



ARBITRATION AWARD

Commissioner: **KM Moodley**

Case No: **PSHS982-19/20**

Date of award: **02 February 2021**

In the matter between:

NEHAWU obo Sibusiso Cosmos Ngcobo and 2 Others

Applicants

and

Department of Health- KwaZulu Natal

Respondent

Details of the hearing and representation:

1. The Arbitration was held at the boardroom, RK Khan hospital, in Chatsworth, over several sittings and was concluded on 13 January 2021. The Applicants were represented by attorney Musawenkosi Sifundo Mbambo, instructed by NEHAWU, and the Respondent was represented by its official Thembekani Zulu. I am satisfied that the parties have been correctly cited and that the PHSDSBC has jurisdiction to hear this matter.
2. The parties tabled bundles of documents the contents of which were accepted by both parties as being what they purported to be.
3. The arbitration proceedings were mechanically recorded and all witnesses testified under oath.
4. No objection was raised to me as the Commissioner presiding over the arbitration.

Issue to be decided

5. The issue to be decided is whether or not the dismissal of the Applicants, procedurally and substantively, was unfair, and if so, what the remedy should be.

Common cause issues

6. The following issues were not in dispute:
7. A Disciplinary Inquiry in respect of the Applicants was held on 28 May 2018. The charges of misconduct preferred against the Applicants related to an incident that took place on 30 January 2018.
8. The Presiding Officer at this Inquiry, SB Jakazi, made a determination to "...withdraw the charges".
9. A second Disciplinary Inquiry in respect of the Applicants was held on 18 July 2019. The reformulated charges of misconduct preferred against the Applicants related to the same incident of 30 January 2018.
10. The Applicants "walked" out of this inquiry. The Inquiry proceeded in absentia.

Background to the dispute

11. The Applicants Sibusiso Cosmos Ngcobo (General Orderly), Nomthandaza Mdletshe (Food Service Aide) and Zinhle Luthuli (Food Service Aide) were employed by the Respondent in the kitchen of the RK Khan hospital.
12. On 31 January 2018 the fridge door was found open and it was discovered that some food items from the fridge were missing.
13. The Applicants signed statements, dated 09 February 2018, admitting that they took 4 packs of fruit juice from the fridge. They were tempted to take the juice when they saw that the fridge door was open.
14. The Applicants were then suspended from duty pending an investigation being conducted. The Applicants then informed the Respondent in writing, that they denied being in possession of the missing items. They were then charged for misconduct and duly appeared before a disciplinary inquiry.
15. The Presiding Officer of this inquiry made a determination to "...withdraw the charges" based on, inter alia the vagueness of the charges.
16. The Respondent then held a second disciplinary Inquiry on the 18 July 2018 for the same incident of 30 January 2018. The Applicants were charged with the following:

1) *it is alleged that on 30 January 2018 you were rostered for duty from 06h00 to 18h00. Just before going off duty you colluded with fellow colleagues Mr CS Ngcobo and Ms Z Luthuli to unlawfully remove 4 cases of 24 x 200ml Rhodes litchi juice at a value of R160.45 per case from the unlocked fridge in the main kitchen. The total cost price is R641.80. You further arranged with another colleague Mr SM Sithole who was off sick, to come into the hospital with his vehicle, a white Nissan Almera registration number ND465722. Mr Sithole arrived and the goods (juice) were loaded into his vehicle and he exited the hospital.*

You then exited the hospital via the staff gate. Once outside the hospital premises the unauthorised State property (juice) was shared between yourselves. Each of you took one case of 200ml Rhodes litchi juice.

2) *It is further alleged that on 30 January 2018 upon discovering the fridge not locked you failed to inform the Food Service Manager or Security.*

3) *By your actions you have committed the following acts of misconduct:*

i) you unlawfully utilised state property for personal gain without authority

ii) deprived some patients from being supplied the juice as part of their diet.

iii) failed to execute your duties in a responsible and competent manner by not informing security or the food service manager of the unlocked fridge.

iv) contravening the code of conduct for public services and.

V) while on duty you conducted yourself in an improper disgraceful and unacceptable manner.

17. The Applicants attended the inquiry but later “walked” out of the proceedings. The inquiry proceeded in absentia. The Applicants were subsequently found guilty of misconduct and were dismissed. The Applicants lodged an appeal against their dismissal but their appeal was unsuccessful. The Applicants then referred a dispute to the Council for adjudication.

Survey of evidence and arguments

18. As the proceedings were mechanically recorded, reference will only be made to the evidence led by the witnesses under oath, which bears relevance to my findings.

19. Similarly, the evidence led by the witnesses is recorded in summary form only due to the extent of the evidence led.

Respondent:

Witness 1: Lucia Dlomo

20. Dlomo was employed by the Respondent as a Senior HR Practitioner. She testified that the Respondent complied with its disciplinary procedure when it took disciplinary action against one Siyabonga Sithole, and the three Applicants.

21. The Respondent appointed one Moonsamy Moodley as the Investigating Officer to investigate the incident that occurred in the kitchen on 30 January 2018 (hereinafter referred to as “the incident”).

22. Following the outcome of this investigation the Respondent appointed SB Jakazi as the Presiding Officer of the disciplinary enquiry (hereinafter referred to as “the first inquiry”).

23. The presiding officer withdrew the charges citing vagueness of the charges.

24. Dlomo further testified that the charges were duly amended by the Respondent and a second disciplinary Inquiry, (hereinafter referred to as “the second inquiry”), was held. A new Presiding Officer, one E. Nagaya was duly appointed.

25. At the second inquiry held on 17 April 2019 the Applicants and their representative Mr. KK Bhungane from Nehawu, “walked” out of the inquiry. The disciplinary inquiry proceeded in absentia. The Applicants were found guilty of misconduct and were dismissed.

Witness 2: Munsamy Moodley (Investing Officer)

26. Moodley was appointed by the Respondent as the Investigating Officer in this matter.

27. He testified that he had inspected the area where the missing items were kept and he also inspected all relevant documentation in respect of the items missing from the fridge. He also interviewed Siyabonga Sithole and the three Applicants.

28. He testified that at the interviews the three Applicants admitted to him to having taken the juice. Each of the Applicants played a different role in the incident concerning the unlawful removal of the packs of juice from the kitchen. They also told him how the packs of juice were shared amongst themselves. Sithole was the

driver of the vehicle. He was off sick on the day of the incident but he was asked to fetch the Applicants from work on that day.

29. He further testified that Zinhle Luthuli and Nomthandaza Mdletshe had carried the packs of juice to Luthuli 's vehicle whilst Ngcobobo waited outside the gate for them. Sithole then drove outside the gate with the packs of juice in his vehicle. Outside the gates Ngcobobo, Luthuli and Mdletshe got into Sithole's car.
30. Sithole then dropped them off at or near their respective homes. As each of the Applicants got off the vehicle, they went off with one pack of juice. (one pack of juice equals 24 units). When the last person got off the car, she told him that there was a pack of juice for him in the car.
31. When Moodley asked the Applicants what they did with the juice they told him that they had consumed it. They did not deny that they had taken the juice from the kitchen. He also asked the Applicants whether they had written their statements on their own free will and the Applicants confirmed that it was their statements.
32. Moodley also testified that he was the Prosecutor at both Disciplinary Inquiries. The first disciplinary enquiry did not proceed as the Presiding Officer deemed the charges to be vague. The Presiding Officer withdrew the charges for vagueness. The Respondent then reformulated the charges and a second disciplinary inquiry was held. At the second disciplinary inquiry the representative of Nehawu raised the issue of 'double jeopardy'. When the ruling of the Presiding Officer was not in the Applicants favour the Union representative and the Applicants walked out of the inquiry. The Presiding Officer informed the Applicants that the inquiry will proceed in absentia should they choose not to participate. Thereafter the disciplinary inquiry proceeded in absentia. The Applicants were found guilty of misconduct and were dismissed.

Witness 3: Errol Nagayah (Presiding Officer)

33. Nagayah was the Presiding Officer at the second disciplinary Inquiry. He testified that at the inquiry Bhungane, the representative, argued the point of double jeopardy. Nagayah ruled against the Applicants as Nagayah found no basis for this claim. Bhungane was not satisfied with this ruling.
34. Bhungane also raised a concern about the number of witnesses to be called and requested for the matter to be postponed. Nagayah ruled that the matter should

proceed. The hearing then became unruly. Bhungane and the Applicants then walked out of the hearing as they were unhappy with the rulings. Nagayah further testified that he had informed Bhungane and the Applicants that the hearing would then proceed in absentia, and that they could appeal against the outcome should they so desire. The hearing then proceeded in absentia.

35. Nagayah pointed out that the Applicants had initially admitted, in writing, to committing the acts of misconduct, but later changed their plea to 'not guilty'. Nagayah testified that based on the evidence led at the second inquiry, he found the Applicants guilty of misconduct. He also found that a sanction of dismissal was the most appropriate sanction for this type of misconduct.

Witness 4: Sabastian Pillay: Food Service Aide

36. Pillay testified that on 31 January 2018 he noticed that the fridge was open when he came on duty

37. It is standing practice that the fridge be locked every evening.

38. His supervisor, Kumaran Naicker, instructed him to do a stock count immediately.

39. The stock count revealed that 8 kg of cheese and 10 cases of juice were missing. He reported this stock shortage to his manager.

Witness 5: Kumaran Naicker: Food Services Manager

40. Naicker testified that on 31 January 2018 Pillay informed him that he found the door to the fridge open. As it is standing procedure for all staff to lock all doors in the kitchen before they leave work, he ordered an immediate stock count to determine whether any stock was missing.

41. The stock count then took place immediately.

42. Pillay reported to him that 8 kg of cheese and 10 cases of juice were missing.

43. Naicker then reported the matter to his supervisor Dumakude, as well as to the hospital security.

Witness 6: Siyabonga Sithole: Food Service Aide

44. Sithole testified that on 30 January 2018 he was on duty but was feeling unwell. He then saw the staff doctor who booked him off work. He then went to see a traditional healer in Umlazi.

45. Late that afternoon he received a call from Mdletshe asking if he could fetch them from work as he usually did. He agreed to do so. He then received a call from Ngcobo asking if he could fetch them from work. He agreed to do so.
46. He arrived at the hospital around 17h00 and parked inside the hospital premises waiting for the Applicants to arrive.
47. He testified that at about 17h30 Luthuli arrived at his car and put some plastic inside his car. He did not question her about the contents of the plastic as it was normal for her to carry stuff that she bought at the shopping centre during lunchtime. She told him that she would meet him outside the gate after she dropped off the keys with the security. She also told him that Mdletshe and Ngcobo would also be waiting to be picked up outside the gate.
48. He drove outside the gate and found Mdletshe waiting there. Soon after this Luthuli arrived. He then picked up Ngcobo at the bus stop. Luthuli then got off the car at the nearby Shoprite store with a plastic bag in her hand. As Mdletshe and Ngcobo lived in his neighbourhood Sithole dropped them off near their homes. They then gave him a pack of juice. They told him that Naicker had given the juice to them as the juice had already expired.
49. On 31 January 2018 Dumakude informed the staff about the missing food items. Sithole then asked the Applicants to confess about taking the packs of juice but they did not agree to do this. Sithole then told Dumakude that the Applicants had given him the pack of juice.
50. Sithole also testified that the Applicants then confessed to Dumakude and apologised to him as they were tempted to take the packs of juice when they saw the fridge door open. Sithole was present when the Applicants confessed to Dumakude about the missing packs of juice.
51. Sithole then returned the pack of juice that was given to him, to security.

Witness 7: Nhlanhla Thembekani Dumakude: Assistant Director: Systems

52. Dumakude testified that following a report of the missing food items from Naicker, he confronted the Applicants about the missing items. They denied any knowledge about the missing items. Dumakude then conducted his own investigations and confronted the Applicants again about the items, but they still denied any knowledge about it. Dumakude then referred the matter to the Labour Relations department for their attention.

53. Subsequent to this meeting the Applicants came to Dumakude's office and admitted to him about the 4 missing packs of juice. They told Dumakude that they were tempted to take the packs of juice when they saw the fridge door open. They told him that they took the packs of juice outside the hospital gates and shared the juice amongst themselves. They apologised to him for their actions. The Applicants offered to return the packs of juice but Dumakude refused to consent to this. He also advised them to apologise to the HR department who might consider giving them a lesser sanction. Dumakude then referred the Applicants to the hospital's security.

Applicants:

Witness 1: Zinhle Luthuli (Food Service Aide)

54. Luthuli, one of the applicants, testified that on 30 January 2018 she together with Sithole and the other applicants, were on duty in the hospital kitchen from 06h00 to 18h00. Sithole left work early but came back later to fetch the Applicants from work. Sithole parked his car near the kitchen. At closing time Luthuli went to the car. She did not carry any bags with her when she entered the car. Luthuli and Sithole then drove off outside the hospital gate. Mdletshe and Ngcobo entered the car when it was outside the hospital gate. The four of them then drove off.

55. Luthuli then got off at the shopping centre nearby. She testified that she had only her handbag with her at the time. She did not have any plastic bags with her at the time.

56. On 31 January 2018 Dumakude asked the staff about the missing items and advised them to talk to him if they knew anything about it. Dumakude then spoke to the Applicants individually where he told them that if they did not tell the truth about what happened in the kitchen, he will dismiss them. The Applicants then met with Sithole who told them to confess and speak the truth and that if they do that they will not be dismissed.

57. She then wrote out a statement in the presence of the hospital security confessing to taking the packs of juice. She testified that she only confessed to taking the packs of juice because she believed that Dumakude would dismiss her if she did not do so. She later realized that she should not admit to something that she did not do, so she wrote out another statement denying having taken the packs of juice. Therefore, she was not guilty of the charge of misconduct.

Witness 2: Nomthandaza Mdletshe (Food Service Aide)

58. Mdletshe testified that she was on duty in the kitchen from 06h00 to 18h00 on 30 January 2018.
59. She stated that Sithole parked his car inside the hospital premises near the kitchen. Sithole told them that he came to the hospital to fetch the Applicants. She did not telephone him to fetch her from the hospital as she travels with him regularly.
60. Luthuli then told Mdletshe that she will get into Sithole's car whilst Mdletshe must lock up the kitchen and then hand the keys over to the hospital security. Mdletshe duly did this and went outside the hospital gate where she saw Luthuli seated inside Sithole's car. Ngcobo then entered the car and the four of them then drove off. Luthuli got off the car at the nearby shopping centre. Luthuli only carried a handbag with her. She did not carry any plastic bags with her. She also did not see Ngcobo and Sithole carrying a plastic bag.
61. On 31 January 2018 Mdletshe met with Dumakude who told her that if the Applicants did not tell what happened to the missing items, then he will dismiss them. Later on, Sithole also told them that if they confessed to the missing items, then the charges will go away.
62. It was because of the pressure from Dumakude and Sithole that she wrote out a statement confessing to taking the pack of juice. She later realized that she should not confess to something she did not do so she wrote out another statement denying having taken the pack of juice. She believed that she was not guilty of misconduct.

Witness 3: Sibusiso Cosmos Ngcobo (General Orderly)

63. Ngcobo testified that on 30 January 2018 he was on duty in the kitchen from 06h00 to 18h00. At about 18h35 he knocked off shift and went to the nearby shopping centre. When he got back to the bus stop Sithole called him to the car. Ngcobo stated that he sat in the front passenger seat of the car and did not see any plastic bags in the car
64. Sithole dropped off Luthuli at the shopping centre. He did not see Luthuli carrying any plastic bags in her hand. She was only carrying her handbag when she got off the car. Sithole then dropped Mdletshe off at her house. Ngcobo did not see Mdletshe carrying any plastic bags in her hand when she got off the car. She was

- only carrying her handbag. Sithole then dropped of Ngcobo at his home. Ngcobo testified that he did not take any plastic bags from Sithole when he got off the car.
65. On 31 January 2018 Ngcobo was asked by Sithole and Dumakude to write out a statement confessing that he took the missing items from the kitchen. Because of the pressure put on him by Sithole and Dumakude, Ngcobe then wrote out the statement dated 9 February 2018. Ngcobo also testified that Sithole later told him that if he admitted to taking the missing items the matter will go away, but if he did not confess then he will be dismissed by Dumakude.
66. He later realized the seriousness of admitting to something that he did not do and then wrote out a statement denying having taken the packs of juice.
67. He believed that he only confessed to having taken the pack of juice, as he was placed under pressure by Sithole and Dumakude. Therefore, he was not guilty of the charge of misconduct.

Analysis of evidence and argument:

68. It was not in dispute that on 31 January 2018, the door of the fridge in the hospital kitchen was found to be open. A stock takes by Pillay showed that 8 kg cheese and 10 cases of juice were missing from the fridge. It was also not in dispute that the Applicants were on duty on 30 January 2018, from 06h00 hours to 18h00 hours.

Written Confessions

69. I found the three Applicants to be neither credible nor reliable witnesses. I could not place much reliance upon their testimony. They initially confessed in writing to having taken and or received 4 packs of juice belonging to the Respondent.
70. On 9th February 2018 the Applicants signed declarations, in the presence of the hospital security official, confessing that they took 4 packs of juice belonging to the Respondent. The reason advanced by the Applicants for confessing, was that they were pressured by Sithole and Dumakude into admitting to the incident, failing which Dumakude would dismiss them. On 16th February 2018 the Applicants submitted signed letters to the CEO of the hospital admitting to taking the juice. They apologised to the CEO for this “mistake’ and pleaded for leniency.
71. However, the Applicants later denied having any knowledge of the missing juices pointing out that they were pressured by Sithole and Dumakude into confessing to

taking the juices. A further reason advanced by the Applicants for their denial was that the items of juice were not found in their possession.

72. I found Dumakude, on the other hand, to be both a credible and a reliable witness. He denied that he had pressured the Applicants into confessing to taking the juice. He testified that when he interviewed the Applicants, they initially denied any knowledge of the missing items. However, they subsequently came to his office voluntarily, and confessed to him that they took the missing items. They also apologized to him. They told him that they were sorry. They also told him that when they saw the fridge door open, they were tempted to take the juice. They then shared the juice amongst themselves.
73. Dumakude's version was corroborated by Sithole who was present when the Applicants made the confession to Dumakude. Sithole also testified that the Applicants told Dumakude that they were tempted to take the juices when they saw the fridge door open. Sithole confirmed that the Applicants also apologized to Dumakude in his presence.
74. Dumakude's version was further corroborated by the Investigating Officer, Moodley. He testified that at the interviews he had with the three Applicants they admitted to him to having taken the juice. They also told him how the packs of juice were shared amongst themselves.
75. I saw no reason to doubt the version put to me by Dumakude. Neither Dumakude, nor Moodley, an independent investigating officer, employed from outside the hospital, stood to gain anything by stating that the Applicants had confessed to them about their role in the missing items. Neither did Dumakude stand to gain anything by forcing the Applicants to confess to doing something that they did not do.
76. The Applicants on the other hand, had everything to gain by claiming that Dumakude and Sithole pressured them to admit to taking the juice. Sithole and Dumakude had no involvement whatsoever in the drawing up and the signing of the statements. The Applicants went to the hospital's security officer individually and signed the statements in private, and in the presence of the security official. Neither Sithole nor Dumakude were present when the Applicants signed their statements. They signed their statements under oath, confessing to taking the juice. It is therefore highly unlikely that the Applicants signed the statements under

pressure from Sithole and Dumakude. A salient part of the Applicants' signed statements reads as follows:

"...I will be liable to prosecution if I wilfully state in it anything which I know to be false or which I do not believe to be true."

77. The Applicants testified that they strongly believed that by confessing to the charges, the charges would, at best, be withdrawn, or alternatively that they would receive a lesser sanction, or that the charges would go away.
78. It was only when they saw that the Respondent was proceeding with disciplinary action against them that they realised the seriousness of the situation. It was only then that they decided to deny the charges against them.
79. I therefore accept the version of the Respondent that the Applicants signed their letters of confession dated 9 February 2018 and 16 February 2018, on their own free will and without being pressured to do so by Sithole and Dumakude, as being the more probable version, and I accept the Respondents version.

Mdletshe:

80. Mdletshe testified that she did not take the juice but was pressured by Sithole and Dumakude into signing a confession dated 09 February 2018, wherein she admitted to have taken the juice from the kitchen fridge.
81. In this statement she stated under oath that she, together with Luthuli, Ngcobo and Sithole was tempted to take 4 packs of juice from the fridge, when they saw the fridge door open. They put the packs of juice in Sithole's car and drove off with it outside the hospital.
82. If Mdletshe was innocent and was forced to admit to taking the juice, she would have simply stated on her statement that she was guilty of taking the juice. Instead, for some strange reason she chose to give a detailed account of what had transpired on 30 January 2021. For example, she pointed out the following details:
- 1) The names of the 4 colleagues involved in the incident.
 - 2) She mentioned that the fridge door was open
 - 3) She specified the actual number of packs of juice taken i.e. 4 packs of juice were taken
 - 4) She mentioned that Sithole came back to work although he was booked off sick
 - 5) She specifically mentioned that the packs of juice were put into Sithole's car.

83. One would assume that if Mdletshe was simply confessing under pressure to something she did not do, she would not be privy to so much detail. In this instance Mdletshe recorded so much detail in her confession that it leads me to conclude that she was an active participant in the removal of the juices from the hospital's fridge.

84. Furthermore, if Mdletshe was innocent, as she claims she was, there was no need for her to admit that she was guilty of something that she did not do. Her innocence would have protected her anyway. If Mdletshe really was innocent she could have refused to bow down to any pressure allegedly exerted on her, and she should have reported the alleged conduct of Sithole and Dumakude to the CEO, but of concern to me was that she chose not to do so.

85. To further support my conclusion, Mdletshe in a letter to the CEO of the hospital dated 15 February 2018, pleaded with the management,

...not to suspend or terminate my services or at least be lenient should I be found guilty”

86. I found this to be an unusual request for someone who was “*innocent*”. If Mdletshe was in fact innocent it is highly unlikely that she would be found guilty, but in this instance, she was already pleading for leniency in the event that she was found guilty.

87. I therefore conclude that it is highly unlikely that Mdletshe was pressured into signing her statement dated 9 February 2018 but that she did so knowingly, and on her own free will.

Ngcobo

88. Ngcobo in his statement dated 9 February 2018 admitted that he received a pack of juice. He then got a lift with Sithole after he received the pack of juice. In a letter dated 16 February 2018 to the CEO of the hospital Ngcobo confirmed that he received the juice from his colleague.

“ I met my colleagues outside the hospital. He offered me some juice and I accepted it. I realize that I was wrong to accept. I humbly apologies for my mistake. I am willing to pay for it. Please I beg you to be lenient to me”

89. Ngcobo later denied that he had received the juice, both in writing and during his evidence in chief. He claimed that Sithole and Dumakude had pressured him into admitting in writing, that he received the juice.

90. I find it very difficult to accept this version for the following reasons:

- 1) The statement dated 9 February 2018 was signed by Ngcobo privately and in the presence of the hospital's security officer.
- 2) Sithole and Dumakude had no involvement in the drafting and signing of this statement.
- 3) The statement dated 16 February 2018 was also signed by Ngcobo privately.
- 4) It is highly unlikely that Ngcobo would apologise for something that he did not do, but he did.
- 5) It is also unlikely that Ngcobo would offer to pay for something that he did not receive, but he did.
- 6) It is also unlikely that Ngcobo would plead for leniency if he was innocent, but he did.

91. Sithole and Dumakude on the other hand denied that they pressured Ngcobo into confessing that he received the juice. Their version was corroborated by the investigating officer Moodley who testified that the 3 Applicants admitted to him to having taken the juice. I therefore accept the version of the Respondent as being more probable than the version of Ngcobo.

Luthuli

92. Luthuli in her statement dated 9 February 2018 admitted that she took a pack of juice and not 10 packs as alleged by her manager.

"I made a mistake and I was wrong."

93. In a letter dated 16 February 2018 to the CEO of the hospital Luthuli confirmed that she received the juice from her colleagues outside the hospital.

"I met my colleagues outside the hospital. He offered me some juice and I accepted it. I humbly apologise for my mistake. I am willing to pay for it. Please I beg of you to be lenient to me."

94. She later denied any knowledge of the juice stating that Sithole and Dumakude had pressured her into confessing that she took the juice. I find it very difficult to accept Luthuli's version for the following reasons:

1. The statement dated 9 February 2018 was signed by Luthuli privately and in the presence of the hospital's security officer.
2. Sithole and Dumakude had no involvement in the drafting and signing of this statement.
3. The statement dated 16 February 2018 was also signed by Luthuli privately.
4. It is highly unlikely that Luthuli would apologise for something that she did not do, but she did.
5. It is also unlikely that Luthuli would offer to pay for something that she did not receive, but she did offer to pay for the juice.
6. It is also unlikely that Luthuli would plead for leniency if she was innocent, but she did.

95. Sithole and Dumakude on the other hand denied that they pressured Luthuli into confessing that she received the juice. Their version was corroborated by the investigating officer Moodley who testified that the 3 Applicants admitted to him to having taken the juice.

96. I therefore accept the version of the Respondent as being more probable than the version of Luthuli.

Conclusion

97. I conclude that the dismissal of the Applicants, procedurally and substantively, was not unfair. Under the circumstances I dismiss this application.

Award

98. I find that the that the dismissal of the Applicants Sibusiso Cosmos Ngcobo, Nomthandaza Mdletshe and Zinhle Luthuli, procedurally and substantively, was not unfair.

99. The Applicants' claim is dismissed.

100. I make no order as to costs.



COMMISSIONER: KM MOODLEY