hearings de novo and the Applicant was entitled to change representatives as they are done now and the representatives need not confine themselves to the cross-examination of the disciplinary hearing.
- 19.7 The General Public Service Sectoral Bargaining Council lacks jurisdiction to deal with issues of the Department of Health.

ANALYSIS OF THIS APPLICATION

- 20 After careful consideration of the submissions made by the parties, I therefore make the following Ruling.
- 21 In terms of rule 29 of the Council's rules, the Council or a panelist of his/her own accord after consultation with the parties or on application may consolidate more than one dispute so the disputes may be dealt with within the same procedure.
- 22 In the present matter, the Respondent served an application requesting that a matter which falls under the jurisdiction of the General Public Service Bargaining Council to be consolidated to be heard by this Council.
- 23 I have considered the submissions by the parties and wish to state that section 51(2)(a) of the Labour Relations Act 66 of 1995 (LRA) provides that (i) The parties to a council must attempt to resolve any dispute between themselves in accordance with the constitution of the council. (ii) For the purposes of subparagraph (i), a party to a council includes the members of any registered trade union or registered employers' organization that is a party to the council.
- 24 Section 51(4) of LRA stipulates that "If one or more of the parties to a dispute that has been referred to the council do not fall within the registered scope of that council, it must refer the dispute to the Commission."

- 25 It is therefore clear that each council has a registered scope and here we are dealing with two bargaining councils each with their own jurisdiction and this precludes me from consolidating the matters as I do not have the jurisdiction to do so.
- 26 Regarding the issue of a stated case while rule 19 of the rules of Council make provision for a Commissioner to direct the filing of a statement in terms of the case law commissioners should approach such request with caution.
- 27 In *PSA and Others v Minister of Correctional Service and Others* [2017] 4 BLLR (LAC) at para 16; *Arends and others v South African Local Government Bargaining Council and others* (2015) 36 ILJ 12 00 (LAC); [2015] 1 BLLR 23 (LAC) it was held that; “[15] ... When parties desire to proceed without oral evidence in the form of a special case, it is imperative that there should be a written statement of the facts agreed by the parties, akin to a pleading. Otherwise, the presiding officer may not be in a position to answer the legal question put to him...”
- 28 Also, in *The South African Social Security Agency v Nehawu obo Malizo Punzi and 13 Others* [(Case No.: C233/14) Judgment delivered: 30 April 2015] at para 8 it was held that; ‘In the absence of such a stated case, oral evidence should be led on the material facts in dispute at arbitrations in terms of the LRA. Commissioners and arbitrators should not condone an agreement between parties that no oral evidence be led unless such a stated case has been agreed, and on which they may draw legal conclusions. (my emphasis) Although parties may regard submitting documents and argument as a fast way of resolving a dispute on the day of arbitration, it in fact renders the award issued susceptible to review. (my emphasis) In the result, the principle of speedy resolution of disputes is ultimately sacrificed.”
- 29 In the present case that Applicant has clearly opposed the matter being heard by way of a stated case and in the light thereof the Application is accordingly denied.
- 30 The Respondent has requested that a senior commissioner be appointed, and this was agreed to by the Applicant. I have considered the facts in the matter and am of the view that it justifies the appointment of a senior commissioner.

RULING

- 31 The Application to consolidate the disputes is denied as Council does not have the jurisdiction to do so.
- 32 The Application for the matter to be heard by way of a stated case is also denied as the Applicant has opposed the application.
- 33 The Application to appoint a senior commissioner is granted.



Adv. RONNIE BRACKS