EMPLOYMENT LAW

hbgschindlers attorneys

# Striking a Balance: Lessons from Makuleni v Standard Bank

By **Sarah Thackwell** (Partner),
and **Lindelwa Magwaza** (Candidate Attorney)

28 March 2024

## INTRODUCTION

In Makuleni v Standard Bank of South Africa Ltd and Others (JA125/2021) [2023] ZALAC 4; (2023) 44 ILJ 1005 (LAC); [2023] 4 BLLR 283 (LAC) (8 February 2023) the Labour Appeal Court (LAC) determined whether an employer could dismiss an employee for misconduct where the facts demonstrated that she was an unpopular boss.

## BACKGROUND

At the heart of the dispute lay the tenure of Mrs. Makuleni, entrusted by Standard Bank to revitalise a neglected branch. Under her stewardship, the branch soared to new heights, ranking third nationwide for performance. However, success came with a price tag as Makuleni's managerial style earned her the label of an "unpopular boss."

Allegations of creating a hostile environment through disrespectful communication and inappropriate language led to Makuleni's suspension and subsequent dismissal for misconduct. Contesting her termination, Makuleni sought recourse through the Commission for Conciliation, Mediation, and Arbitration (CCMA).

The CCMA, recognising procedural irregularities, deemed Makuleni's dismissal unfair and ordered her reinstatement. Standard Bank, dissatisfied with the ruling, pursued a review in the Labour Court, which favoured the bank. Makuleni, undeterred, appealed to the LAC.

## KEY FINDINGS

The LAC's ruling underscored the well-established test for reviewing CCMA awards: whether the decision reached by the commissioner is one no reasonable person could have made. The court chastised the Labour Court for overlooking the Commissioner's reasonable decision amid disjointed evidence.

Crucially, the LAC highlighted the necessity for simplicity and expeditiousness in arbitration proceedings, emphasizing the legislative intent behind such mechanisms.

In a notable observation, the LAC flagged the failure to consider Makuleni's personal circumstances and exemplary service spanning 23 years. Despite her management style diverging from the bank's ethos, the tangible results achieved under her leadership warranted alternative measures.

## LESSONS LEARNED

The Makuleni case serves as a clarion call for employers to exercise prudence before resorting to dismissal. Rather than a knee-jerk reaction, avenues such as training and corrective discipline should be explored, particularly where employee tenure and contributions merit such considerations.

Moreover, allegations of workplace misconduct demand thorough investigations and impartial assessments, lest procedural oversights undermine the pursuit of justice.

In conclusion, Makuleni v Standard Bank illuminates the intricate interplay between disciplinary action and procedural fairness. By heeding its lessons, employers can navigate workplace disputes with integrity and equity, fostering environments conducive to organizational growth and employee well-being.

**Sarah Thackwell**
(Partner)

**Lindelwa Magwaza**
(Candidate Attorney)