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(1) REPORTABLE: YES/~~NO~~.
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22/08/22
DATE

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THE JUDICIARY · REPUBLIC OF SOUTH AFRICA

IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Reportable
Case No: JS 108/18

In the matter between:

HOPE GLORIA KEITOKILE MASHILO **1st Applicant**

TSHEBELETSO ZIPPORAH SEREMANE **2nd Applicant**

and

THE COMISSIONER OF SOUTH AFRICAN REVENUE SERVICES **Respondent**

Heard: **25, 26, 27, 28, 29/07/2022**
Delivered: **22/08/2022**

Summary: **Dismissal of the applicants due to operational requirements were automatically unfair. Fair reason(s) for dismissal not proved. Alternative positions offered not on the approved structure. Protected Disclosure caused dismissal. Held: (1) Dismissal automatically unfair. (2) Dismissal of applicants due to operational requirements procedurally and substantively unfair. (3) Applicants are retrospectively reinstated effective from 1 September 2022, to their positions**

prior to their dismissal with all the benefits and emoluments. (4) Punitive costs order against SARS. (5) Applicants to report for duty on 1 September 2022.

JUDGMENT

SETHENE AJ

Introduction

"Oh you who believe!
Stand out firmly for justice, as witnesses
To Allah, even as against
Yourselves, or your parents,
Or your kin, and whether
It be (against) rich or poor:
For Allah can best protect both."

Qur'an, Surah An-Nisa 4:135[1]

[1] History narrates that in human tragedies, wars and skirmishes, women are always burdened with sufferings and hardships. The burden of womanhood is a daily struggle encountered by women in all walks of life. Courts should not be meek and gentle when confronted with instances that have all the traits of any attempt to keep women subjugated in any form at workplaces.

[2] This case captures the hardships endured by two single mothers and senior executives during the infamous "restructuring" of the South African Revenue Services (SARS) by Bain & Company (South Africa) during the tenure of Commissioner Thomas Swabedi Moyane (Mr Moyane). Their story is set at *Lehae* (meaning home), the headquarters of SARS in

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[1] Nisa in Arabic means women. It is Chapter 4 of the Qur'an. It is so named after women as it details mainly pertinent issues and law regarding women, inheritance and the rights of women.

Pretoria. Their main sin was to question the integrity of the 2015 "restructuring" sponsored by Mr Moyane with Bain as a service provider. Their positions were downgraded and were dictated to accept supernumerary positions which were not on the approved "new" structure introduced by Bain on 18 August 2015. They repeatedly requested to be furnished with information regarding the details of the positions that were being dictated to them. Information was not forthcoming from Mr Moyane or any SARS officials he delegated. The applicants refused to accept the supernumerary positions. Their refusal to accept the said positions prompted Mr Moyane to address letters to them intimating in clear terms that they either accept the positions or face dismissal. Ultimately, they were dismissed "due to operational requirements" in terms of s 189 of the Labour Relations Act 66 of 1995 ("the LRA"), as amended. Aggrieved by their dismissal from SARS in 2017, they sought refuge to this court to adjudicate and determine their plight. SARS contends that the "restructuring" was consistent with s 189 of the LRA.

[3] Mesdames HOPE GLORIA KEITOKILE MASHILO ("the First Applicant/Ms Mashilo") and TSHEBELETSO ZIPPORAH SEREMANE ("the Second Applicant/Ms Seremane") are the main characters in this episode that unfolded at *Lehae* between 2015-2017.

[4] At the commencement of the trial, two applications were collectively made on behalf of the applicants by Ms Britz, their counsel. One application concerned the amendment of the Notice of Motion. The applicants introduced a prayer that they be reinstated back to SARS. Mr Mofokeng, counsel for SARS held instructions to oppose the application. SARS was unable to persuade me that the amendment sought by the applicants would be prejudicial to it. I granted the application for amendment of the Notice of Motion[2].

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[2] Devonia Shipping Limited v MV Luis (Yeoman Shipping Ltd) 1994 (2) SA 363 (C) at 369F-I where it said: *"...As in the case of the summons or a pleading in an action, (it) will always be allowed unless the application to amend is mala fide or unless the amendments would cause an injustice or prejudice to the other side which cannot be compensated by an order for costs or, in*

[5] The second application made on behalf of the applicants was the admission of the extracts of the reports of the Nugent Commission chaired by the retired Justice Robert Nugent and the State Capture Commission chaired by the former Deputy Chief Justice, and now the Chief Justice of the Republic, Chief Justice Raymond Zondo. SARS vehemently opposed the admission of the extracts of the reports from the said commissions on the basis that the authors of the said reports are not going to be called to speak on their contents. It was further contended on behalf of SARS that the said reports would be hearsay evidence in terms of law of evidence. I found no iota of credence in the submissions advanced on behalf of SARS. I reasoned that the interest of justice is paramount in this case. I then ordered that the extracts of reports from both commissions shall be provisionally accepted for the purposes of the trial and counsel for the parties shall address me on reasons to ultimately exclude or include them as part of the record of this court.

[6] The prayers sought by the applicants are the following:

6.1 Declaring the dismissal of the first applicant automatically unfair in terms of section 187(1)(h) due to the protected disclosure made by the first applicant in terms of the Protected Disclosure Act, 2000 which resulted in her dismissal disguised as a dismissal based on operational requirements;

Alternatively-

6.2 Declaring the dismissal of the applicants for operational requirements to be procedurally and substantively unfair and in breach of the provisions of section 189 of the Labour Relations Act;

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other words, unless the parties cannot be put back for the purposes of justice in the same position as they were when the Notice of Motion which it sought to amend was filed"

6.3 Directing respondents to pay compensation to the applicants, the amount of which is to be equal to (24) twenty-four months remuneration calculated at the applicants' rate of remuneration as of the date of dismissal;

6.4 Reinstatement into the positions that the applicants are skilled for in terms of the approved structure of SARS on the same terms and conditions before retrenchment;

6.5 An order for costs;

6.6 Further and/or alternative relief.

[7] SARS's contention is that there is no reason for the court to grant the applicants the relief sought. The matter must be dismissed with costs.

[8] The onus to prove that dismissal in terms of s 189 of the LRA were procedurally and substantively fair vests with the employer, in this instance SARS.

SARS's case

[9] In support of its decision to dismiss the applicants in terms of s 189 of the LRA, SARS called three witnesses being Mr Jacobus Nicholaas Hurter (Mr Hurter), Ms Lorette van Wyk (Ms van Wyk) and Ms Stefh Bosch (Ms Bosch).

Evidence of Mr Hurter

[10] Mr Hurter testified that he started working for SARS on 1 July 2007, as Head: Organisational Effectiveness & Renewal. His current position effective from 2021 is Head: Employee Engagement. His duties entail designing solutions, intervention and increase engagement within SARS and improve total employee experience.

[11] In 2015, Mr Hurter testified that he was the Executive: Human Resources Business Partners. His duties entailed providing end to end human resources services to internal business units at SARS. He had six managers reporting to him. He has twenty years (20) experience in labour relations and has worked for Telkom and he holds a master's degree in labour relations. At Telkom, Mr Hurter engaged staff in terms of s 189 of the LRA.

[12] Mr Hurter testified that in August 2015, a model structure was announced. However, he was not part of the Steering Committee: Communication that was tasked with informing employees about the change. He stated that as a result of the introduction of the structure, other employees were informed that their jobs have changed. Affected employees were invited to apply for positions on the same level and this resulted in a number of employees been placed. This was Phase 1.

[13] Phase 2 according to Mr Hurter was for unsuccessful employees who had to apply for remaining positions at the lower, same or higher level. Phase 3 concerned recruitment of external persons to join SARS. Mr Hurter's duty was to inform unplaced employees that they were to be absorbed in specialist roles at various levels.

[14] Senior managers were asked to engage unplaced employees and ensure that they are placed into the "new" structure. In many instances,

Mr Hurter stated that other employees were placed in specialist roles and that process commenced around June 2016 and was completed at the end of 2016.

[15] Mr Hurter testified further and stated that the employees who did not accept to be placed on specialist roles, the Steering Committee, chaired by Mr Jonas Makwakwa decided that s 189 process should be invoked. Approximately 54 employees including the applicants were at executive level. Around 21 Executives were not successful in the quests to apply for new positions. One of the executives resigned. Eighteen (18) accepted to be placed as Domain Specialist and only the applicants refused to be placed.

[16] After five (5) months of negotiations with the applicants, the Steering Committee that reported to Mr Moyane recommended that the employment of the applicants be terminated.

[17] Mr Hurter stated that the Steering Committee had exhausted all the options with the applicants and the applicants' refusal to accept Domain Specialist positions resulted in SARS terminating their employment.

[18] Mr Hurter testified that Bain had put together a document entitled "Unplaced Employees Protocol and FAQ"[3] dated 23 May 2016. The reason for the said protocol was to keep employees informed about the organisational review process. The principles set out in the said protocol were that:

18.1 All unplaced employees will retain their current grade and salary;

[3] Trial Bundle page 187-230

18.2 Unplaced employees will be transitioned into specialist roles at their grade level (note all unplaced employees will assume the titles of "specialist" at specific grade. E.g Grade 9A Principal Specialist, Grade 8b Domain Specialist, Grade 8A Snr Specialist, Grade 7 Specialist;

18.3 Reporting lines for unplaced employees will be defined by the relevant Chief Officer/GE (Group Executive)

18.4 Performance contracting will be in line with the assigned specialist role;

18.5 These specialist roles are additional to the organisational Operating Model structure and will be removed once the employee vacates the position;

18.6 Unplaced employees can and will be encouraged to apply for vacancies within the new organisational structure.

[19] Mr Hurter testified that the positions of the Domain Specialist were meaningful. However, he stated that he was not directly involved in a day-to-day business of the Domain Specialists and they did not report to him.

[20] Mr Hurter testified further that the applicants did not accept the positions of Domain Specialists. He stated that Ms Seremane informed him in writing that there was no integrity to the entire "restructuring" process. According to Mr Hurter, Ms Seremane wanted to have a deeper understanding of what the position of Domain Specialist entail. Ms Seremane wanted an explanation of what is the difference between her downgraded position and that of Domain Specialist and there was an undertaking that more information would be sought and provided to Ms Seremane.

[21] Further, Mr Hurter stated that the applicants were also afforded an opportunity to approach other business units at SARS to establish if they

could be placed. Ms Seremane proposed that she be placed in the office of the Commissioner to deal with integrity as her position had to do with the organisational integrity. Following discussions with Mr Teboho Mokoena (Mr Mokoena), Ms Seremane's proposal was declined. Mr Luther Lebelo was also part of the discussion.

[22] According to Mr Hurter, unplaced persons were senior executives and very experienced. They had wealth of expertise and knowledge about SARS.

[23] Mr Hurter stated that according to him, there was nothing wrong with the implementation of the "restructuring" and s 189 process. He stated that they consulted with the applicants in terms of s 189.

[24] When asked if the applicants could be accommodated back at SARS, Mr Hurter stated that ***"it is an option that could be explored."*** However, currently there are no vacancies at Executive Level and he does not have a final say. Mr Hurter further stated that through engagement process, legal representatives of the applicants and SARS can come up with an agreement for possible reinstatement of the applicants.

[25] Mr Hurter, when asked about the hardships the applicants allegedly suffered as a result of being dismissed, he said SARS cannot be blamed as it tried to offer them Domain Specialist positions which the applicants refused.

[26] Under cross-examination, Mr Hurter stated that he first heard of Domain Specialist position in 2016 and he believed it was Bain who came up with the positions. He was never involved in the conceptualisation of the positions of Domain Specialist. He was asked if Bain, is the same company that reimbursed SARS, Mr Hurter retorted in affirmative. He

further testified that SARS did not have a retrenchment policy. He is the one who proposed s 189 to be implemented when the applicants refused to accept to be place as Domain Specialists.

[27] Mr Hurter conceded that he did not provide Ms Seremane with the minutes of the meeting where the implementation of s 189 process was discussed and agreed upon. He conceded that he had no finer details of the protocol for unplaced employees and he had nothing to do with it.

[28] Mr Hurter further conceded that it was not his function to supervise Domain Specialists. His role and that of Mr Venon Naidoo (Mr Naidoo) were to report to the Steering Committee about the developments of the "restructuring". At the steering Committee, Ms Seremane's transfer to Custom Division, which was at the request of Customs was never discussed by the Steering Committee. It was Mr Naidoo who was informed about Ms Seremane's transfer to Custom Division and had to see it done. He stated that him and Mr Naidoo never compared notes.

[29] Mr Hurter confirmed that the positions of Domain Specialists are still available on Grade 8B up to Grade 9.

[30] Under re-examination, Mr Hurter stated that the positions of Domain Specialists currently available at SARS are in areas such as legal, psychologists and they report to the most senior manager.

Ms Lorette van Wyk

[31] Ms van Wyk was the second witness for SARS. She commenced her employment at SARS on 1 October 2007 as Human Resources Manager and is currently a Senior Manager: Business Partners. Her duties involve

looking after human resources processes to enable business to work optimally.

[32] In 2015, she was a Senior Manager: Human Resources. The role she played was in the recruitment process of Phases 1 and 2 by facilitating and implementing some of the processes that were being rolled out. From time to time she was asked to write letters to the applicants

[33] She did not agree that the positions of Domain Specialists were not meaningful. To her knowledge, SARS currently has no positions of Domain Specialist.

[34] Under cross examination, the only role she played was to attend a meeting arranged with the Ms Mashilo. She did not know about the protected disclosure submitted by Ms Mashilo. She recalled that Ms Mashilo was offered a position of Domain Specialist: Career Management and Transformation. She stated that the positions of Domain Specialists were phased out between 2016-June 2019. She was not re-examined.

Ms Stefne Bosch

[35] She testified that she started working for SARS on 1 February 2001, as Human Resources Manager. In 2015 she was Senior Human Resources Manager: Business Partners. Her duties entailed leading people management at Gauteng South Region. She testified that Domain Specialist positions were never on the "new" structure. She confirmed that she took minutes or notes during consultation minutes with the Ms Seremane.

[36] Under cross examination, she conceded that she did not take minutes verbatim. Under re-examination, she confirmed that she had no

obligation to tell Ms Seremane to make inputs on the notes she took. SARS closed its case.

Applicants' case

Ms Mashilo

[37] Ms Mashilo testified that she was employed at SARS on 5 March 2005, as Senior Human Resources. In 2015, she was Executive: Workplace Wellness in the main dealing with employee assistance programmes, occupational health, extended sick leave, executive wellness and chronic diseases. She also testified that before joining SARS in 2005, she worked for the National Intelligence Agency as Component Head: Strategic Human Resources Planning. She had also worked for ML Sultan Technikon in Durban. Her highest qualification is Master of Business Administration. Prior to her dismissal, she was on Grade 8B, earning R1,5 million per annum.

[38] She testified that Mr Moyane was announced as Commissioner toward the end of September 2014. To her surprise, during the month of October 2014, Mr Moyane indicated in one of the management meetings that there was going to be a review of operating model. Apparently, according to Ms Mashilo, Mr Moyane informed the management that he had a script to transform SARS.

[39] Mr Jonas Makwakwa was appointed by Mr Moyane as Project Sponsor to oversee the review of SARS's operating model. Seven streams were formed to support the review and she together with Ms Seremane were appointed to the Steering Committee: Communication. The role of the said committee was to travel to all provinces to inform employees of SARS of the review of the operating model.

[40] Around 18 August 2015, the top management was called into a meeting by Mr Moyane and Bain presented the "new structure". All the executives were invited in what was called National Management Forum. She stated they were informed by Mr Moyane that the Minister of Finance, Mr Nhlanhla Nene (Mr Nene) had appointed an Advisory Committee led by the retired Judge Kroon and the new structure[4] had been approved by the Minister and the Judge. Bain unveiled the "new" structure. It was for the first time she was seeing the "new" structure.

[41] On or around October 2015, there was another meeting of senior managers including the executives where Mr Makwakwa presented the divisional structures. She realised during the said meeting that her position had been phased out of the structure at the executive level and was downgraded.

[42] She addressed a letter to Mr Moyane seeking to establish reasons her position to be downgraded. The reason she could not ask her supervisor was that her supervisor's position was also downgraded. She had no one to report to. Mr Moyane addressed an email to Ms Mashilo informing her that effective from 1 January 2016, a Chief Officer: Human Resources, Mr Mokoena would commence his duties. From January 2016, she made repeated requests to meet with Mr Mokoena. Mr Mokoena was only able to meet with Ms Mashilo only in June 2016.

[43] The reason Ms Mashilo wanted to meet Mr Mokoena was to seek clarity about the position of Domain Specialist. According to Ms Mashilo, effective from 1 April 2016 to 2 August 2017, she earned a salary for doing nothing. On meeting Mr Mokoena, he asked her what does she do when she arrives at work. Ms Mashilo replied that she switches on a computer, read newspapers and do nothing. Mr Mokoena offered her the position of Domain Specialist. She asked Mr Mokoena to identify the

[4] Trial Bundle page 1-14

position of Domain Specialist in the "new" structure. Mr Mokoena could not. Neither could Mr Mokoena explain what does the position entail.

[44] Ms Mashilo made it clear to Mr Mokoena that she does not want to be retrenched. Mr Mokoena promised Ms Mashilo that he was going to obtain information about the Domain Specialist and would revert to her. Around 21 July 2016, Ms Mashilo received a call whilst traveling to work from Mr Mokoena. Mr Mokoena informed Ms Mashilo that she must consider voluntary severance package (VSP).

[45] On 5 August 2016, Ms Mashilo received a call from the Executive: Human Resources, Mr Naidoo. The latter informed Ms Mashilo he had a letter for her. Upon receipt of the letter, Mr Naidoo wanted Ms Mashilo to sign a letter agreeing to take VSP[5] and leave SARS. She refused to sign the letter prepared for her.

[46] Around September 2016, Ms Mashilo was in discussions with Mr Mokoena who required her to reconsider the VSP. She protested and informed Mr Mokoena that she has never agreed to opt for VSP. Ms Mashilo then asked for a meeting with Mr Makwakwa. It turned out that Mr Makwakwa had been suspended.

[47] On 21 September 2016, Ms Mashilo filed a grievance with Mr Moyane. The response[6] Ms Mashilo obtained from Mr Moyane was that during "restructuring" no grievance are to be entertained.

[48] Ms Mashilo had also requested Mr Moyane to furnish her with documents[7] detailing what the Domain Specialist position entailed. In

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[5] Trial Bundle at page 59-60

[6] Trial Bundle at page 65-66-at para 4-Mr Moyane writes: *"You are required to accept and/or reject the offer on or before the 07 October 2017."*

response, Mr Moyane gave her less than twenty (24) hours[8] to either accept the position of Domain Specialist or face prospects of dismissal. Ms Mashilo insisted that she needed to be furnished with documents to enable her to make an informed decision on the email[9] addressed to Mr Moyane on 11 November 2016. To Ms Mashilo, all executives who accepted positions of Domain Specialist had no meaningful jobs to do. They would arrive in the morning, read newspapers and take a walk to Brooklyn Mall. Switching computers on was also a waste of time as they were not receiving any emails from anyone within SARS. Employees who were placed, avoided speaking to Domain Specialist.

[49] Ms Mashilo testified that Domain Specialists were earning their normal salaries based on their previous positions prior to "restructuring" without doing any work for SARS. They were not performance assessed. However, they received bonuses.

[50] Ms Mashilo penned what she called ***"Breaking the Silence"***[10]***.*** In her view, it was a protected disclosure. She emailed the said missive to Minister of Finance, at the time, Mr Malusi Gigaba (Mr Gigaba) and Mr Yunus Carrim (Mr Carrim), Chairperson of Standing Committee on Finance (SCOF). She copied Mr Moyane on the email dated 31 July 2017.

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[7] Ibid at page 67-68—Documents requested by Ms Mashilo are (1) the concept document for the new HR division; (2)signed off and approved strategic document for the new HR Division; (3) Organisational structure approved and signed off by the Advisory Board and the Minister, indicating how a Domain Specialist is positioned in the new SARS operating model; (4) approved and signed off new HR Division organogram approved by the Advisory Board and the Minister, indicating hoe the Domain Specialist is positioned including the function and role thereof; (5) Job description; (6) Outcome of job evaluation process; and (7) factors and science taken into consideration for making Ms Mashilo a Domain Specialist.

[8] Letter at footnote 6 is dated 6 October 2016 and Ms Mashilo is required to respond on 7 October 2016.

[9] Trial Bundle at page 69-70. Ms Mashilo informed Mr Moyane that he has not furnished her with the documents she requested to make a decision regarding the position of Domain Specialist.

[10] Trial Bundle at page 32-39

[51] Some of what she detailed in her missive concerned her personal circumstances in respect of the "restructuring" process. Some of what she detailed in the said missive concerned issues she stated were in the best interest of SARS and the country. Some of the issues she raised in her missive are what she called the unlawful appointment of Bain by Mr Moyane. She also raised the issue that Domain Specialists were being paid for doing no work for SARS and such was inconsistent with the Public Finance Management Act.

[52] On 2 August 2017, she attended a meeting around the Commissioner's office. She was approached by one Ms Happiness Gama and Mr Naidoo who informed Ms Mashilo that they have instructions from Mr Moyane that she must leave SARS's premises immediately. They had a letter[11] terminating Ms Mashilo's employment at SARS which they gave it her. Security personnel were instructed to escort Ms Mashilo out of SARS's premises and SARS's property in her possession was duly confiscated.

[53] Ms Mashilo testified that following her dismissal, she lost everything. Her insurance policies lapsed. Her house was about to be repossessed but was able to sell it. The impact of the dismissal took a serious psychological toll on her and her children. She described herself as a wreck. She felt like she had leprosy as no one at SARS wanted anything to do with her at the time. As a single parent she was financially broken.

[54] However, with the passage of time, certain developments gave her hope. Ms Mashilo had relocated to Kimberly. The suspension of Mr Moyane by the President gave her hope. The appointment of Nugent Commission elevated her spirits. She was called by the Nugent Commission's Secretariat to come testify at the Commission. She said she could not afford to travel. She was broke. However, she followed the hearings of the Nugent Commission. At its conclusion, when she read the findings of

[11] Ibid at page 118

Justice Nugent on the role of Bain, that was a healing process for her. She felt vindicated. The dismissal of Mr Moyane by President Matamela Ramaphosa brought joy to her.

[55] Ms Britz then asked Ms Mashilo why wished to be reinstated at SARS. Ms Mashilo stated that she wants to go contribute towards rebuilding of SARS. The s 189 process was unfair. Due to her protected disclosure, SARS has benefited in that Bain returned R 217m with interests.

[56] Under cross-examination, Ms Mashilo emphasised that her missive was in essence, a protected disclosure. It may have included her personal circumstances. However, the issue of the unlawful appointment of Bain was not a personal issue from which to derive a benefit.

[57] On the issue of the Domain Specialist, Ms Mashilo persisted that no one, including the human resources employees at SARS knew anything about the said positions and what they entailed. She stated that during her employment at SARS, even her payslip referred to her in her executive position. She persisted that the reason she could not accept the position of Domain Specialist was that it was never on any official structure.

[58] Ms Mashilo went further to state that the during Nugent Commission, Mr Nene testified that he was misled about the "restructuring" process and anything associated with the involvement of Bain at SARS. Judge Kroon also distanced himself from the whole process including the approval of the structure. She stated that the structure was never designed by SARS's management but by Bain.

[59] Ms Mashilo further stated that she was bullied and harassed to accept a position that could not be explained even by Mr Moyane. She testified that following the conclusion of the Nugent Commission, one of the

recommendations were that SARS must engage former employees who left as a result of "restructuring". SARS did approach her and Ms Seremane in the presence of their legal representatives in 2019. In the initial discussions it was tentatively agreed that SARS was to reinstate her and Ms Seremane and pay their legal costs. However, SARS summersaulted and offered to re-employ them without any compensation whatsoever. They refused. They instructed their legal representatives to proceed with this litigation. Following cross-examination, Ms Mashilo was not re-examined.

Ms Seremane

[60] She joined SARS in October 2009 as Executive: Integrity and Organisational Culture. Instilling ethical culture at the senior and junior levels of SARS were some of her responsibilities. She had to provide feedback about ethical challenges faced by SARS. She was on Grade 8 B earning R1.5m per annum. At the time of her dismissal, she was busy with her MBA thesis following her successful completion of the course work. However, she had to abandon her MBA due to financial constraints.

[61] She testified that SARS before the arrival of Mr Moyane valued integrity and was compliant to all its policies and its responsibilities towards tax payers. Upon Mr Moyane's appointment, she made a presentation to Mr Moyane sharing the values of SARS and she too was appointed to be part of the Steering Committee: Communication led by Mr Makwakwa.

[62] Ms Seremane stated that the first time she heard of the "restructuring" was shortly after Mr Moyane joined SARS. As part of the committee led by Mr Makwakwa, Ms Seremane stated that she had discomfort about Bain. This is after she came across a report compiled by Bain which did not have any data. When the structure was unveiled on 18 August 2015,

she was at the loss. According to Ms Seremane, SARS had always worked on the strategy and the structure would come thereafter.

[63] She realised during the "restructuring" there was a lapse of integrity and corruption issues were becoming prevalent. To her, it was strange that integrity was downgraded and yet Mr Moyane purportedly placed emphasis on it.

[64] Following the downgrading of her position, she applied for two positions[12] and she was not successful. During the "restructuring" process, she testified that she was also pressurised to accept the position of Domain Specialist. She considered the position to be IT related as to her, reference to the word "Domain" meant a duty that has to do with the IT. She asked to be furnished with information to enable her to make an informed decision about the Domain Specialist. No information was forthcoming.

[65] She testified that during the said period at SARS, she was earning a salary without doing anything. She attended a meeting at Customs and following her presentation on integrity and ethics, the Head of Customs Division at SARS instructed Mr Naidoo to transfer Ms Seremane to Customs so that she could help instil integrity at Customs as corruption activities were rife. The transfer never happened.

[66] Ms Seremane was furnished with a letter informing her that she either accepts a position of Domain Specialist or risk dismissal. She persisted to be furnished with information concerning the position. Ultimately, she was furnished with a letter terminating her employment at SARS.

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[12] Trial Bundle at page 119-Ms Seremane applied for Executive: Governance and Executive: Stakeholder Management: Government and Public Institutions. The letter informed her she was unsuccessful. The last paragraph of the letter stated: ***"I wish you all the success in this challenging journey to transform SARS and we trust in your continued commitment and cooperation."***

[67] Two weeks or so after Ms Seremane was dismissed, she received a phone call from the Head of Customs informing her that officials at Customs are waiting for her to make a presentation at the meeting. She informed him that she is no longer with SARS.

[68] It must be stated that after she was furnished with a letter of dismissal[13], Ms Seremane, addressed a letter to Mr Moyane informing him that Customs had expressed an interest in having her transferred to Custom. It appears that Mr Moyane directed Mr Hurter to contact Ms Seremane to seek details of her transfer to Customs. Further, Ms Seremane was also asked to appeal her dismissal and was furnished with forms for dismissal for misconduct. Mr Seremane testified that she was surprised that she could appeal dismissal "due to operational requirements".

[69] When asked how did the dismissal affect her, Ms Seremane stated that she is a mess. She is broken. She had just been divorced when she was dismissed. She was building a house for herself and her children. Her financial situation took a nose dive. She appreciated friends buying airtime for R12 for her. She appreciated when her friends bought her food. She had no money to pay school fees for her children. Her children's grades dropped as they slipped into depression. Her insurance policies and retirement annuity lapsed.

[70] There was a time she was stuck with her car which had no petrol. The tyres were worn out such that the wires were protruding. She had no one. She was a breadwinner. Her mother and her sisters relied on her for their upkeep. Due to the deterioration of her financial situation, her mother slipped into depression as well. For the first time in her adult life, she asked money from her mother. Her mother, a beneficiary of social

[13] Trial Bundle at page 156

grant, as she could not come to terms with her daughter's economic plight, drank a drain cleaner. Her mother now deemed herself as a liability to her unemployed daughter. To date, her mother can only eat blended food. Ms Seremane's daughter attempted to commit suicide. On one occasion, her son had come back from school with a fundraising form. He did not ask her for money. He look at all the drawers and could only get R2.50. He took the form and money to school to give to the principal who threw it back at him. That was emotionally wrenching to Ms Seremane.

[71] Under cross-examination, she testified that she was a witness at the Nugent Commission. On being asked about her refusal to accept a position of a Domain Specialist, she persisted that she could not take a position that was not on an approved structure and whose details and genesis were unknown to the human resources senior officials at SARS. The position was not meaningful. She was not furnished with documents to make sense of what the position entailed. She pointed out that Mr Moyane's communication[14] to employees of SARS at the time stated that there would be no retrenchment . However, only her and Ms Mashilo were dismissed for operational requirements. She requested to be furnished with minutes of the committee which decided on s 189. She was never furnished with the minutes. Following her cross-examination, there was no re-examination.

Sydwell Phokane

[72] Mr Phokane testified in support of the applicants' case. He had been with SARS for last twenty (20) years and six month. He rosed through the

[14] Trial Bundle at page 15—Last paragraph of the "Commissioner Foreword", Mr Moyane states: ***"SARS has always been committed to refrain from retrenchment of its staff. I give you my assurance that we will continue to adopt this approach. This is an immense undertaking that will require the support, dedication, and teamwork of each one of us in order to achieve our targets at the end of March 2015. Please provide me with your unwavering support."***

ranks and was appointed Executive: Customs & Excise. In 2015, he was Executive: Customs Compliance Audit but was seconded to Regional Executive responsible for regional operations.

[73] He testified that he was also impacted by the "restructuring". He was not placed. He applied for a position and was unsuccessful. Following interviews, Group Executive: Human Resources asked him to challenge the interview process as the process was flawed. He discussed the matter with his family and decided not to challenge the process.

[74] He was reluctant to accept the position of Domain Special. No one explained to him what the position entailed. However, his mentor who used to work for SARS advised him to "just accept and lie low". He accepted the position of Domain Specialist after the dismissal of the applicants. He testified that during the period he was Domain Specialist in 2016 to 2019, he was not linked to any Group Executive or business unit at SARS. He had no role to play. He received performance bonuses during the duration for performing no work for SARS. He testified that he was called by Senior Executive and informed him that he qualified for performance bonus. He stated that the performance bonuses paid to him were approximately R 774 000.00 [R350 000.00; R262 000.00 and R 162 000.00]. He testified that he appropriated the money and to this day he feels bad as he did not work for it. He remained in a position of Domain Specialist from June 2016 and was only place in June 2019 following a meeting he had with the current Commissioner of SARS, Mr Kieswetter. He testified the meeting with Mr Kieswetter gave him hope.

[75] As Domain Specialist, there was no meaningful job that he performed from June 2016 to June 2019. Placed employees did not want to talk or be seen in company of those who were not placed.

[76] He testified that he was in a meeting where it was resolved that Ms Seremane must be transferred to Customs Division to deal with integrity and ethics as corruption was rife. He had attended the meeting as he was trying to help at Customs as it was the environment he knew best.

[77] He stated that he has been through about eight restructuring by previous SARS Commissioner. The worse experience of "restructuring" he ever encountered is that under the leadership of Mr Moyane. He stated that the process was flawed and not transparent. There was a culture of fear. He further stated that the "restructuring" under Mr Moyane was never in the interest of SARS.

[78] Under cross-examination, he stated that it was painful to have earned the money he never worked for. He also testified at the Nugent Commission. He did not apply for this current position but was placed by Mr Kieswetter as the latter wanted to ensure that there is stability at SARS. Following the end of cross-examination, there was no re-examination.

Extracts from Nugent Commission and State Capture Commission

[79] It was not disputed that Ms Mashilo was invited to testify at the Nugent Commission. Due to her financial constraints at the time, she could not attend. Both Ms Seremane and Mr Phokane testified at the Nugent Commission. Their basis for testifying at the Nugent Commission was premised on the facts within their ken, in particular, about what ensued at SARS during Mr Moyane's "restructuring".

[80] During the closing argument, SARS's counsel, Mr Mofokeng could not say what prejudice stands to be suffered by SARS if the extracts from the Commissions' reports are admitted. Section 3 of the Law of Evidence Amendment Act 45 of 1988 provides that hearsay evidence can be

admitted by court if the court is of the opinion that the admission of such evidence is in the interest of justice.

[81] Mr Mofokeng conceded that SARS has implemented some of the recommendations of the Nugent Commission. He further stated that Nugent Commission's report has not been reviewed and set aside by any court. It was also not in dispute that there was an urgent application by the applicants seeking the former Minister of Finance, Mr Pravin Jamnandas Gordhan (Mr Gordhan) to testify in these proceedings. That urgent application was heard by my half-brother Moshoana J on 21 July 2022. In that urgent application, by agreement between the parties, it was agreed that the evidence tendered by Mr Gordhan at the Nugent Commission shall be admitted in this trial. The said agreement was made an order of court.

[82] With that in mind, I find that the opposition by SARS not to have this court admit the Nugent Commission's report is misplaced and without foundation. In any case, the President of the Republic appointed the Nugent Commission solely to deal with the affairs of SARS. Amongst the issues the Nugent Commission dealt with relate to the "restructuring" and purging of persons like the applicants under the pretext of s 189 process. The same applies to the extracts of the report of the Commission on State Capture dealing with SARS.

Evaluation, analysis and law

[83] Dismissal for operational requirements is a statutory provision through which the employer can dismiss employees. In this type of dismissal, the employer shoulders the responsibility to tender evidence before court that due to economic, technical, structural reasons or any other reason prescribed in the LRA, s 189 dismissal had to be effected.

[84] As per the evidence of SARS's witness, Mr Hurter, the applicants' refusal to accept the positions of Domain Specialist is the sole reason for their dismissal. Mr Hurter in his testimony missed the crucial point that the applicants persistently requested to be furnished with information regarding the details of the Domain Specialists. They were not furnished with any information until they were dismissed.

[85] The evidence of Ms Mashilo, Ms Seremane and Mr Phokane was never challenged under cross-examination. They were all impacted by Mr Moyane's sponsored "restructuring". They earned their salaries without rendering any services for the benefit of SARS. None of the three witnesses called by SARS had anything to do with the Domain Specialist positions. At best, they were in the dark on that score. None could contradict the version of the applicants and Mr Phokane. Strangely, SARS's witnesses, notwithstanding that they had no business with the said positions, had the audacity to state under oath that the positions were meaningful. Their version is rejected. The Constitutional Court when dealing with the principle of unchallenged evidence under cross-examination in ***President of the Republic of South Africa v South African Rugby Football Union***[15] said:

> *"If a point in dispute is left unchallenged in cross examination, the party calling the witness is entitled to assume that the unchallenged witness's testimony is accepted as correct. This rule was enunciated by the House of Lords in Browne v Dunn and has been adopted and consistently followed by our courts."*

[86] From the evidence tendered before me, it does not appear that the views of the executives and/or other employees at SARS were sought before the "restructuring" was steamrolled. What is startling is that Mr Moyane joined SARS towards the end of September 2014, and in October 2014,

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[15] 2000 (1) SA 1 (CC) at para 61

he indicated that SARS's operating model must be reviewed. Mr Moyane was new at SARS. He certainly required sufficient time to study the environment. Prior to joining SARS, Mr Moyane was the National Commissioner of Correctional Services. Without doubt, SARS was a foreign environment to him. SARS is a specialised environment.

[87] It was not disputed by SARS under cross-examination of the applicants and Mr Phokane that Bain has reimbursed SARS all the fees it charged for the "services" it rendered during Mr Moyane's "restructuring". It is also not disputed that Mr Nene and Judge Kroon distanced themselves from the "approved structure".

[88] What this court can deduce from Bain's reimbursement of SARS is that Bain, with the benefit of hindsight, realised that its presence at SARS was not to the benefit of SARS. By reimbursing SARS for "services" it rendered during Mr Moyane's tenure Bain was engaging in a reputational cleansing to its own tattered image. Were it not for Nugent Commission and Commission on State Capture reports, would Bain had reimbursed SARS? That is doubtful; not even in the wilderness of nincompoops!

[89] It must be stressed that the legislature had never envisaged or intended the dismissal for operational requirements to be laced with corruption or activities designed or calculated to further the objectives of state capture. Let alone, to purge employees for ulterior motives. The legislature was alive to the fact that at times, economic downturn could place employers in parlous financial position. To mitigate the total closure of a company, s 189 was devised as a statutory remedy to cure any imminent economic repercussions.

[90] With the evidence tendered before me, none of SARS witnesses testified about economic difficulties encountered by SARS to warrant dismissal for operational requirements. SARS tendered no evidence in this court to

demonstrate that the Domain Specialist positions were on the "approved structure". SARS did not tender evidence in this court to demonstrate and prove that Domain Specialists were performing any meaningful jobs. It further failed to demonstrate and prove that there were any performance assessments done for persons who occupied Domain Specialist positions. SARS failed to challenge Mr Phokane's version that he was paid performance bonuses when he did not perform any duties at the behest of SARS's "restructuring" during Mr Moyane's tenure.

[91] In the premise, I find that SARS has failed to justify the dismissal of the applicants for operational reasons. In a retrenchment situation, the veritable question is: does the employer have commercial rationale to dismiss? If the answer is in the negative, then the employer has a problem to justify dismissal premised on s 189 of the LRA.

[92] The court has observed that in SARS's Heads of Argument, Bain is written with white ink. There is no reference to Bain by name or context and yet the issue around Bain's unlawful appointment at SARS was ventilated by the applicants and Mr Phokane. Even when dealing with Ms Mashilo's missive, this court is not invited by SARS's counsel to consider Bain's unlawful appointment at SARS. To underplay Bain's role at SARS is akin to concealing material evidence and consorting with Bain in corruption. This court declines to dive into slumber and ignore Bain's conduct at SARS.

[93] In respect of Ms Seremane, it was not in dispute that SARS's Customs Division had expressed that she be transferred to the said business unit before she was dismissed. Mr Phokane was in the meeting of Customs Division when Ms Seremane's transfer was decided and concluded. There is no fair reason why Ms Seremane was dismissed. There is no reason why Mr Moyane did not reverse the dismissal of Ms Seremane

the moment he was informed by Ms Seremane in writing[16] that Customs Division sought her services. SARS did not call anyone from Customs Division to dispute Ms Seremane's version. What is before this court is that Mr Phokane corroborated Ms Seremane's version and that evidence was never challenged under cross-examination. Ms Seremane's dismissal is a dismissal that could and ought to have been avoided. My view is fortified by Zondo JP (as he then was-the current Chief Justice of the Republic) when he held in ***Oosthuizen v Telkom SA***[17] (***Telkom***):

> *"[8] In my view an employer has an obligation not to dismiss an employee for operational requirements if that employer has work which such employee can perform either without any additional training or with minimal training. This is because that is a measure that can be employed to avoid the dismissal and the employer has an obligation to take appropriate measures to avoid an employee's dismissal for operational requirements."*

[94] It was neither disputed nor challenged under cross-examination that Ms Seremane was called by the Head of Customs at SARS who informed her that they are waiting for her to come make a presentation[18] on integrity only to find Ms Seremane had been dismissed. Mr Hurter wrote to Ms Seremane as per the instructions of Mr Moyane for Ms Seremane to amongst others, appeal her dismissal. It is for that reason Ms Seremane testified that to her knowledge, s 189 dismissal were not appealable. Worse, the appeal forms furnished to Ms Seremane had to do with misconduct. She had committed none at SARS.

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[16] Trial Bundle at page 237. Ms Seeremane wrote at paras 3.3 and 3.4 to Mr Moyane. ***"I remain committed to work in SARS and have accepted to work in the said Business Unit on integrity as agreed as the Management Committee meeting held on 22nd June 2017. I request you Commissioner to assist as per your commitment that there will be no retrenchments, that I be afforded an opportunity to work in the Business Unit that desperately requires my skills and knowledge."***

[17] [2007] 11 BLLR 1013 (LAC)

[18] Trial Bundle at page 236: A letter Ms Seremane addressed to Mr Moyane dated 2 August 2017 reads at para 3(v)... ***"As I write to you Commissioner, I have been invited to meetings including the 1st August 2017, where I was supposed to assist with the development of the Anti-Corruption strategy and Integrity Plan."***

Was Ms Mashilo dismissed for reasons of making a protected disclosure?

[95] "***Breaking the Silence***" is a missive Ms Mashilo emailed to Mr Gigaba and Mr Carrim. Mr Mofokeng's submissions are that in terms of s 9[19] of the Protected Disclosures Act 26 of 2000 (PDA), as amended, the court must find that Ms Mashilo submitted no protected disclosure. I disagree.

[96] Ms Mashilo's missive did not only contain a disclosure of her personal circumstances. Ms Mashilo disclosed the unlawful appointment of Bain in the main. Both the Nugent Commission and the Commission on State Capture had the liberty of interrogating evidence and witnesses who testified at length about Bain's activities at SARS. By reporting Bain, Ms Mashilo was performing one of the most underrated and thankless constitutional duties: whistleblowing. I employ the words "underrated and thankless" advisedly due to the fact that the legislature seems to be moving at the snail pace in promulgating tangible legislation to protect whistle-blowers. The current PDA is insufficient to safeguard and really protect whistle-blowers.

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[19] Section 9 reads:

General protected disclosure

(1) Any *disclosure* made in good faith by an *employee* –

(a) who reasonably believes that the information disclosed, and any allegation contained in it, are substantially true; and

(b) who does not make the *disclosure* for purposes of personal gain, excluding any reward payable in terms of any law; is a *protected disclosure* if –

(i) one or more of the conditions referred to in subsection (2) applies; and

(ii) in all the circumstances of the case, it is reasonable to make the *disclosure*."

[97] This court cannot exclude what Ms Mashilo reported about Bain simply due to the fact that in her missive she included her personal circumstances. The missive by Ms Mashilo, to the extent that it detailed and disclosed Bain's unlawful appointment, constitutes a protected disclosure as contemplated by the PDA. In the premise, Ms Mashilo's dismissal was inconsistent with s 187(1)(h) of the LRA. Ms Mashilo's conduct is that of a whistle-blower. As per the *Qur'anic* injunction adverted above, Ms Mashilo stood firmly for justice for the benefit of SARS and this land. To suggest she was not a whistle-blower is meritless. Ms Mashilo made her disclosure to the Minister of Finance (Mr Gigaba) and the Chairperson of a Finance Committee in Parliament (Mr Carrim). There is no evidence tendered in this court that either Mr Gigaba or Mr Carrim entertained Ms Mashilo's disclosures. The evidence presented in this court which was not challenged under cross-examination is that Mr Moyane instructed Mr Naidoo to get the security to escort Ms Mashilo out of *Lehae* with immediate effect on 2 August 2017. The "***Breaking the Silence***" was emailed on 31 July 2017. Both the SCA[20] and LAC[21] have accepted that an employee can make a disclosure to its professional body or to the media.

[98] In ***Telkom***[22], Zondo JP (as he then was) stated that the moment the employer is unable to prove that it instituted s 189 process for a fair reason, then the court must reinstate the dismissed employees. SARS has dismally failed to prove that its dismissal of Ms Mashilo and Ms Seremane were procedurally and substantively fair.

[99] The injustice visited upon Ms Mashilo and Ms Seremane deserves the unwavering protection of this court. This court cannot consort with any

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[20] City of Tshwane Metropolitan Municipality v Engineering Council of SA an Another (2010) 31 ILJ 322 (SCA)

[21] The Minister of Justice and Constitutional Development v Tshishonga [2009] 9 BLLR 862 (LAC); (2009) 30 ILJ 1799 (LAC)

[22] [2007] 11 BLLR 1013 (LAC)

corrupt activity at workplaces calculated to circumvent any provision of the LRA. This court cannot consort with anyone who trampels upon women to exploit their vulnerability at workplaces. If this court were to turn a blind eye on what occurred at SARS during Mr Moyane's "restructuring", it would be failing in its constitutional obligations.

[100] Any employer before electing to institute s 189 process must always ensure the process is beyond reproach. This court should not hesitate to declare s 189 process nugatory the moment there is evidence of corruption or *mala fide*. The employers must always bear in mind what Nicholson JA said ***in General Food Industries Ltd V FAWU***[23] at para 55:-

"The loss of jobs through retrenchment has such a deleterious impact on the life of workers and their families that it is imperative that-even though reasons to retrench employees may exist, they will only be accepted as valid if the employer can show that all viable alternative steps have been considered and taken to prevent the retrenchments or limit these to a minimum."

[101] In the conspectus of what is adverted above, this court shoulders the responsibility to ease the burden of womanhood at workplaces. It is in the interest of justice and the rule of law for this court to order the current Commissioner of SARS, Mr Kieswetter to welcome Ms Mashilo and Ms Seremane[24] back at *Lehae* effective from 1 September 2022.

Costs

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[23] [2004] 7 BLLR 667 (LAC) 682J, para 55

[24] Trial Bundle at page 236 at paras 3.1 (vi) and 3.3. It a letter dated 2 August 2017, Mr Seremane said to Mr Moyane: ***"For this reason my dismissal cannot be based on operational requirements when Business Units are confronted with integrity challenges and do not have the capacity and skill to deal with such."***

[102] Section 162(1)(2) of the LRA confers powers on this court to make an order for costs according to the requirements of the law and fairness. When deciding whether or not costs should be awarded, this court must first ascertain whether this matter ought to have been to court in the first place. The court also has to take into account the conduct of the parties in the matter.

[103] It is inescapable like the air we breathe that SARS ought to have ensured that it settles with the applicants the moment it was presented with the Nugent Report. Further, the moment Bain reimbursed SARS, SARS ought to have reviewed its legal tact in pursuing to defend the indefensible. It dismally failed to reconsider its legal strategy.

[104] The applicants instituted this litigation in February 2018. According to the evidence of the applicants, around 2019, SARS engaged them. They informed SARS that they are willing to return to SARS if SARS was to reinstate them, pay their salaries from the date of dismissal and their legal costs. SARS later reverted to them and informed them it could re-employ them without any compensation and payment of legal costs. SARS clearly negotiated in bad faith. The conduct of SARS in these proceedings deserves the utmost censure and displeasure of this court. Punitive costs order against SARS would be just and equitable in the circumstances adverted above.

Conclusion

[105] Former Deputy Chief Justice Dikgang Moseneke (DCJ), when reflecting on the role of judges and how they should dispense justice, had this to say in his book ***All Rise: A Judicial Memoir***[25] at page 270;-

> *"Fidelity to our oath of office is important, not because we are important but because, without it, not we but our people will suffer. By our people, I mean the full diversity, poor and rich, white and black, female and male, urban and rural, the marginalised and the powerful. They all deserve our unwavering protection, which our Constitution demands we provide. After all, we are the ultimate guardians of our Constitution."*

[106] This court, being a court of equity, is charged with the responsibility to deal with employment related disputes. Retrenchments do not only affect the plight of the employees retrenched. Their dependents get affected. So are extended families. The plight of the applicants and their dependents in this case warrant this court to look to SARS for help from the prism of *Ubuntu* and restorative justice. In ***S v Maluleke***[26], the concept of restorative justice received cogent judicial scrutiny when the court described it as:

> *"...an approach to justice that focuses on repairing the harm caused by crime while holding the offender responsible for his or her actions, by providing an opportunity for the parties directly affected by the crime-victim(s), offender and community-to identify and address their needs in the aftermath of the crime, and seek a resolution that finds healing, reparation, and prevents further harm."*

[107] In dealing with *Ubuntu/Botho*-humanity, Jajbhay J in ***City of Johannesburg v Rand Properties***[27] reasoned that the courts need to *"weave the elements of humanity and compassion within the fabric of formal structures of the law"*. The applicants and their family members were affected by Mr Moyane's "restructuring". As a direct consequence

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[25] Moseneke D. All Rise: A Judicial Memoir. Published in 2020 by Picador Africa.

[26] 2008 1 SACR 49 (T) para 28

[27] 2007 (1) SA 78 (W) para 62

of Mr Moyane's "restructuring", the applicants were rendered impecunious. This court, as a creature of statute is constrained to grant remedies set out in s 193 read with s 194 of the LRA. If there were no legislative constraints, consistent with the principles of *Ubuntu* and restorative justice, I would be inclined to order that SARS, through its wellness programmes to ensure that necessary psychological and counseling services are offered to the applicants and their dependents. However, the court's hands are constrained.

[108] In the result the following order is made:

Order

1. The dismissal of Ms Hope Gloria Keitokile Mashilo and Ms Tshebeletso Zipporah Seremane by SARS were automatically unfair;

2. It is declared that the dismissal of Ms Hope Gloria Keitokile Mashilo was unfair in terms of s 187(1)(h) of the LRA due to protected disclosure she made in terms of Protected Disclosures Act;

3. It is declared that the dismissal of Ms Hope Gloria Keitokile Mashilo and Ms Tshebeletso Zipporah Seremane for operational requirements was procedurally and substantively unfair and in breach of the provisions of s 189 of the LRA;

4. Ms Hope Gloria Keitokile Mashilo and Ms Tshebeletso Zipporah Seremane are retrospectively reinstated as SARS employees as of date of their dismissal with full benefits and emoluments effective from 1 September 2022;

5. Ms Hope Gloria Keitokile Mashilo and Ms Tshebeletso Zipporah Seremane are to report for duty on 1 September 2022, at *Lehae*, the headquarters of SARS; and

6. SARS is ordered to pay the costs of the applicants on attorney-client basis including the costs of counsel.

SMANGA SETHENE
Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant:	Adv C Britz
Instructed by:	Narain Attorney, Johannesburg
For the Respondent:	Adv X Mofokeng
Instructed by:	Majang Inc Attorneys, Johannesburg