



# Arbitration Award Rendered

Case Number: **ECEL4131-19**  
Commissioner: **Elizabeth Tom**  
Date of Award: **16 November 2019**

In the **ARBITRATION** between

**Vuyisile Joseph Lekoro**  
(Employee)

And

**Legosec International cc**  
(Employer)

**Union/Applicant's representative: Self**  
Union/Applicant's address: **C 314 Orange Groove**  
**Greenfields**  
**East London**  
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**Respondent's representative: Marco Entres (SAUEO official)**  
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## DETAILS OF HEARING AND REPRESENTATION

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1. The arbitration hearing was held under the auspices of the CCMA as an Unfair Dismissal Dispute for misconduct under section 191 (5) (a) of the Labour Relations Act 66 of 1995 as amended. The hearing took place on 8 November 2019. Closing arguments were submitted orally on the same day of 08 November 2019.
2. The applicant Mr. Vuyisile Joseph Lekoro was present at the hearing and he represented himself. The respondent, Legosec International cc was also present at the hearing and was represented by Mr. Marco Entres the official from South African United Employers Organization (SAUEO).

### ISSUE TO BE DECIDED

3. I am required to determine whether or not the applicant's dismissal was unfair and if so, the appropriate relief in accordance with Sections 193 and 194 of the Labour Relations Act No 66 of 1995, as amended.

### BACKGROUND TO THE ISSUE

4. The applicant was employed by the respondent as a Security Officer. The applicant was dismissed by the respondent on the 18th June 2019. At the time of his dismissal he earned R4500.000. He was found guilty of the following charges:

- i) "Smelling of alcohol whilst on duty on Monday 03 June 2019 at ZF East London.
- ii) Threatening a Snr Manager Mr. Andre Els by stating to him "My man you will see what's going to happen to you. I will come for you on 05 June 2019 at ZF EL site".

### NARROWING DOWN OF ISSUES

#### 5. Common cause issues

- i) No disciplinary code existing
- ii) 1<sup>st</sup> written warning for "absence' from work
- iii) Breatherliser tester showed no reading or results
- iv) Applicant refused to blow self-test breatherliser.
- v) Not found guilty on 2<sup>nd</sup> charge of " Failing to carry out a lawful and reasonable operational instruction from your Manager Mr. Andre Els to report back on site on 4 June 2019 9h00 at ZF EL site"

#### 6. Disputed issues.

- i) Breatherliser did not show results

ii) Charges denied

## SURVEY OF EVIDENCE

### Submissions by the respondent

7. The 1<sup>st</sup> respondent's witness, **Mr. Andre Els**, testified that he is employed as a Senior Security Manager of the respondent. He conducted two investigations of incidents of the respondent where there were break-ins on site. There were certain client stuff stolen on this client site. 1<sup>st</sup> incident occurred on the 19 May 2019 and another happened on 25 May 2019. The client was very upset about this and threatened to cancel the contract between the respondent and its client.
8. Out of the investigations he conducted he discovered that the shift that was on duty during the night of the break-ins was the applicant's shift. He organized a lie detector test to be conducted on all staff on the 3<sup>rd</sup> June 2019. The person that the witness found to conduct the test, was to conduct it over the phone. All those security officers who were on shift during these nights were tested.
9. As he gave the applicant the phone to speak to the person conducting the test, he felt smell of alcohol from his breath. The applicant admitted that he drank the previous day. The witness was then instructed by the head office of the respondent to organize a breathalizer tester to let the applicant blow. Before the witness organized such tester, he looked for other managers to witness what he smelt from the applicant. He called Ms. Poella and Mr. Koch to test the applicant. Thereafter the witness organized the "eye blow system" tester that belonged to ZF. The other tester was the "self-test". The problem with the "self-test" tester, it does not show recordings. Ms. Poella tested the applicant using the tester. The applicant blew. He did not blow properly. He was tested 5-6 times and no results were showing. The respondent's head office suggested that a self-test be used. The applicant refused to undergo such a test. The applicant was then released to leave the premises. The applicant was working at the main entrance and was released because had the client seen him the jobs of the other fifteen employees would have been at risk.
10. The witness, immediately asked Mr. Koch to ask the applicant to return to work on the 04<sup>th</sup> June 2019. The applicant indicated that he will not be able to come to office on the 4<sup>th</sup> June because he was supposed to go to the clinic. The intention of calling him to office on the 04<sup>th</sup> was for the applicant to receive his notice of hearing. The applicant came to office thereafter on the 05 June 2019.
11. On the 05 June 2019, the applicant was again under the influence. The witness called other witnesses for a second opinion. The 1<sup>st</sup> person the witness called was Mr. Manzi. When Mr. Manzi came to office the applicant started arguing with the witness. The witness instructed the applicant to leave and return when

he is sober. The applicant started shouting telling the witness that the witness was wasting his time. According to the witness, the applicant threatened the witness. Then the applicant was escorted out of the premises.

12. The witness stated that it was brought to his attention that, when the applicant entered the premises, he left his bag at the gate. Ms. Poella informed the witness that the applicant had a knife in his bag. According to the witness, he is in fear due to the threats of the applicant. They are there to protect lives, property and to ensure that there is always safety. The applicant's conduct became a concern and has affected the client. In May 2019, similar incident occurred where the applicant threatened a Team Leader. He threatened to stab the Team Leader. The company suggested that he be given a second chance.
13. After the two break-ins, the client sent a message saying that they doubt their securities.
14. The company has a disciplinary code. The applicant signed it.
15. The 2<sup>nd</sup> respondent's witness, **Ms. Deborahe Poella** corroborated the evidence of Andre Els and stated that, she made a statement about the applicant's incident. On 3 June 2019, she was called by Mr. Else to his office. When she got into that office, Mr. Els, Kog and the applicant were there. She was asked to conduct smell test from the applicant. What she observed was that, just walking inside that office there was a smell of liquor. She came closer to the applicant and smelt liquor from him. She knows how liquor smells because she has a father that takes liquor. When the applicant was tested the tester did not give readings. The applicant admitted that he had two beers the previous day. The smell she detected from the applicant was the same smell she normally smell from her father when he drinks beers.
16. She stated that on the 5<sup>th</sup>, the applicant came on site and the witness was called by the other securities on site because the applicant was literally drunk. She asked the applicant to be calm because she was avoiding a worse situation to happen. She asked the applicant to leave his bag outside the premises to be looked after by the securities. No weapons are allowed on premises. However, Security Sixolo and she saw the knife carried by the applicant in his bag. Sixolo saw it first and came to call the witness to see it. It was when she saw it as well.
17. The 3<sup>rd</sup> respondent's witness, **Mr. Christiaan Hendrick Koch**, corroborated the evidence of Andre Else and and Deborahe Poella and stated that he testified at the hearing. On the 3 June 2019 was called by Andre Els. He requested the witness to conduct a liquor test from the applicant because he believed that the applicant was under the influence. He was asked if he could smell liquor from the applicant's breath. At that stage was unable because he had flue and could not smell properly. Due to blocked nose. It was

when he suggested that Ms Poella be called to smell and she came as requested. The witness demonstrated how a tester is blown. However, the applicant was shown how the tester works and how he should blow. The tester did not show results. A different test was suggested and the applicant refused to undergo such.

18. The applicant was instructed to return on 4 June 2019. He was unable because he was to go to the clinic and returned on the 5<sup>th</sup> June 2019. On this date the applicant was again not sober. He started arguing with Mr. Andre Els and said to Andre Else *"My man, I will come back on you. You will see what will happen..."*
19. On this day the applicant was aggressive and unable to walk straight. The witness also corroborated the incident where the applicant threatened a Team Leader.
20. The applicant is aware of the rules. When they are trained with Psira during grade E, D and C are trained the do's and don'ts as a security officer. The applicant had four (4) months service with the respondent.
21. The 4<sup>th</sup> respondent's witness, **Thuliswa Manzi** corroborated the evidence of Mr. Christiaan Hendrick Koch, Andre Else and Deborah Poella. She stated that on the 5<sup>th</sup> June 2019 the applicant came on site and was very intoxicated. Whilst the applicant was having a discussion with the employer Andre Els, there was a misunderstanding between the two. The applicant was instructed to come on another day. The applicant started shouting at the Manager and was escorted out of premises by the witness and other security officers. According to the witness the conduct of the applicant on this day was unbecoming. No one is allowed to be drunk at work. When the applicant came on site the witness was called and it was how she saw the condition the applicant was in. The applicant was shouting and walking like a drunk person. She heard the applicant when he was threatening the manager.

### **Closing arguments**

22. The parties made closing arguments the same day. The respondent argued that the company has a rule. The rule is valid and reasonable. Through Psira. All security officers are trained how to behave. Being under the influence, smelling of liquor, threatening one another f manager are offences that the industry is against of.
23. That the rule has been consistently applied. The sanction imposed was appropriate because the threats that the applicant made were very serious with an intension of a bodily harm. Such cannot go without the most serious sanction of dismissal.

24. The applicant had 4 months services having been employed in February 2019. He has a record of threatening a fellow employee in a short service he has.
25. The respondent further argued that the commission should order cost against the applicant for bringing a frivolous case before the commission. The respondent argued that the applicant must be taught a lesson. The respondent incurred costs to the amount of R10 000.00 through flights from Pretoria, accommodation and four witnesses that were out of work for a day to testify. The absence of the witnesses from work placed their contract at risk.

### **Submissions by the applicant**

26. The applicant Mr. Vuyisile Joseph Lekoro testified that he was at ZF from 6am to 18h00. Around 11h00, Mr Els came on site and the applicant at the time was at the car park. Mr. Els called the 2<sup>nd</sup> guard on site one Mdleleni to his office. After Mdleleni he was also called to the office. When he entered the office, was informed by Mr. Els that a voice test was to be conducted on him. However, such test was to be over a telephone. The reason of the voice test was because of an incident that occurred on the 14 May 2019. Mr. Else gave him Mr Els's telephone to speak through. Mr Els, informed the applicant that someone was to speak to the applicant over that phone. Over the phone the applicant spoke to a lady. The lady asked him some questions about tires and trailers that got missing from the client site.
27. After the telephone discussion the applicant gave the phone over to Mr. Els and he left to his post. Subsequent to that, he was again called to the office and was informed that a smell of liquor is detected from him. Mr. Els asked if he can test the applicant. He agreed to be tested. A tester was organized. It was opened in front of him. However, when blown it showed no results. Thereafter was instructed to leave the premises.
28. He was instructed to return on the 4 June 2019. He was unable to return on the 4<sup>th</sup> June because he was not well. He went to the clinic. He only returned on the 5<sup>th</sup> June 2019. On this day, Mr. Els said that he was not going to give him the documents that he was supposed to have received because Mr. Els accused him of being under the influence. He said to Mr Els "I will take you to CCMA" he denied having threatened Mr. Els. He denies having carried a knife on the 5<sup>th</sup> June 2019 when he went to the company premises. His bag was indeed left outside premises because it had his important things.
29. He worked day shift on the 02 June 2019 and it was a Sunday. When he left work he was tired, drank two Hansa beers and slept.

30. His hearing was held on the 18 June 2019. At the hearing he felt that he was a victim because the chairperson was would interject and stop him from asking questions. Mr. Els guided all employer witnesses. The chairperson at the hearing informed him that he was not guilty of the 3<sup>rd</sup> charge. He was not happy the manner in which the hearing was held.
31. He conceded that he signed every page of the hearing minutes. Because the chairperson asked him to do so. He is 55years old.
32. He conceded that he drank two beers the previous day and that it is possible for one to smell liquor the next day.
33. He concede saying to Mr, Else that "I will get you, will take you to CCMA...". He was not aware that, such a statement is a threat. He was made to sign each sentence of the minutes of the hearing. He signed without reading, whilst he was not the one who was a scribe. However, conceded to have said "I will get you... such statement is a threat. When one says that one could be frightened because you do not know how will the person who makes the threat find you.
34. The applicant stated that in his hearing was not treated fairly. He was not allowed to bring an external representative.

### Closing

35. The applicant argued that he has a child at University and two other children are in multiracial schools. He is the only source of income in his family. His mother depends on him.
36. Regarding costs he opposed the cost application and stated that he is unemployed and will not be able to pay such.

### ANALYSIS OF EVIDENCE AND ARGUMENT

Section 185 (a) of the Labour Relations Act 66 of 1995 as amended provides that:

- Every employee has a right not to be unfairly dismissed.

37. The applicant was dismissed for two charges namely:

- (a) *"Smelling of alcohol whilst on duty on Monday 03 June 2019 at ZF East London.*

(b) *Threatening a Snr Manager Mr. Andre Els by stating to him "My man you will see what's going to happen to you. I will come for you on 05 June 2019 at ZF EL site".*

38. In this particular case, the applicant admitted that it is possible for one to smell liquor even if it is the previous day. On the day that he was accused of smelling liquor he drank two Hansa Beers the previous day. I find the applicant guilty through his own admission and corroborated evidence from the respondents' witnesses that he smell alcohol on duty on 3 June 2019. He argued right through arbitration that the breathalyzer did not show results. I am of the view that had the tested show results he would have been charged for being under the influence. The respondent because they could not establish such, he was charged for smell of alcohol on duty.
39. He was again dismissed for the 2<sup>nd</sup> charge of *"threatening a Snr Manager Mr. Andre Els by stating to him "My man you will see what's going to happen to you. I will come for you on 05 June 2019 at ZF EL site".* He denied this charge. However he conceded saying that he did say *"I will get you..."* Such a statement sounds to be a threat. The applicant testified to say that he meant that he will take the employer to CCMA.
40. He has a similar misconduct committed in the past where he threatened his fellow colleague. He did not deny this instead asked what does that have to do with the current matter. The applicant's conduct is very serious. He cannot be trusted and it cannot be condoned. All witnesses of the respondent corroborated saying that they saw him threatening the manager, pointing fingers at him. I find that based on evidence given by witnesses and the corroborated evidence the witnesses that he indeed threatened the manager. The fact that a knife was found in his bag aggravates his conduct.
41. The applicant testified that the company has no disciplinary code. His testimony that no rule existed does not exonerate him from the misconduct he is accused of. Even though there is no Code in his company, some rules emanate from common Law and/or the Industry norms. Reporting for works smelling of alcohol in security sector is not permissible. Threatening other people instead of securing them is also not permissible. No reasonable employer that can keep an employee in his employ who does that. An employee who commits such offences at work acts in bad faith against his employer. Failure not to have a Code that regulates such offences does not prevent the employer from acting against the employee who committed such an act. I find that the applicant has broken a rule and a fair, valid and reasonable rule.
42. The respondent argued that he always live in fear because he does not know what will happen when. Some other witnesses refused to testify in the arbitration fearing for the applicant. Where people will be in fear to be around a certain person sends a message that the sanction was appropriate in the circumstances. This is a reason enough to prove that the relationship has broken. In ***Department of Home Affairs and another/ Ndlovu and others (2014) ILJ 3340 (LAC)***, the court held that in order to



prove that the sanction of dismissal was appropriate , the employer must present evidence to prove breakdown in the employment relationship. Such evidence is not necessary where the breakdown is apparent from its nature of the offence and or circumstances. I deciding the appropriateness of the sanction, I considered the length of service of the applicant, the gravity of the misconduct committed and the fact that this was not the first time such conduct of threatening others occurred. The nature of his job was against what he did.

43. I find that the sanction was appropriate.

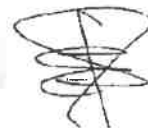
44. In the circumstances I make the following award

**Award**

45. The dismissal of the applicant was fair.

46. The applicant is entitled to no relief.

47. There is no order as to costs.



Signature:

Commissioner:

Elizabeth Tom

APPROVED