

IN THE LABOUR COURT OF SOUTH AFRICA
(HELD AT JOHANNESBURG)

Case Number: 2026- 069094

In the matter between: -

NKOMAZI GAME RESERVE (PTY) LTD Applicant

and

SOLOMZI MPIKO N.O First Respondent

**THE COMMISSION FOR CONCILIATION,
MEDIATION AND ARBITRATION** Second Respondent

AFADWU obo GINA SIMANGA ISRAEL Third and Further Respondent

NOTICE OF MOTION

KINDLY TAKE NOTICE THAT the Applicant intends to make an application to the above Honourable Court on a date to be determined by the Registrar for an order in the following term:

1. That the award issued by the First Respondent, under the auspices of the Second Respondent under case number MPMB1650-25 dated 20 February 2026 be reviewed and set aside, in accordance with Section 145 of the LRA.
2. That the award issued by the First Respondent, under the auspices of the Second Respondent under case number MPMB1650-25 dated 20 February 2026 be substituted with an award that the dismissal of the Third Respondent was substantively fair.

3. Alternatively, that the matter be remitted back to the Second Respondent for proper determination of the dispute *de novo* before an arbitrator other than the First Respondent.
4. That those Respondents' who oppose the granting of this application be ordered to pay the costs thereof.
5. That such further and / or alternatively relief be afforded to the Applicant as the Honourable Court may deem necessary

BE PLEASED TO TAKE NOTICE FURTHER THAT the First and / or the Second Respondent is / are hereby called upon in terms of Rule 37(2) of the rules of the above honourable court to show cause why the decision or proceedings should not be reviewed, corrected or set aside, and to provide the record of the proceedings and the reasons for the decision, within 10 (ten) days of the date of delivery of this application.

BE PLEASED TO TAKE NOTICE FURTHER THAT the Respondent(s) are hereby notified in terms of the Rule 37(22) that should any of the Respondent(s) decide to oppose the granting of the order prayed for, he / she / they may deliver to the Registrar and to the Applicant, his / her / Answering Affidavit(s), within 10 (ten) days after service of the Applicant's notice / affidavit in terms of Rule 37(20), failing which the matter may be heard in such parties' absence and an order for costs may also be made in such event.

BE PLEASED TO TAKE NOTICE FURTHER THAT the accompanying affidavit of Gustav Roux together with all annexures thereto, is annexed to this application and will be used in support hereof.

BE PLEASED TO TAKE NOTICE FURTHER THAT the Applicant appoints the offices of **SNYMAN ATTORNEYS**, being its attorneys of record as the address at

which it will accept all documents and process in these proceedings and which address is reflected *infra*.

DATED at JOHANNESBURG on this the 24th day of MARCH 2026



SNYMAN ATTORNEYS

Applicant's Attorneys

24 Sturdee Avenue

Rosebank

Johannesburg

Tel: 082 450 4475

E-mail: arendp@snymanattorneys.com

Ref: A. Posthuma

**TO: THE REGISTRAR OF THE ABOVE HONOURABLE COURT
JOHANNESBURG**

AND TO: FRANK NAIDOO
First Respondent
c/o Second Respondent

**AND TO: THE COMMISSION FOR CONCILIATION,
MEDIATION AND ARBITRATION**
Second Respondent

CCMA House
Gerryman Building
46 Athlone Street
Witbank
E-mail: wtb@ccma.org.za
Tel: 013-655 2600

AND TO:

AFADWU obo GINA SIMANGA ISRAEL

Third and Further Respondent

E-Mail: admin@afadwu.org.za; info@afadwu.org.za;
mphogol@afadwu.org.za; ngubaneb@afadwu.org.za;
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SERVICE BY E-MAIL

IN THE LABOUR COURT OF SOUTH AFRICA
(HELD AT JOHANNESBURG)

Case Number: 2026-

In the matter between: -

NKOMAZI GAME RESERVE (PTY) LTD
Applicant
and

SOLOMZI MPIKO N.O
Respondent

First

**THE COMMISSION FOR CONCILIATION,
MEDIATION AND ARBITRATION**
Respondent

Second

AFADWU obo GINA SIMANGA ISRAEL

Third and Further Respondent

FOUNDING AFFIDAVIT

I, the undersigned

GUSTAV ROUX

Do hereby make oath and state that:

1. I am an adult male and the Manager of the Applicant in this application. I am duly authorized to depose this affidavit on behalf of the Applicant.
2. The facts hereinafter deposed to are within my personal knowledge, save where the converse is stated or is clear from the context used, and both true and correct.
3. This affidavit accompanies an application for the review of an award by an arbitrator of The Commission for Conciliation Mediation and Arbitration (hereinafter referred to as "The CCMA"), in terms of Section 145 and of the Labour Relations Act no 66 of 1995 (hereinafter referred to as "The Act").
4. The said award, forming the subject matter of this review, is an award given by Commissioner Solomzi Mpiko. In terms of the award, he determined that the dismissal of the Individual Third Respondent was substantively unfair. A copy of the aforesaid award is annexed as "A" hereto. The Applicant became aware of the arbitration award on the 20th of February 2025. I hereinafter refer to the Individual Third Respondent as the Third Respondent.

PARTIES

5. The Applicant is Nkomazi Game Reserve (Pty) Ltd, a company duly registered in terms of the Companies Act of the Republic of South Africa, having its physical address at the R541 between Badplaas and Elukwatini and its address for the purposes of this application at c/o Snyman Attorneys, as indicated.
6. The First Respondent is Solomzi Mpiko, cited herein in his capacity as commissioner, an adult male commissioner of the Second Respondent appointed by the Second Respondent in terms of the provision of the Act, cited herein nomine officii, with his address for these proceedings at care

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of the Second Respondent.

7. The Second Respondent is the CCMA a statutory dispute resolution body.
8. The Third Respondent is Gina Simanga Israel who is an erstwhile employee of the Applicant and whose full and final particulars are unknown to the Applicant.

RELEVANT BACKGROUND

9. The Third Respondent was employed by the Applicant as a Workshop Assistant on 1 April 2021. He was dismissed on 23 May 2025 for negligence. The charge was that on 14 May 2025 he failed to perform duties in that he mix-matched the springs he was asked to fit to a vehicle
10. The commissioner determined in his award that the Applicant discharged its onus of proof that the Third Respondent was guilty of the offence of negligence, that the trust relationship between the parties has broken down but determined that the sanction of dismissal was too harsh because the Third Respondent was 58 years old and unlikely to find other employment.
11. The commissioner found the dismissal of the Third Respondent substantively unfair and ordered the Applicant to pay the Third Respondent 8 (eight) months compensation.

GROUND OF REVIEW

12. The Applicant seeks to review and set aside only the aspect of the award determining that the sanction was too harsh and that the Third Respondent must be compensated. The Applicant takes no issue with the commissioner's finding that the Third Respondent was guilty of negligence or his finding that the trust relationship was destroyed.
13. It is however submitted that the commissioner failed to apply his mind properly or at all to the evidence presented to him by the parties at the arbitration.
14. It is further submitted that the commissioner's reasoning process in terms of the finding that the sanction of dismissal was too harsh makes the award a decision that a reasonable decision maker could not reach. No other reasonable decision maker could have come to this conclusion.
15. The Commissioner committed a gross irregularity by finding that the sanction of dismissal was too harsh.
16. It is evident from this finding that the commissioner ignored the evidence that the Third Respondent received a final written warning for negligence on the 10th of January 2025 related to failing to do proper checks on an exhaust system and rear leaf springs of a vehicle. This warning was still valid at the time that the Third Respondent committed the offence for which he was dismissed.
17. It is further evident from this finding that the commissioner ignored the evidence that the Third Respondent received a second final written warning on the 29th of January 2025 for negligence when he incorrectly installed base brackets to a vehicle.
18. This evidence showed that the Applicant followed a path of corrective and

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progressive discipline but that the Third Respondent could not be rehabilitated. Dismissal was therefore the only available sanction remaining.

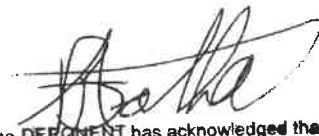
19. The commissioners disregard of this evidence has resulted in an unreasonable outcome and the finding on the appropriateness of the sanction could not have been reached by a different decision maker.

Order

20. The Applicant therefore prays for the relief as set out in the Notice of Motion which this affidavit is annexed.


GUSTAV ROUX

I CERTIFY THAT THIS FOUNDING AFFIDAVIT WAS SWORN TO AND SIGNED BEFORE ME BY THE DEPONENT ON THIS THE 25th DAY OF March 2026 AT Nelspruit, SUBSEQUENT TO THE DEPONENT HAVING ACKNOWLEDGED TO ME THAT HE KNOWS AND UNDERSTANDS THE CONTENT OF THIS FOUNDING AFFIDAVIT, THAT HE HAS NO OBJECTION TO TAKING THE PRESCRIBED OATH, AND THAT SHE CONSIDERS THE PRESCRIBED OATH TO BE BINDING ON HER CONSCIENCE.


I certify that the DEPONENT has acknowledged that he/she knows and understands the contents of this affidavit, that he/she does not have any objection to taking the oath, and that he/she considers it to be binding on his/her conscience, and which was sworn to and signed before me

at Nelspruit on this the 25 day of 3 2026
and that the administering oath complied with the regulations contained in Government Gazette No. R1258 of 21 July 1972, as amended.


COMMISSIONER OF OATHS (RSA)
Andries Johannes Botha
Professional Accountant (SA)
Member No.: SAIBA16445
4 Lugagane Close
Nelspruit, Mpumalanga, 1201

''A''



IN THE COMMISSION FOR CONCILIATION, MEDIATION AND ARBITRATION

Case number: MPMB1650-25

AFADWU obo Gina Simanga Israel

Applicant

and

Nkomazi Game Reserve

Respondent

Date of hearing: 5 November 2025

APPROVED

Date of submission of heads of argument: 18 February 2026

Date of award: 20 February 2026

Name of the Commissioner: Solomzi Mpiko

ARBITRATION AWARD

1. Details of hearing and representation

- 1.1 This is an arbitration award in the alleged unfair dismissal dispute between **AFADWU obo Gina Simanga Israel**, the Applicant, and **Nkomazi Game Reserve**, the Respondent. The matter was set down for arbitration and proceeded before me, on 30 September 2025 and was concluded on 11 February 2026.
- 1.2 Both parties were present. The Applicant was represented by **Elias Mgwanya** a Union Official from **AFADWU**. The Respondent was represented by **Zandre Maritz**, an Official from **LWO Employers Organisation**.
- 1.3 The proceedings were conducted in English and were manually and electronically recorded. Interpretation service was provided.
- 1.4 The Respondent submitted bundles of documents and a video clip which it used as evidence in support of its case. The Respondent bundle was marked Annexure R.

2. Background information

- 2.1 Common cause issues
- 2.1.1 The Applicant was employed by the Respondent as a Workshop Assistant on 1 April 2021. He was dismissed on 23 May 2025. He was charged for Negligence in that: on or about 14 May 2025 he failed to perform duties in that he mix-matched the springs he was asked to fit to a vehicle.
- 2.1.2 At the time of the Applicant was dismissed he was earning a basic salary of R6010.00 (six thousand and ten rands) per month. He wanted reinstatement or compensation as relief.
- 2.2 Issues in dispute
- 2.2.1 The Applicant denied that he was negligent as charged.

3. Issues to be determined

- 3.1 I have to decide whether or not the Applicant's dismissal was fair. The Applicant challenged both the substantive and procedural fairness of his dismissal.

4. Preliminary matters

- 4.1 There were no preliminary issues.

5. Analysis of evidence and argument

- 5.1 Both parties were given an opportunity to present their cases under oath. They were also allowed to submit written closing arguments not later than 18 February 2026. The Respondent called one witness, Gustav Le Roux. The Applicant testified and called Siphon Mthupha, a union shop steward, who also testified for his case.

- 5.2 Section 192 (2) of the Labour Relations Act 66 of 1995 ("the LRA") places the burden of proving that the dismissal was for a fair reason on the employer. The onus is discharged if the respondent shows, by credible evidence, that its version is the more probable and acceptable version.

- 5.3 Item 2 of the Code of Good Practice of the LRA ("the Code") provides that: a dismissal is unfair if it is not effected for a fair reason. Whether or not a dismissal is for a fair reason is determined by the facts of the case.

- 5.4 The Respondent's witness, Gustav Le Roux, testified that the Applicant did not report to him but to Johnny, the Workshop Manager. He was however, in charge of both Johnny and the Applicant. He confirmed that the Applicant was not trained but he had engagements with him in his office in regard to the way he was doing his work. The Applicant was competent because he worked close to Johnny and had done, on many occasions in the past, the same work he was asked to do. He confirmed that he was given written warnings in the past for negligence as he failed to do his work properly. Johnny was given a written warning for the misconduct for which the Applicant was dismissed. He was not dismissed because it was his first misconduct.

- 5.5 The Respondent submitted that the Applicant was dismissed because he was negligent. As a qualified Auto Electrician, he should have realised that the springs that he fitted in the vehicle were not the correct ones. The work he was assigned to do did not require technical skills. Any unskilled person could do it. The Applicant was not supervised. He was the one assigned to do the work on the vehicle. The vehicle that the Applicant repaired was recalled for inspection as they would normally do (after a week or two) with all the vehicles they fixed to check if the work they did was proper. They did so because it happened sometimes that the bolts they fastened would, after a week or two, get loose again.
- 5.6 The Applicant was the one who spotted the problem with the vehicle when it came back and reported that to Johnny that it had a fault. He was a qualified Auto Electrician, but the Respondent never cared about that because it did not recognise his qualification in terms of paying him as such.
- 5.7 He confirmed that he fitted springs (which were small in size) which were meant for a diesel vehicle, instead of the springs meant for a petrol vehicle. It was for that reason that the Respondent saw an opportunity to charge and dismiss him. He did not pick up the springs himself. He did not doubt that they were not the right size for a petrol vehicle because they were given to him by Johnny, his supervisor. There was no damage or costs incurred as the result of the alleged misconduct. The conduct of the Applicant risked the Respondent's reputation as his work could have caused harm to the client's vehicle if it was not spotted on time and fixed. The Respondent had lost trust in the Applicant.
- 5.8 I concur that the Applicant committed misconduct (negligence for which he was charged) which was failure to exercise reasonable care. I am not convinced that the Applicant was not able to distinguish between the different sizes of the springs that he had to fit given the experience he had in doing the same work over and over. I would not agree too, that the Applicant needed training in this regard but accept that he committed a mistake.

- 5.9 I considered that negligence is a mistake, inadvertence, or failure to meet the standard of care a reasonable person would take. It is different from a severe, conscious and voluntary disregard for the need to use reasonable care. There was no evidence led that the Applicant consciously and voluntarily disregarded the need for reasonable care. Instead, evidence was led that it was a practice that vehicles were recalled after work to ascertain that the work done on them was proper. The Applicant on his volition recalled the vehicle and identified his error (which was having inserted smaller sized springs) and reported the same to the respondent. I cannot overlook that the same error was committed by another person (Johnny the supervisor) who handed the springs to the Applicant for fitting.
- 5.10 *The Labour Appeal Court in Gcwensha v CCMA and Others [2006] 3 BLLR 234 (LAC)* established that an employer may fairly dismiss an employee for misconduct (gross negligence/incompetence) even without a valid final written warning, provided the dismissal is substantively and procedurally fair. The court upheld the dismissal of a long-serving employee based on a record of poor performance and misconduct. I have to consider the totality of circumstances, including fairness, when determining whether or not the dismissal is an appropriate sanction. In this regard I considered that the Applicant was not charged for Gross Negligence but for Negligence. The fact that there were some written warnings issued in the past does not automatically mean that the employee must be dismissed should he commit the same or similar misconduct in future. In this regard the Labour Appeal Court (LAC) in *Gcwensha* as cited in this paragraph here above, that an employer is not strictly required to have a valid final written warning to justify dismissal, provided the misconduct is serious and the employee's history justifies it. I am not of the view that the employee's history justifies dismissal particularly considering that there was a practice of recalling the vehicles which confirms that rework was normal in the respondent's workshop.
- 5.11 In the light of the evidence before me I am satisfied that the Respondent proved its case on the balance of probabilities. I however, I cannot conclude that dismissal was an appropriate sanction. I have considered the undisputed evidence that the employment relationship is broken down. I also considered that the Applicant is at an advanced age (fifty-eight years old) and therefore not likely to find another employment. I am of the view that compensation is the appropriate relief in the given circumstances.

6. Award

6.1 I find that the dismissal of the Applicant, **Gina Simanga Israel**, is substantively unfair.

6.2 I order that the Respondent, **Nkomazi Game Reserve**, compensates the Applicant, **Gina Simanga Israel**, with R48 080.00 (forty-eight thousand and eighty rands) which is an amount of money equivalent to the Applicant's eight months' salary calculated R6 010.00 (six thousand and ten rands) per month times eight month. The Respondent is to pay the said amount into the Applicant's bank account on or before 25 March 2026

Commissioner: Solomzi Mpiko



Signature:

APPROVED