



CONSTITUTIONAL COURT OF SOUTH AFRICA

Reynolds Maleka v Timothy Boyce N.O and Others

CCT 175/23

Date of hearing: 12 September 2024
Date of judgment: 24 February 2026

MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.

On 24 February 2026, the Constitutional Court handed down judgment in an application for leave to appeal against a judgment and order from the Labour Appeal Court (LAC).

The applicant in this matter was Reynolds Maleka (Mr Maleka). The first respondent was Timothy Boyce (Mr Boyce), a Commissioner, cited in his official capacity as the arbitrator appointed by the second respondent, the Commission for Conciliation Mediation and Arbitration (CCMA). Mr Boyce arbitrated the dispute between Mr Maleka and the third respondent, ADT Security (Pty) Limited (ADT), a security company. The main issue in this matter was whether Mr Maleka was constructively dismissed by ADT, in accordance with section 186(1)(e) of the Labour Relations Act 66 of 1995 (LRA), that is whether he resigned because ADT made his continued employment intolerable.

Since 2014, Mr Maleka was employed as IT Director by Tyco, an Irish company, and placed to work at ADT, Tyco's South African subsidiary. As a director, he formed part of ADT's executive committee. Mr Maleka reported to two people: internationally, he reported to Mr Paul Birmingham (Tyco's global Head for IT), and locally, he reported to Mr Stuart Clarkson (ADT's Managing Director). In late 2016, there were negotiations between Tyco and Fidelity Security Group (FSG) for FSG to acquire ADT from Tyco. Ahead of this planned acquisition, at ADT's December 2016 executive committee strategic planning meeting, Mr Clarkson announced that ADT had appointed Mr Allen Quinn (Mr Quinn) as its new financial director, and that Mr Quinn would oversee the IT portfolio that Mr Maleka headed. Once FSG acquired ADT, Mr Maleka would thus report to someone on the same level as him. Mr Clarkson said that this reporting line aligned with FSG's structure. To Mr Maleka, the announcement appeared to be a restructure requiring him to report to someone on his level, and as he had not been consulted about the change, he immediately expressed his concerns with Mr Clarkson. He expressed that he would not accept the change, claiming it would negatively impact his status, authority, work, and working conditions. Mr Clarkson's

response was that he did not have to consult with Mr Maleka on the change. FSG's acquisition of ADT was approved by the Competition Commission on 15 March 2017. On 22 March 2017, Mr Maleka requested a meeting with Mr Clarkson to discuss his reporting line change. Mr Clarkson provided him with 10 minutes and stated that his decision was final. On 23 March 2017, Mr Maleka resigned.

On 24 April 2017, Mr Maleka referred an unfair dismissal dispute to the CCMA alleging that he was constructively dismissed, and sought his reinstatement at ADT. The matter remained unresolved after conciliation, and was referred for arbitration. The sole issue of the arbitration was whether ADT made Mr Maleka's continued employment intolerable. The Commissioner noted that this was assessed objectively, not by an employee's perceptions and rejected Mr Maleka's claim that the planned change in his reporting line constituted a demotion and made his continued employment intolerable. The Commissioner also noted that the change would not have affected his title, position, income, responsibilities, or his position on ADT's executive committee. It concluded that the proposed change was a reasonable operational response to the pending sale of ADT to FSG, and that Mr Quinn, as an expert in the software system used by FSG which would be used by ADT post-acquisition, would be better able to support Mr Maleka in his role than Mr Clarkson. As Mr Maleka did not use ADT's grievance procedure before resigning, the Commissioner found that Mr Maleka failed to prove that he resigned because ADT made ongoing employment intolerable for him, therefore ADT did not constructively dismiss him.

Mr Maleka then approached the Labour Court to review and set aside the CCMA's arbitration award. The Labour Court noted that the review test for the Commissioner's finding that Mr Maleka was not constructively dismissed is one of correctness, not reasonableness. The Court found that the Commissioner's finding was correct, reasoning that without a compelling reason for Mr Maleka to ignore ADT's grievance procedure, this was fatal to his constructive dismissal claim. The Court further found that the change in Mr Maleka's reporting line was a result of FSG's acquisition of ADT, and that as his salary, role and title did not change, the change did not make his employment intolerable. Therefore, it held that his resignation was impulsive and not a measure of last resort, and dismissed his review application with no costs order.

Aggrieved, Mr Maleka approached the LAC to appeal the Labour Court's order. The LAC found that Mr Maleka's resignation was premature because, aside from using ADT's grievance procedure, he could have referred unfair labour practice claims relating to demotion or unfair discrimination to the CCMA before resigning, and that his failure to do so was objectively unjustifiable. The LAC found that when Mr Maleka resigned, the situation was not yet objectively intolerable. Thus, Mr Maleka failed to prove that he was constructively dismissed, and the CCMA and Labour Court findings in that regard were correct. The LAC therefore dismissed Mr Maleka's appeal and made no costs order.

Before this Court, Mr Maleka sought an order that he was constructively dismissed by ADT as well as orders that his dismissal was unfair and that ADT must reinstate him as its IT Director. He submitted that because this matter concerns the interpretation and application of the LRA, and his right not to be unfairly dismissed or subjected to unfair labour practices, it engaged this Court's constitutional jurisdiction, and that it was in the interests of justice to grant leave to appeal as the matter affects workers who resign after being subjected to intolerable conditions caused by the transfer of their employment to another employer under

section 197 of the LRA. In terms of the merits, Mr Maleka submitted that as ADT's IT Director, he was solely responsible for the execution of all IT deliverables within ADT. FSG's acquisition of ADT changed his reporting line such that he would report to an employee on the same level as him, and because there would then be two executives in one department, this effectively demoted him. He submitted this demotion would render his role in ADT redundant, making him an affected employee in a section 197 transfer of employment. Despite assurance from Mr Clarkson that his salary, benefits and title would not change, Mr Maleka argued that he would become a token at ADT as he would lose his authority and responsibilities as an IT Director. As such, Mr Maleka submitted that the CCMA, Labour Court and LAC erred in finding that he was not constructively dismissed because he failed to resolve his grievance through ADT's grievance procedures or the CCMA, and on focusing on his failures and conduct as the employee, rather than ADT's. Mr Maleka further submitted that that ADT's failure to consult him makes his constructive dismissal an unfair dismissal. He sought reinstatement as a remedy.

ADT opposed Mr Maleka's application and disputed that this Court had jurisdiction over the matter simply because the LRA's provisions are invoked. ADT submitted that rather than requiring Mr Maleka to use ADT's grievance procedure or that his resignation be a last resort to meet the constructive dismissal test, the Labour Court and LAC merely correctly required that he use the reasonable remedies available to him to correct the alleged intolerable conditions. ADT submitted that Mr Maleka was changing tack by now submitting that the intolerability of his continued employment is based on ADT's failure to consult him under section 197 of the LRA on the change in his reporting, as his prior position was that the change was effectively a demotion. ADT submitted that objectively, Mr Maleka's continued employment was not intolerable; that a change in reporting is not a material change in employment; that ADT can have multiple executives in one department, and that Mr Maleka himself submits that any intolerability from the change in his reporting did not yet exist when he resigned. As such, any intolerability was merely anticipated and sought for this Court to dismiss Mr Maleka's application and that he pays ADT's costs on an attorney and client scale.

First judgment

In the majority judgment penned by Seegobin AJ, concurred in by Kollapen J, Majiedt J, Tolmay AJ and Tshiqi J, the Court held its constitutional jurisdiction was engaged as the matter involved the interpretation of section 186(1)(e) of the LRA as well as the protection of the constitutional right to fair labour practices. It further engaged its general jurisdiction as the legal issues of the matter were of paramount importance because it raised the need for employees to safeguard the right to dignity.

Relying on *Solid Doors (Pty) Ltd v Theron N.O.* [2004] ZALAC 14; (2004) 25 ILJ 2337 (LAC), the Court held that there are three requirements necessary for constructive dismissal. It held that the first requirement is not contentious but the second and third are as they require the employee to display that the conduct of the employer or conditions of employment were so intolerable that they could not have been reasonably expected to continue with their employment contract. The Court further found the inquiry into intolerability is an objective one that requires proper examination to determine the presence and that the threshold to establish intolerability under section 186(1)(e) is high. Intolerability requires more than just conduct or working conditions. In light of Mr Maleka's resignation letter, the Court held that his dissatisfaction did not come from a state of intolerability but rather, it came from the fact that his reporting line had changed. Additionally, he failed to discharge the onus in section

186(1)(e) of the LRA. It is also inconceivable that his employer made his continued employment so intolerable that he had no other option but resignation. As such, his resignation occurred as a result of anticipated intolerability rather than existing one and such intolerability, is not contemplated under section 186(1)(e). Lastly, the Court found that an employee in his position should first explore other suitably alternative remedies prior to resigning. To conclude, the Court held that Mr Maleka has no prospects of success and as such, his condonation application must fail. No costs order was made.

Second judgment

A dissenting judgment penned by Madlanga ADCJ, concurred in by Maya CJ, Mathopo J and Rogers J (second judgment), disagreed with the first judgment's reasoning and outcome. The second judgment was of the firm view that Mr Maleka was constructively dismissed and that the constructive dismissal was unfair.

The second judgment noted that the historical context of racial inequality in South Africa's corporate environment could not be ignored, and that Mr Maleka's rise to an executive position was significant given the challenges faced by black professionals in a predominantly white corporate landscape. It was in this important context that the second judgment found that it gave rise to grievous intolerability to displace a highly qualified and experienced black executive who had risen against all odds in South Africa's white dominated corporate landscape, and against whom there was not a single blemish, and to replace them with a white executive who had not cogently been shown to be more qualified or experienced than the black executive. It was thus inaccurate to say that Mr Maleka had retained his position on Exco, title, status and conditions of employment. His position, title and status had been rendered hollow. He was a director in name only. This was tokenism.

The second judgment held that ADT treated Mr Maleka in a manner that displayed a total disregard for his self-worth and an uncaring attitude about his dignity. This was the fundament of the intolerability.

Lastly, the second judgment found that fairness of the dismissal had not been established by the employer, because of the lack of a cogent reason for interposing Mr Quinn as the person to whom Mr Maleka had to report. The reasons given by Mr Clarkson for having Mr Quinn oversee Mr Maleka were manifestly untenable. Mr Maleka had tried to resolve the situation amicably, but was rebuffed. Resignation was a measure of last resort.

Consequently, the second judgment would have granted leave, upheld the appeal, awarded compensation in the form of a year's remuneration and ordered ADT to pay costs in all the Courts.