

You can't be fired just because you're unpopular, court says

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Labour Appeal Court rules that Standard Bank branch manager must be reinstated.



Image: A Standard Bank branch manager fired for “misconduct” must be reinstated, the Johannesburg Labour Appeal Court has ruled. Archive photo: Ashraf Hendricks/GroundUp

- A fired Standard Bank branch manager must be reinstated, the Johannesburg Labour Appeal Court has ruled.
- She was an unpopular boss and the staff were “glad to see the back of her”, but her dismissal was unfair, said the judge.
- Zimbini Makuleni’s “unblemished record” of 23 years was not taken into account by Standard Bank, the court said.

Five years after a Standard Bank branch manager was fired for “misconduct”, the Johannesburg Labour Appeal Court has ruled that the “unpopular boss” should be reinstated.

Judge Roland Sutherland, with two judges concurring, has directed that Zimbini Makuleni report for duty within two months, giving time for the parties to “interact” on her future role with the bank.

He said given her 23-year unblemished service with the bank, her dismissal was clearly unfair.

She had been given the job as manager of the Centurion Branch to clean it up. Under her leadership, it became the third best performing branch in the country.

“If her style of management was inconsistent with what the bank wanted, the results certainly were what they wanted,” said Judge Sutherland, noting that a more appropriate response to complaints against her from her subordinates would have been to send her on advanced management training.

Makuleni was fired in January 2018 after having been suspended the previous year.



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In October 2018, Commission for Conciliation, Mediation and Arbitration (CCMA) Commissioner Isaac Milanzi ruled that her dismissal was unfair and that she should be reinstated.

The bank took that ruling on review in Johannesburg Labour Court, which ruled in its favour.

Makuleni then approached the appeal court.

[Read the judgment](#)

The charges she faced included that she had created a hostile environment at the branch by communicating with subordinates in a “disrespectful, offensive and childish” manner.

She had also used inappropriate and vulgar language in front of colleagues and customers and had failed to motivate her team resulting in subordinates feeling uncomfortable and worthless.

Judge Sutherland said the charges were bereft of concrete allegations.

The incidents mentioned by nine complainants were only “vaguely located in time”.

Makuleni denied some allegations. Others she said, she had no recollection of, but denied the “spin” put on them.

Commissioner Milanzi had concluded that Makuleni’s evidence was preferable to that of her accusers and that the bank had not taken into account her 23 years of exemplary service.

Judge Sutherland said the Labour Court, in setting aside the CCMA award, had been wrong to find that the witnesses had no motive to lie.



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“The facts demonstrate that she was an unpopular boss, even by her own reckoning, she was exacting, demanding, inclined to micro-manage and be authoritarian ... Staff were glad to see the back of her.”

He said the commissioner had rejected excuses given by the witnesses that they had been too scared to come forward with their complaints and lodge grievances, but the Labour Court had been “heavily impressed by this excuse”.

However, the judge said, the Labour Court was dealing with a review and not an appeal, and it could not be said that the commissioner’s ultimate decision was unreasonable.

He said the commissioner’s credibility and probability findings were not egregious, especially in the light of the fact that the bank bore the onus to prove its case.

“When the evidence is considered together with the absence of grievances being lodged at the time of the occurrences, why could the rejection of the version be criticised as unreasonable?” said the judge.

Judge Sutherland said Makuleni had worked for the bank most of her adult life and yet, in the Labour Court, no serious weight had been given to this.

She had been appointed to the branch because it was in need of rehabilitation. It had been neglected and ill-discipline had set in. If her personal management style was not reformable, then the prospect of another post where she was not overseeing staff ought to have been explored.

He set aside the Labour Court ruling, confirmed the CCMA award, and ordered the bank to pay Makuleni’s costs.

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