REPUBLIC OF SOUTH AFRICA

THE LABOUR COURT OF SOUTH AFRICA, PORT ELIZABETH

JUDGMENT

Reportable

Of interest to other judges

Case no: P107/12

In the matter between:

C ARENDS AND OTHERS **Applicants**

and

SALGBC **First Respondent**

MARTIN LE ROUX KOORTS N.O **Second Respondent**

NELSON MANDELA BAY MUNICIPALITY **Third Respondent**

Heard: **19 February 2013**

Delivered: **1 March 2013**

Summary: Review of a jurisdictional ruling in terms of which the second respondent found that the individual employees have not made out a case for the relief sought. The second respondent concluded that the true nature of the dispute is not capable of being arbitrated.

JUDGMENT

MOSHOANA, AJ

Introduction

[1] This is an application to review and set aside an award issued by the second respondent under the auspices of the first respondent. It was common cause between the parties that effectiveley the award is a jurisdictional ruling.

Background facts

[2] Following the disestablishment of Port Elizabeth Municipality, the Uitenhage Municipality and the Despatch Municipality, the third respondent was established. Owing to the obvious salary disparities, it seems that a team was commissioned to look into the disparities. In April 2005, the council of the third respondent considered a report tabled before it dealing with the differing levels of remuneration.

[3] In May 2005, the council of the third respondent adopted a resolution that the transitional allowances would be paid with retrospective effect. During October 2006, a similar resolution was adopted extending the ambit thereof to level one Managers and Assistant Managers and Grades1-14 employees. The transitional allowance scheme was intended to be for a short duration in anticipation of a long term resolution to be put in place by a Task team, which was to produce new uniform post evaluation and grading scheme for the local government. During transition what obtained was the old salary rate from the previous municipalities and a transitional allowance.

[4] Due to the delay in implementing a uniform scheme a collective agreement was entered into known as the Pay Parity Collective Agreement. The parties to the agreement are the third respondent and two unions, SAMWU and IMATU. The agreement was signed on 11 December 2009. In terms of clause 3.2 thereof receiving of transitional allowance introduced was to cease with the implementation of the

collective agreement. The implementation date of the collective agreement was set as 1 July 2009. On 18 February 2010 letters were directed to the applicants advising as follows 'I have pleasure in advising that on 11 December 2009, a parity agreement for Nelson Mandela Bay Municipality was signed by the Employer and both Labour Unions. In terms of this agreement, you have been designated as Assistant Director on Grade 0016 (R329 124-R371 940) at a salary of R371 940 per annum, effective from 1 July 2009. Service conditions that currently apply to your position will remain effective until amendments, effected through the appropriate Bargaining Forum, are introduced. Should you not concur with the parity offer, you are entitled to lodge an objection, in writing within fourteen (14) days of date of this letter, which must be addressed to the Pay Parity Task Team, 16th floor, Lilian Diedericks Building (formerly Brister House) and contain full details of the legitimate ground on which your objection is based. However, I trust that you will be satisfied with the above offer of parity and continue to serve the Council in an exemplary manner.'

[5] The letter was signed by the Executive Director Corporate Services. In making the offer, the Executive Director was implementing as it were clause 4.5 of the Parity Agreement, which reads- 'Existing employees, who as of the date of the signing of the agreement are currently earning a salary that falls below the salary for the benchmark grade for their counterparts performing the same work, will be migrated to the notch where the highest earner is situated within that position on the structure. It seem common cause that none of the applicants rejected the offer and accordingly, their individual contracts of employment were amended as collectively agreed.'

[6] It is apparent that on 17 and 18 June 2010, at the breakaway of the LLF, a forum constituted by labour and management, a resolution was adopted highlighting that there was incorrect implementation of the parity agreement and employees will have to pay back. A task team was put in place to deal with the validation of the employees who benefited improperly. The task team met on 22 July 2010. On 23 August 2010 the

Acting Municipal Manager was given a report from the task team effectively directing recovery of monies following a validation schedule.

[7] On 29 September 2010, a further correspondence was addressed to the applicants seeking to correct an error that led to an over-payment. The contention of the third respondent was that the grading was supposed to have been 14 as opposed to 16. The effect of this being that the individual contract was amended erroneously as it were if the contention of the third respondent was anything to go by or that they were now seeking to resile from the agreed amendment. Nonetheless, the applicants were given an opportunity to give reasons why they are not in agreement and a representation on means and how the over-payment could be repaid to the third respondent. On 1 September 2011, a letter was dispatched by the applicants' attorney Francois Le Roux enclosing a referral to the CCMA.

[8] In short, the letter was registering an objection to the proposed change and deduction. The referral to the CCMA was about alleged unilateral change to terms and conditions of employment and interpretation and application of collective agreement. The summary of facts therein records thus; 'NMBM is threatening the unilateral implementation of changes to conditions of employment, purportedly in terms of a collective agreement'. The desired results were: 'non-implementation of the change'. On 3 October 2011, the CCMA conciliated the dispute and issued a certificate directing the dispute to arbitration.

[9] For some reason a further referral was made on 3 October 2011 to the first respondent. The dispute was catergorised by the referring parties as one of interpretation and application of collective agreement. In summary of the facts the referring parties recorded that 'the parties are in dispute regarding the Pay Parity Agreement'. The desired outcome was couched in the following terms: 'NMBM to desist from unilaterally reducing remuneration benefits.'

[10] It seems apparent that on 25 October 2011, the first respondent certified the dispute to be unresolved. On the same day, the applicants requested

resolution of the dispute through arbitration. The dispute referred to arbitration was catergorised as interpretation and application of collective agreement. The decision required was couched as: 'employer not allowed to implement reduction of remuneration.'

[11] On 19 January 2012, the arbitration hearing sat. At the commencement, the applicants' attorney advised the second respondent that a single primary issue raised was whether the Pay Parity Agreement permits the employer to reduce employees' earnings below a given employee's total level of earnings as at the date of signature. From the record produced it is apparent that the applicants through their attorney identified the issue in dispute as whether the Parity Agreement allowed a drop in earnings. After making some opening remarks, the second respondent and the parties agreed on time frames within which to make written submissions on the issue. Parties agreed to submit bundles they had prepared in anticipation of a full arbitration hearing. The applicants' bundles was labelled A and the third respondent's bundle was labelled B. Thereafter, written submissions were delivered as agreed. On 15 February 2012, the second respondent published his award.

[12] The applicants were aggrieved by the award and launched this application. It appears that another application was launched to stay the award pending the outcome of this application. This court issued an order staying the enforcement of the award. This application is being opposed by the third respondent.

Evaluation

[13] The determination of this matter lies squarely on the true nature of the dispute between the parties. The matter requires a careful consideration of the content and meaning of section 24 of the LRA. As a point of departure, it is important to note under which part of the LRA is the section located. It is located in Part B-Collective agreements. In my view, the fact that section 24 is located there implies that only collective agreement issues are dealt with there. Firstly, section 23 deals with the legal effect of collective agreements. Secondly, section 24, which is the

section I intend considering carefully deals with disputes about collective agreements. I find it behoveful for me to quote in full the relevant text of the section.

[14] The section reads: - 24 Disputes about collective agreements-(1) Every collective agreement excluding an agency shop agreement concluded in terms of section 25 or a closed shop agreement concluded in terms of section 26 or a settlement agreement contemplated in either section 142A or 158(1)(c) must provide for a procedure to resolve any dispute about interpretation or application of the collective agreement. The procedure must first require the parties to attempt to resolve the dispute through conciliation and, if the dispute remains unresolved, to resolve it through arbitration. (2) If there is a dispute about the interpretation or application of a collective agreement, any party to the dispute may refer the dispute in writing to the Commission if-. (my own underlining)

[15] What is immediately discernible is that the section spells out the nature of the dispute contemplated. The dispute ought to be about interpretation or application of a collective agreement. If a dispute is not about interpretation or application of a collective agreement, then that dispute does not resort under section 24. Further, the section limits the dispute to be between the parties. The section affords parties a discretion to refer a dispute to the Commission. In my mind, a party is a person who would have entered into a collective agreement. This thinking is fortified by the definition afforded to the term collective agreement in section 213 of the LRA. It refers to one concluded by one or more registered unions, on the one hand and, on the other hand-one or more employers; one or more registered employers' organisations; or one or more employers and one or more registered employers' organisations.

[16] It must follow axiomatically that an individual employee cannot be a party to a collective agreement. A party can either be a registered trade union or an employer or employer's organisation. If the legislature contemplated employees, it could have used the phrase one employee or more employees as it did with employers. The issue of who a party is is distinct from the binding nature of the agreement. Alive to the concept

of *stipuatio alteri*, the legislature introduced section 23 (c)-(d). Employees can derive benefits from a collective agreement even if not parties. To my mind employees only derive benefits from a collective agreement and are not parties to the agreement. In *Thal v Baltic Timber Co*,[1] Sutton J said- 'the Baltic Timber Co to show before it can recover under the contract, that it was either a party to the contract or that as a third party for whose benefit the stipulation had been made it had accepted it.' (my underlining)

[17] According to Christie's, The Law of Contract in South Africa 6th Edition 2010, the identity of the parties is as essential a term of the contract as is the subject matter. I conclude by saying that a non party cannot refer a dispute in terms of section 24 of the Act. Since employees are generally non parties but beneficiaries, they cannot in my view refer a dispute in terms of section 24.

[18] After identification of a party follows the nature of the dispute. The legislature employed the word "about". The dictionary meaning of the word is in connection with; appertaining to; dealing or occupied with; concerning; on the subject of or in relation to.[2] The first step towards interpretation is to give words employed their ordinary dictionary meaning. Therefore, a dispute firstly must be concerning a collective agreement and secondly and most importantly it must be concerning the interpretation or application of the collective agreement. The dictionary meaning of interpretation is the action of explaining the meaning of something, the proper explanation or signification of something. Therefore, the parties must be concerned with an explanation of the meaning of something. Ordinarily, an interpretation dispute involves one party explaining the meaning of the entire agreement or a specific clause different from the other. Then the parties are in dispute.

[1] 1935 CPD 110.
[2] See The New Shorter Oxford English Dictionary.

[19] I have said the following in *United Transport and Allied Trade Union v Jammy N.O*:[3]

> 'In my view, a true dispute contemplated in section 24, is one that seeks either an application or an interpretation of a collective agreement. Such would be, for instance in an application claim, a party may approach the CCMA to say in terms of clause 4, it is entitled to 3 hours lunch and is not been afforded it. On the interpretation issue, a party may approach the CCMA. For instance, if according to party A, the term lunch, as employed in the agreement means a period of one hour as opposed to three hours.'

[20] Application is defined as the action of bringing something into material. Ordinarily an application issue arises where something contemplated in the agreement does or does not happen or happens deficiently. Having said all that I turn to the very difficult question. How does the Council or the CCMA attract jurisdiction? I do so now.

[21] Jurisdiction obtains in two forms. Firstly, certain facts must exist before a power to decide arises. That part is known as objective jurisdictional facts. Secondly, an instrument must give that authority. That is the power itself. Often times, it is located in a statute or regulation. In relation to this particular matter, the section allows conciliation and arbitration. However, if the objective jurisdictional facts are absent, there is no power irrespective of the exercising of the power in terms of the empowering legislation.[4]

[22] The jurisdictional facts appertaining to this matter are what the nature of the dispute is and the contesting persons. An appointed functionary must satisfy himself or herself that the dispute brought under section 24 concerns a collective agreement and its application or interpretation. If the dispute concerns something else, then it is not justiciable under section 24 and the repository of power is handicapped. Often times, the

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[3] [2010] 7 BLLR 774 (LC) at para 23.
[4] See in this regard *SA Defence Aid Fund v Minister of Justice* 1967 (3) SA 31 (C), *Kimberly Junior School and Another v Head, Northern Cape Education Department and Others* 2010 (1) SA 217 (SCA) and *SAPS v Salukazana* [2010] 7 BLLR 764 (LC).

difficulty arises on an apparent technical divide between concerning and mentioning. By that I mean, a dispute may concern a particular issue but in the course something else is mentioned. In *Junid Manufacturing CC v NBCCMI and Others*,[5] I had an occasion to say that a simple labeling of a dispute as one within the contemplation of the section does not make the dispute one justiciable under the section. The true dispute gives rise to the application of the section.

[23] The LAC in *Johannesburg City Parks v Mphahlani NO and Others*[6] drew a distinction between a dispute and an issue in a dispute. There are situations where the decider of facts may be called upon to interpret a collective agreement in order to arrive at a resolution of the main dispute. What finds jurisdiction is not an issue in a dispute but a real dispute. This decision was confirmed by the LAC in the matter of *Minister of Safety and Security v SSBC and Others* [2010] 6 BLLR 594 (LAC) at paragraphs 7-11 of the judgment. Not only am I bound by those two instructive judgments I also agree fully with them.

[24] I am acutely aware that the Mphahlani judgment was overturn on appeal. I however believe that the judgment was overturned on a different basis. What the LAC sought to say with regard to the distinction in my view remains undisturbed. I am unable to agree with Grogan A in the matter of *Imatu obo D'Oliviera v Buffalo City Municipality*,[7] when he said that since a referring party is a *dominus litis* he may choose how to frame the cause of action and depending on how he or she framed an action jurisdiction follows. This statement ignores the very rubric and fundamental question that if the jurisdictional facts are absent, there is no jurisdiction. It also ignores the long line of authorities that before jurisdiction is exercised the true dispute must be identified. As correctly held in *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others*[8] arbitrators perform

[5] [2009] 5 BLLR 463 (LC).
[6] [2010] 6 BLLR 585 (LAC) at para 14.
[7] [2012] 33 ILJ 3019 (BCA).
[8] (2007) 28 ILJ 2405 (CC) at para 230.

administrative functions and make administrative decisions. Before such decisions can be made there must be power to do so.

[25] A court of law does not perform administrative functions. It will therefore be correct to accept that the jurisdiction of the courts arises from how a party pleads. Pleading is quite different from existence of jurisdictional facts to clothe an administrator with powers. What the statement suggests is that if a party in his or her referral deals with an administration of estates issue, the administrator must rule on that matter simply because he or she has pleaded the issue. Niehaus for the applicants also brought to my attention an award by Marion Fouche in a matter of *Imatu obo Bubb and Others v SALGA and Others* case number HQ 051003. Fouche also seem to echo the same sentiments that pleadings guides jurisdiction. For the same reasons set out above, I do not agree. Recently the LAC in the matter of *Shell Energy (Pty) Ltd v NBCCI and Others*[9] endorsed the approach of determining jurisdictional facts before exercising power. It did so by citing with approval the case of *Pinetown Town Council v President of the Industrial Court and Others*[10] (N) where the court said: '[w]here the jurisdiction of a tribunal is dependent on the existence of a particular state of affairs, it cannot give itself jurisdiction by incorrectly finding that the conditions precedent to jurisdiction known as jurisdictional facts which must objectively exist before the tribunal has power to act.' (my underlining)

[26] In fact as the LAC held in *SARPA* matter rulings such as one for Fouche are made for convenience. What determines jurisdiction is the objective facts and not how a party pleads as it were. In any event, in arbitration proceedings there are no pleadings, there is a referral. The duty to determine the true dispute still remains.

[27] On review of a ruling that jurisdiction does not obtain, the test is one of objective facts to obtain jurisdiction. In other words, do the jurisdictional facts obtain in order to exercise the power? If they did, this court should

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[9] Case number JA 42/10, [2012] ZALAC 39 (12 December 2012) yet unreported.
[10] 1984 (3) SA 173 (N).

find that jurisdiction obtained irrespective of what the arbitrator has said. However, if I find that the arbitrator performed his task being interpretation or application of the collective agreement, I will be unable to interfere with such an application or interpretation even if I do not agree with it.[11] However, in this matter, Niehaus for the applicants contended that the arbitrator performed his task in a deficient manner in that he did not deal fully with the dispute. Further, he contended that by taking into account material not agreed to, he subjected the applicant to a procedural irregularity. I shall consider these contentions separately later in this judgment if necessary.

[28] I accept that when it comes to application non-compliance with a particular clause of the collective agreement may fall within the concept application of the collective agreement even if it also strictly speaking mean a breach of an agreement in a common law sense. Section 138 (9) amongst others gives a commissioner the power to make an award that gives effect to any collective agreement. I must point out that this section on its own does not confer jurisdiction on the CCMA without more. This section must be read with section 24. All it does, it gives the commissioner powers to issue an award when having the necessary jurisdiction that will give effect to any collective agreement a commissioner sought to interpret or apply in terms of section 24. It seeks to widen the relief as it were in disputes about interpretation and application of a collective agreement. The first hurdle to cross is to place the dispute squarely within the letter and spirit of section 24. Having done that, resort to section 138(9) on the issue of the relief.

The arbitration award

[29] In his award, the second made the following pertinent findings:

> 'I have carefully considered the arguments before me and it is my view that the respondent is correct in their assertion that the SALGBC do not have the required jurisdiction to determine the enforceability or

[11] See *SAMWU v SALGA and Others* [2012] 4 BLLR 334 (LAC); (2012) 33 ILJ 353 (LAC).

> implementation of a collective agreement. It is evident to me that the SALGBC do not have the powers to interpret the Pay Parity Collective Agreement and then award the relief sought by the Applicants, namely that the Employer not be allowed to implement reduction of remuneration as recorded in the referral form of the Applicants.'

[30] He went further to find that: 'It is clear that nowhere in the Pay Parity Collective Agreement a right exists for a salary not to go down or to remain at the pegged constant as stated by the Respondent. It is my view that after inter alia an assessment on the facts of this matter, the true nature of the dispute, relevant case law presented that the dispute is not a dispute that can be arbitrated.' He concluded by saying:

> 'In the premises I must concluded (sic) with the Respondent that the Pay parity Agreement was not implemented and neither is it capable of argument, that employees' salary structures or overall remuneration was to be downgraded or lowered. Payments were effected contra the Pay Parity Agreement and the Respondent now lawfully seeks to rectify its error.'

The review

[31] It is contended by the applicants that in failing to realise that he could entertain the dispute, the second respondent failed to discharge his function as arbitrator and committed a fundamental error of law. He failed to appreciate that the dispute is one of right as contained in the Pay Parity Agreement. He exceeded his powers by considering an issue not properly before him. He adjudicated with reference to evidentiary material not properly before him, thereby exceeding his powers. He failed to apply mind and reached a decision a reasonable commissioner could not reach.

Application of the law to the facts of this case

[32] Before I do so, I deem it appropriate to consider the grounds of review raised. With regard to lack of jurisdiction I simply state that as it will become apparent when I apply the law to the facts, I have no reason to find that the second respond was wrong when he found that he lacked

jurisdiction. He committed no fundamental error in law. Regarding the right in the Pay Parity Agreement, the second respondent is spot on when he found that the Pay Parity Agreement does not give right to no lowering of salary. In argument, I asked Mr Niehaus to direct my attention to a clause protecting the right in question. He could not. He, however, retorted that the entire agreement did not envisage a worse off situation. This does not help the applicants. As alluded to earlier in this judgment, I am not averse to an argument that non compliance with a collective agreement gives rise to a dispute about application. Since the applicants cannot point a clause not complied with in the collective agreement, it must follow that their claim is not germane from the agreement. I agree that the award is not the best model of clarity. But proper reading reflects a proper reasoning.

[33] Regarding excess of power, the argument by Niehaus is that consideration of the merits without proper powers suggests excess of power. As a general statement of law a person exercising a power he or she does not have is considered to be acting *ultra vires* and his or her decision is unlawful. However, with regard to this matter I fail to comprehend the assertion in the light of what the parties recorded as an issue to be considered. In the applicants' attorney's mouth, there was a single primary issue. The second respondent answered it by saying there is nothing in the collective agreement that gags the third respondent to reduce the salary. He was asked to do that, he does that he is accused of excess of power. This does not make sense.

[34] The other argument of excess of power is premised on an alleged agreement that in considering the matter, the second respondent was confined to the two bundles and nothing more. To the extent that he considered further documents he acted *ultra vires* so went the argument. A finding that the second respondent was correct that he had no jurisdiction on the objective facts defeats this ground. However, on careful perusal of the record, I was unable to identify the alleged agreement. All I observed is a question from the second respondent whether the documents were the only documents. The applicants'

attorney simply mentioned the overlap without expressly confirming that those were the only documents.

[35] On failure to apply mind and the reasonableness test, the answer lies on the test for jurisdictional reviews. The test to be applied is whether on the facts objectively viewed there was jurisdiction.[12] Accordingly, in my view all the grounds are without merits and are bound to be dismissed.

[36] Turning to application of the law to the facts, I am of a firm view that the true dispute between the applicants and the third respondent is one of reduction of salary contrived as Grogan for the third respondent correctly argued as one residing in section 24. The exercise of determining the true dispute satisfies the requirement of jurisdictional facts. Same exercise was endorsed by the LAC albeit in a strike context in the matter of *Ceramic Industries Ltd v Betta Sanitaryware v NCBAWU* (2).[13]

[37] Traces of the true nature of this dispute are evident from the referral documents and the reliefs sought. In any event in my view the applicants' claim is located in their individual contracts as novated by the collective agreement. In the context of *stipulatio alteri,* the applicants acquired a benefit from the collective agreement by having their individual contracts amended. An offer was made and accepted by them. In law, an agreement comes into existence thereby. It is that agreement that is allegedly breached.

[38] A further difficulty with the applicants claim lies in the fact that they are not parties to the collective agreement. Although the second respondent did not refuse jurisdiction on this basis, this court is perfectly entitled to raise it in considering the objective facts. More appropriately because the point was raised and argued. Grogan argued that the two unions who are parties to the collective agreement did not raise any dispute. This lends credence to the very point that there was no breach of the collective agreement. The two unions were part of the LLF that resolved to validate

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[12] See in this regard *SAPS v SSBC and Others* [2012] 33 ILJ 453 (LC) and the authorities cited therein.
[13] (1997) 18 ILJ 671 (LAC).

and recover monies paid improperly. To my mind disputes in terms of section 24 can only be referred by parties to the collective agreement in question.

[39] For non parties, a collective agreement may serve as evidence of a particular contended right. In such instance, if interpretation arises, it becomes an issue in a dispute and not the dispute. On the whole, the facts of this case simply demonstrate a dispute of breach of individual contracts. Such disputes are justiciable in this court and the civil courts in terms of section 77 (3) of the BCEA.

[40] Even if I am wrong, that the second respondent did not have jurisdiction and the dispute is truly about the application of the collective agreement, the fact that the second respondent found that the collective agreement does not give the right contended for, he performed his task. I cannot agree with Niehaus that he performed it deficiently and the dispute ought to be remitted. The applicants were represented by a seasoned labour lawyer. He identified the issue as simply one of whether the agreement permits the employer to reduce the earnings. A pertinent answer was couched in the following terms fully quoted earlier: 'It is clear that nowhere in the Pay Parity...' Having done that, he determined the application of the Pay Parity Agreement. I have no basis to fault this conclusion. In coming to this conclusion which is closely linked to the jurisdiction aspect in terms of power, I must accept that the second respondent acted *ex abudandi cautela.* That being in the event I am wrong that I do not have jurisdiction, I however do what the parties asked me to do. Regarding the contention of failure to apply mind, it ought to be repeated that failure to apply mind entails taking into account irrelevant considerations and ignoring the relevant ones. I do not think that the second respondent did that. The relevant considerations appertaining to the issue laid at the door of the second respondent is simply whether the Pay Parity Agreement prevented the third respondent from lowering the earnings as it proposed to do. Application of mind is evident from this passage in the award:

> 'The evidence shows that the implementation of the Pay Parity Agreement, an unlawful instruction was issued by the Acting Municipal Manager to functionaries in the respondent's corporate department. The unlawful instruction was to the effect that the pay parity agreement was disregarded by the respondent, and that the method which was used to calculate salaries due to the applicants was the method previously used in calculating transitional allowances which was clearly a decision which was ultra vires to the pay parity agreement... The applicants was(sic) aware that the decision was incorrectly taken and cannot now hold that the respondent must be held to its decision which was incorrectly taken...'

[41] I am aware that the applicants argue that the issue of unlawfulness was not pertinently raised and documents appertaining thereto were sneaked in as it were contrary to the agreement between the parties. I have already found that such an agreement is not apparent. In our law, a party may not be estopped from raising *ultra vires*.[14] Therefore, even if I were to accept that the issue was to be pertinently agreed upon to be part of the case as it were, the material placed before the second respondent demonstrate that the Municipal Manager acted *ultra vires* and as a critical factor for the determination of the dispute, the second respondent was obliged to have regard to it even if not raised pertinently as it were by any of the parties.

[42] In summary, it is my view that on the facts objectively viewed the second respondent was correct in concluding that the first respondent has no jurisdiction. If I am wrong, I come to the conclusion that the second respondent performed his task within the contemplation of the section and his award is reasonable and unassailable. I rejected all the grounds persisted with to suggest that the award is reviewable in law.

Order

[43] In the results, I make the following order:

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[14] See *Strydom v Die Land- en Landboubank van SA* 1971 2 SA 449 (NC) at 815G-816B.

1. The application for review is dismissed with costs.

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Moshoana, AJ

Acting Judge of the Labour Court of South Africa

APPEARANCES

APPLICANT:	Attorney Minaar Niehaus
	Of Minaar Niehaus Attorneys, Port Elizabeth.
THIRD RESPONDENT:	ADV J G Grogan SC
	Instructed by Gray Moodliar Attorneys, Port Elizabeth.