THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Reportable

Case no: JR 2213 / 11

In the matter between:

SOUTH AFICAN LOCAL GOVERNMENT

BARGAINING COUNCIL **Applicant**

and

MEHMOOD DAWOOD ALLY N.O. **First Respondent**

CITY OF JOHANNESBURG **Second Respondent**

Heard: **30 June 2015**

Delivered: **14 August 2015**

Summary: Bargaining council arbitration proceedings – Review of proceedings, decisions and awards of arbitrators – Test for review – Review concerning issue of jurisdiction – Test of rationally and reasonableness does not apply – Issue considered *de novo* as to whether arbitrator right or wrong

Collective agreement – claims for costs by bargaining council in terms of collective agreement – consideration of provisions – costs to be determined by appointed arbitrators in dispute resolution proceedings

Jurisdiction – jurisdiction of bargaining council to enforce costs awards in favour of council – cannot be a separate issue for determination – must be decided by arbitrator in course of individual dispute resolution proceedings

Enforcement – process for enforcement of award of costs in favour of bargaining council – normal execution process applies – cannot again be referred to council for arbitration in terms of Section 33A

Section 33A of LRA – purpose of provision – enforcement of terms and conditions of employment in bargaining council agreements – not intended for separate enforcement of costs in favour of bargaining council

Jurisdiction – bargaining council arbitrator does have jurisdiction to decide costs – therefore not an issue of jurisdiction – applicant's claim in this instance is a bad claim – cannot be decided again

Review of award – conclusion of arbitrator correct – Arbitration award upheld

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JUDGMENT

SNYMAN, AJ

Introduction

[1] This matter concerns an application by the applicant to review and set aside an arbitration award of the first respondent in his capacity as an arbitrator of the SALGBC, the latter ironically being the applicant itself. This application has been brought in terms of Section 145 of the Labour Relations Act[1] ('the LRA').

[2] This matter is unique. Normally, dispute resolution processes conducted under the auspices of bargaining councils involve two litigating parties, with the function of the bargaining council being no more than to facilitate the dispute resolution process and appointing an arbitrator. However, and in this

[1] No 66 of 1995.

instance, certain benefits, for the want of a better description, accrue to the bargaining council itself from this litigation process, because of certain costs provisions in the bargaining council main collective agreement. The crisp questions then arise as to how would the bargaining council firstly procure these benefits, and how would it enforce the same? These were the issues that were placed before the first respondent as arbitrator.

[3] The applicant, as bargaining council, sought to enforce costs which it contended was owing to it by the second respondent under the provisions of its main collective agreement. It did this by way of the arbitration proceedings that came before the first respondent. The first respondent however decided that he had no jurisdiction to entertain the matter, concluding that these costs could not be enforced by the applicant using the normal bargaining council collective agreement enforcement processes. The first respondent dismissed the matter, giving rise to these proceedings.

Background facts

[4] Fortunately in this matter, most of the background facts are in fact common cause or undisputed.

[5] The applicant is the bargaining council having jurisdiction in the local government sector, duly registered under the LRA. The applicant is governed by a constitution and main collective agreement, concluded between the representative trade unions in the sector, on the one hand, and the South African Local Government Association ('SALGA') on the other. SALGA has as its members some 278 municipalities across the entire country, with the second respondent being one of these.

[6] The powers and functions of the applicant are determined by clause 3 of its constitution. Of relevance to the current matter, these include enforcement of its collective agreements[2], and the performing of dispute resolution functions as contemplated by Section 51 of the LRA[3]. The applicant then also has the jurisdiction, in terms of clause 11.2 of its constitution, to conciliate and arbitrate any dispute arising out of the provisions of its own collective agreements.

[2] Clause 3.1.3.
[3] Clause 3.1.4.

[7] Pursuant to the provisions of the applicant's constitution, and the LRA, the parties to the applicant as bargaining council then concluded what was termed the 'Main Collective Agreement', on 18 June 2007. I will refer to this collective agreement in this judgment as 'the main agreement'. The main agreement has several parts, being the following: (1) part A – application of the main agreement; (2) part B – substantive matters which are in essence conditions of employment of employees in the sector; (3) part C – procedural matters which in essence relate to collective bargaining rights and organizational rights; (4) part D – rules of the council which includes the applicant's dispute resolution process; (5) part E – exemptions; (6) part F – enforcement of the main agreement; (7) part G – disputes about interpretation or application of the main agreement; (8) part H – amendment of the main agreement; (9) part I – repeal of existing agreements; and (10) part J – definitions.

[8] Where it comes to the enforcement of collective agreements concluded under the auspices of the applicant, this is regulated both in the applicant's constitution[4] and the main agreement[5]. Save for inconsequential differences in wording between clause 19.2 of the constitution and clause 2 of part F of the main agreement, the enforcement provisions in these documents are identical and in effect mirror Section 33A of the LRA.

[9] Under the applicant's constitution and main agreement, the enforcement proceedings entail a process to try and remedy the default by way of a compliance order, or referring any unresolved issue with regard to compliance to arbitration. As to the arbitration process itself, it is the same as any other arbitration conducted under the auspices of the applicant, and section 138 of the LRA equally applies. The powers of the arbitrator include ordering compliance with any collective agreement, imposing a fine, awarding costs, enforcing a compliance order and charging a party an arbitration fee.

[10] Turning then to dispute resolution under the auspices of the applicant in general, clause 11 of the applicant's constitution provides for the referral of such disputes to the applicant for conciliation[6] and then, if unresolved,

[4] Clause 19.
[5] Part F.
[6] Clause 12.

ultimately to arbitration. Clause 14 of the constitution then provides for an arbitration procedure, applicable to all arbitrations conducted under the auspices of the applicant. Of importance to the current proceedings, any appointed arbitrator has the power to either award costs at the request of an actual party to the dispute, or to award costs due to any conciliation or arbitration proceedings postponed or delayed unnecessarily.[7] Also of importance is clause 14.9, which reads: 'Unless ordered otherwise by the arbitrator in terms of this clause 14, the Council shall bear the costs of the arbitrator, the venue and any interpreter'. Finally, clause 14.18 of the constitution provides that dispute resolution rules may be issued from time to time.

[11] The main agreement then provides for the rules applicable to dispute resolution under the auspices of the applicant, which can be found in section 2 of part D of the main agreement. These rules are to a large extent the same as the CCMA rules relating to dispute resolution, and include provisions relating to referral processes, forms, completion and service of documents, applications, calculation of time limits, conciliation and arbitration processes, con/arb, default proceedings, and pre-dismissal arbitrations. Of some relevance to the current matter is clause 2.23, which provides for the process relating to postponement of arbitrations which can take place either by agreement or on proper application as prescribed, by any party to the dispute.

[12] Section 2 of part D concludes with what is headed a 'General' section, encompassing clauses 2.35 to 2.41. This includes a general power given to an arbitrator to condone non-compliance with the rules, and provides for the recording of arbitration proceedings, subpoenas, witness fees, taxation, costs, certain fees payable to the council, and certification of awards for execution. Of particular relevance in the current matter is clause 2.39(1), which provides that the basis on which an arbitrator may make a costs award in an arbitration is regulated by Section 138(10) of the LRA.

[13] Specific reference must also be made to clause 2.41 in section 2 of part D of the main agreement, which provides as follows:

[7] See clauses 14.2.3 and 14.2.4.

> '(1) Any party or parties that fails or fail to request for a postponement timeously, as stipulated in rule 2.23 above, shall be liable for the fees of the arbitration, including other incidental costs arising from the convening of the arbitration.
>
> (2) The arbitrator is required to rule on frivolous or vexatious postponements.
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> (3) The Council shall pay for a maximum of three (3) days of arbitration only. If the arbitration exceeds three (3) days, the disputing parties shall jointly/and equally be responsible for the arbitration fees in excess of three (3) days, unless the arbitrator determines otherwise.
>
> (4) Any party to a conciliation or arbitration proceeding, who does not comply with any rule in Part D, shall bear the costs of the Council, due to any postponement or delay of the conciliation or arbitration hearing.'

[14] In short, and pursuant to clause 2.41, fees may be payable to the applicant by one or both of the litigating parties, in the instances where a postponement is not requested timeously, the arbitration exceeds three days, or where a postponement is occasioned because a party does not comply with a dispute resolution rule under Part D of the main agreement.

[15] The current matter relates to various arbitration proceedings in which the second respondent was involved, for the period from 2004 up to and including 30 October 2010. None of these proceedings related to instances where the applicant itself, as a party to the proceedings, sought to enforce compliance of any of its collective agreements, as against the second respondent. All these proceedings were between the second respondent, as employer party, and either the unions IMATU or SAMWU acting on behalf of individual members, or individual employees themselves.

[16] The applicant filed a bundle of documents containing various awards and rulings made in the course of the dispute resolution proceedings referred to above which, according to the applicant, entitles it to the payment of costs / fees by the second respondent to it. The bulk of these awards / rulings relate to postponements, being some 21 individual instances where in the course of these disputes the second respondent was directed by an arbitrator to pay

costs / fees to the applicant as a result of these postponements. Two further instances where arbitrators directed that the second respondent pay costs to the applicant are an award issued on 1 December 2004 where an arbitrator directed that the second respondent pay an arbitration fee to the applicant in terms of section 140(2) of the LRA, and an award issued on 29 May 2009 where the arbitrator directed that the second respondent pay the applicant's costs relating to a delay in the arbitration resulting from a dismissed objection *in limine*

[17] Then there are also seven individual instances where the applicant was claiming costs from the second respondent where arbitration proceedings exceeded three days, but I could find no actual award by an arbitrator to this effect. Similarly, the applicant claimed postponement costs from the second respondent in the matters of SAMWU obo MIYA and SAMWU obo C OLIPHANT, when there was no award/ruling to this effect by an arbitrator.

[18] The total amount claimed by the applicant from the respondent amounted to R116 021.00. The applicant contended this amount was payable by virtue of the provisions of clause 2.41 of section 2 of part D of the main agreement, referred to above.

[19] The second respondent however failed to settle any of these fees/costs forming the subject matter of these proceedings. The applicant contended that such failure to pay, by the second respondent, was in effect non-compliance with the provisions of clause 2.41 in section 2 of part D of the main agreement. The applicant's case was that it was accordingly entitled to enforce compliance with these provisions of the main agreement, in terms of clause 19 of the constitution, as read with section 33A(4)(a) of the LRA. The applicant did not refer to part F of the main agreement itself, but as said, this is virtually identical to clause 19 of the constitution.

[20] Accordingly, the applicant squarely founded its case on the contention that by failing to pay the amounts due to the applicant in terms of the various awards, rulings and proceedings referred to above, the second respondent is in contravention of the main agreement which the applicant is then entitled to enforce in terms of the enforcement proceedings under its constitution, as

read with Section 33A of the LRA. The importance of properly defining the applicant's case will be discussed later in this judgment.

[21] The applicant then in fact applied the process as set out in clause 19 of the constitution. It issued the second respondent on 6 December 2010 with a compliance order as contemplated by clause 19.2, and demanded payment of R116 021.00. The second respondent did not comply with this compliance order.

[22] The applicant then referred the dispute to arbitration, citing in its arbitration referral that the dispute was being brought in terms of section 33A(4)(a) of the LRA as read with clause 19 of the applicant's constitution. It is these proceedings that came before the first respondent for arbitration on 19 July 2011.

[23] At the arbitration proceedings, the second respondent raised an objection *in limine* as to the jurisdiction of the first respondent to entertain the dispute, contending the first respondent did not have such jurisdiction. The first respondent upheld this contention of the second respondent, finding that that enforcement proceedings under section 33A could not be brought in this instance and he thus did not have jurisdiction. The first respondent then dismissed the matter. It is this determination that then gave rise to this review application.

The test for review

[24] As stated above, the first respondent disposed of the matter on the basis of a jurisdictional determination, being that he did not have jurisdiction to entertain the enforcement proceedings brought by the applicant. This being the case, and on review, the review test as enunciated in *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others*[8] would not apply. As was said in *Fidelity Cash Management Service v Commission for Conciliation, Mediation and Arbitration and Others*[9]: '…. If the CCMA had no jurisdiction in a matter, the question of the reasonableness of its decision would not arise. Also, if the CCMA

[8] (2007) 28 *ILJ* 2405 (CC).
[9] (2008) 29 *ILJ* 964 (LAC) at para 101.

made a decision that exceeds its powers in the sense that it is ultra vires its powers, the reasonableness or otherwise of its decision cannot arise.'

[25] When deciding a review where the issue concerns the jurisdiction of the bargaining council to determine a dispute, the proper review test where the existence of the requisite jurisdictional fact is objectively justiciable in court, would be whether the determination of the arbitrator was right or wrong. This was so held in *Zeuna-Starker Bop (Pty) Ltd v National Union of Metalworkers of SA*[10] where the Court said:

> '…The commissioner could not finally decide whether he had jurisdiction because if he made a wrong decision, his decision could be reviewed by the Labour Court on objectively justiciable grounds...'

[26] I have had the opportunity to deal with this kind of review test in *Trio Glass t/a The Glass Group v Molapo NO and Others*[11] and said:

> 'The Labour Court thus, in what can be labelled a 'jurisdictional' review of CCMA proceedings, is in fact entitled, if not obliged, to determine the issue of jurisdiction of its own accord. In doing so, the Labour Court is not limited only to the accepted test of review, but can in fact determine the issue de novo in order to decide whether the determination by the commissioner is right or wrong.'

[27] This 'right or wrong' review approach has been consistently applied in instances where the issue for determination on review concerned the jurisdiction[12] of the CCMA, as is apparent from the judgments in *SA Rugby Players Association and Others v SA Rugby (Pty) Ltd and Others*[13], *Asara Wine Estate and Hotel (Pty) Ltd v Van Rooyen and Others*[14], *Hickman v Tsatsimpe NO and Others,*[15] *Protect a Partner (Pty) Ltd v Machaba-Abiodun and Others,*[16] *Gubevu Security Group (Pty) Ltd v Ruggiero NO and Others,*[17]

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[10] (1999) 20 *ILJ* 108 (LAC) at para 6. See also *SA Commercial Catering and Allied Workers Union v Speciality Stores Ltd* (1998) 19 *ILJ* 557 (LAC) at para 24.
[11] (2013) 34 *ILJ* 2662 (LC) at para 22.
[12] Mostly in the instance as to whether or not a dismissal exists.
[13] (2008) 29 *ILJ* 2218 (LAC) at paras 39 – 40.
[14] (2012) 33 *ILJ* 363 (LC) at para 23.
[15] (2012) 33 *ILJ* 1179 (LC) at para 10.
[16] (2013) 34 *ILJ* 392 (LC) at paras 5–6.
[17] (2012) 33 *ILJ* 1171 (LC) at para 14.

Workforce Group (Pty) Ltd v CCMA and Others[18] and *Stars Away International Airlines (Pty) Ltd t/a Stars Away Aviation v Thee NO and Others.*[19]

[28] There is no reason why this same approach cannot be applied to bargaining council arbitrations, and where the issue on review concerns the jurisdiction of a bargaining council arbitrator to have entertained a particular dispute. I will therefore decide whether the determination of the first respondent was right or wrong, by way of a *de novo* consideration of the justiciable facts on record, being the applicable review test.

The applicant's review case

[29] I do not intend to set out all of the applicant's individual review grounds, but will only summarize what I believe to lie at the heart of the applicant's case on review.

[30] The applicant contends that the first respondent misconstrued the nature of the applicant's claim, and failed to properly interpret and apply the provisions of the applicant's constitution and main agreement, as read with the relevant sections of the LRA.

[31] The applicant contends that the costs / fees payable to it by the second respondent are payable in terms of clause 2.41 of the main agreement, as it stands. This liability exists irrespective of any awards or rulings made by arbitrators in the course of dispute resolution proceedings. The applicant is thus entitled to enforce these provisions in its main agreement in the same manner as it would be entitled to enforce any other provisions of its main agreement. In short, the applicant says it claims are not founded upon awards or rulings of arbitrators.

[32] The applicant further contends that in any event, the awards / rulings made by the arbitrators on the issue of costs / fees are not arbitration awards as contemplated by sections 143 or 158(1)(c) of the LRA, and these provisions could thus not find application because of this. The applicant stated that what

[18] (2012) 33 *ILJ* 738 (LC) at para 2.
[19] (2013) 34 *ILJ* 1272 (LC) at para 21.

the arbitrators may have said about costs were just 'observations' by the arbitrators of 'contractual liability' of the second respondent in terms of the main agreement, and thus not a determination of the issue.

[33] The applicant also took issue with the first respondent's reasoning that clause 19 of its constitution as read with section 33A of the LRA only applied to collective agreements relating to terms and conditions of employment of employees, contending that this unduly narrowed the construction of the definition of a collective agreement. According to the applicant, clause 19 and section 33A would apply to any collective agreement, and this included the provisions of clause 2.41 of the main agreement, which was intended to protect the finances of the applicant from undue dissipation.

[34] The applicant contended that it was unable to use the provisions of sections 143 and 158(1)(c) to enforce the costs / fees payable to it in any event, as it was not a party to the dispute resolution proceedings, and the machinery under these provisions was only available to litigant parties.

The issue of jurisdiction

[35] I will start with the issue of jurisdiction of the first respondent, as this was the basis for the first respondent's dismissal of the matter. I am compelled to say that I have my doubts as to whether the first respondent's finding that he did not have jurisdiction to entertain the matter is indeed correct. What the first respondent was doing, in simple terms, was confusing the issue of jurisdiction with what may or may not have been a bad case brought by the applicant. The issues are not the same. The first respondent held that he could not entertain the applicant's dispute because the applicant could not bring its enforcement proceedings under section 33A of the LRA. This is not an issue of jurisdiction. It is an issue pertaining to a determination whether the applicant's claim has substance in law.

[36] Van Der Westhuizen J in *Gcaba v Minister for Safety and Security and Others*[20] considered the very meaning of jurisdiction and jurisdictional challenges, and held:

> 'The specific term 'jurisdiction', which has resulted in some controversy, has been defined as the 'power or competence of a court to hear and determine an issue between parties'. ….'

The learned Judge further said:[21]

> 'Jurisdiction is determined on the basis of the pleadings, as Langa CJ held in *Chirwa*, and not the substantive merits of the case. …. In the event of the court's jurisdiction being challenged at the outset (in limine), the applicant's pleadings are the determining factor. They contain the legal basis of the claim under which the applicant has chosen to invoke the court's competence. While the pleadings - including in motion proceedings, not only the formal terminology of the notice of motion, but also the contents of the supporting affidavits - must be interpreted to establish what the legal basis of the applicant's claim is, it is not for the court to say that the facts asserted by the applicant would also sustain another claim ….'

[37] In *Mbatha v University of Zululand*[22], Jafta J again had the opportunity to consider the issue of jurisdiction, and said:

> 'Ordinarily the question of jurisdiction is determined with reference to the allegations made in the plaintiff's or applicant's pleadings. …. In assessing whether this procedural requirement has been met, the proper approach is to take the allegations in the particulars of claim (summons) or the founding affidavit at face value. Usually those allegations are taken to be true for purposes of determining jurisdiction. The question whether a court has jurisdiction does not depend on the substantive merits of the case. The allegations which, if established, would prove jurisdiction are sufficient.'

[20] (2010) 31 ILJ 296 (CC) at para 74.
[21] Id at para 75.
[22] (2014) 35 ILJ 349 (CC) at para 157.

The learned Judge then referred with approval to the *dictum* of Van der Westhuizen J in *Gcaba* referred to above, and held:[23]

> 'What emerges from *Gcaba* is that in determining whether this court, and for that matter any court, has jurisdiction, one must examine the pleadings with a view to finding 'the legal basis of the claim under which the applicant has chosen to invoke the court's competence'. The caution that applies to this enquiry, as was observed in *Gcaba*, is that one must consider whether the facts pleaded sustain the pleaded cause of action. Whether the facts also support another cause of action, not pleaded, is immaterial. It follows that the facts, as pleaded, play a crucial role in determining jurisdiction.'

[38] I shall apply the above *dicta* to the current proceedings, despite the fact that there are no pleadings as such in bargaining council arbitration proceedings. The pleaded facts, by the applicant, can however be gathered from the arbitration referral, the submissions to the arbitrator, as well as the case articulated in the applicant's founding affidavit in the review application. For the purposes of deciding jurisdiction, this pleaded case of the applicant must then be accepted, as it stands. This means that the case before the first respondent, as brought by the applicant, was that the second respondent breached clause 2.41 of section 2 of Part D of the main agreement and the applicant was consequently seeking to enforce it against the second respondent using the enforcement provisions of clause 19 of its constitution as read with section 33A of the LRA.

[39] There can be no doubt that the first respondent would have jurisdiction to decide such a case. The applicant is specifically tasked by its constitution and the LRA to enforce any of the provisions of any collective agreements concluded under its auspices. The main agreement is clearly such an agreement. Where the issue of compliance with a collective agreement remains unresolved, it proceeds to arbitration. There is no difference between enforcement arbitration proceedings and any other dispute resolution arbitration proceedings conducted under the auspices of the applicant. This is apparent from clause 14.1, as read with clause 19.7, of the applicant's constitution itself. The first respondent was an arbitrator appointed in terms of

[23] Id at paras 159 and 160.

this arbitration process, tasked by the applicant with deciding the issue of enforcement of the main agreement. This task resorted squarely within his jurisdiction as arbitrator under the arbitration dispute resolution process convened in terms of the applicant's constitution and main agreement.

[40] What the first respondent did was to decide whether he had jurisdiction on the basis of the merits of the applicant's case. The first respondent in effect adopted the view that the enforcement proceedings and section 33A could not be applied in this case, and that the applicant had alternative remedies under sections 143 and 158(1)(c) of the LRA. In simple terms, the first respondent declined jurisdiction because he held the view that the applicant's case was a bad case. This is clearly a decision on jurisdiction based on the outcome or the merits of the applicant's case. This is a flawed approach, and clearly wrong. The simple point is that the first respondent had the jurisdiction to entertain the enforcement case as articulated by the applicant and brought by the applicant.

[41] In *Makhanya v University of Zululand*[24], Nugent JA specifically dealt with the issue of the difference between an issue of jurisdiction and a bad claim in law. The learned Judge held:[25]

> '…. Judicial power is the power both to uphold and to dismiss a claim. It is sometimes overlooked that the dismissal of a claim is as much an exercise of judicial power as is the upholding of a claim. A court that has no power to consider a claim has no power to do either (other than to dismiss the claim for want of jurisdiction).'

The learned Judge further said:[26]

> 'I have pointed out that the term 'jurisdiction', as it has been used in this case, and in the related cases that I have mentioned, describes the power of a court to consider and to either uphold or dismiss a claim. And I have also pointed out that it is sometimes overlooked that to dismiss a claim (other than for lack

[24] (2009) 30 ILJ 1539 (SCA). See also *SA Maritime Safety Authority v McKenzie* (2010) 31 ILJ 529 (SCA) at para 8.
[25] Id at para 23.
[26] Id at paras 52 and 54.

> of jurisdiction) calls for the exercise of judicial power as much as it does to uphold the claim. ….
>
> …. the power of a court to answer a question (the question whether a claim is good or bad) cannot be dependent upon the answer to the question. To express it another way, its power to consider a claim cannot be dependent upon whether the claim is a good claim or a bad claim.'

Nugent JA then concluded:[27]

> '…. The first is that the claim that is before a court is a matter of fact. When a claimant says that the claim arises from the infringement of the common-law right to enforce a contract, then that is the claim, as a fact, and the court must deal with it accordingly. When a claimant says that the claim is to enforce a right that is created by the LRA, then that is the claim that the court has before it, as a fact. When he or she says that the claim is to enforce a right derived from the Constitution then, as a fact that is the claim. That the claim might be a bad claim is beside the point.'

[42] The applicant's claim was, as said, for enforcement of the main agreement against the second respondent. It does not matter, for the purposes of deciding jurisdiction, whether this claim had substance in law. Neither does it matter whether the applicant had other options available to it. The first respondent always had the power to answer the question whether to enforce the main agreement, or not. The first respondent decided his jurisdiction on the basis of the outcome of the substance of the applicant's claim, even though it is on a question of law, which in the light of the clear *ratio* in *Makhanya*, is inappropriate and thus wrong.

[43] Recently, and in *SA Municipal Workers Union on behalf of Jacobs v City of Cape Town and Others*[28] the Labour Court had the opportunity to specifically deal with the enforcement provisions in terms of clause 19.1 of the SALGBC (the current applicant) constitution in an instance where the arbitrator declined

[27] Id at para 71.
[28] (2015) 36 ILJ 484 (LC).

jurisdiction. Steenkamp J specifically referred to section 33A of the LRA and held:[29]

> 'It seems clear from these provisions that an arbitrator acting under the auspices of the bargaining council does have the power to determine whether the city had complied with its obligations under clause 6 of the collective agreement. And if it hasn't, that the arbitrator has the power to issue a declaratory order that the city is in breach of the collective agreement. ….'

[44] Based on the above, I am satisfied that the first respondent was wrong in deciding that he did not have jurisdiction to entertain this matter. The first respondent always had the power to decide the issue of enforcement of the main agreement, which is the case the applicant asked the first respondent to consider. The fact that the first respondent believed the applicant's claim was a bad claim in law did not detract from his jurisdiction. The point is that if the applicant was right that the second respondent was indeed in breach of the clause 2.41 of the main agreement and was entitled to enforce it against the second respondent, it certainly cannot be said the first respondent would have no jurisdiction to do this. The first respondent's determination that he did not have jurisdiction thus falls to be reviewed and set aside, as he clearly had jurisdiction.

The enforcement provisions

[45] Since I have concluded that the first respondent's finding on jurisdiction is wrong and must be set aside, where to now? I must now decide whether to refer the matter back to the bargaining council for arbitration *de novo*, or myself decide the merits of the applicant's case. In terms of section 145(4)(a) of the LRA, the Labour Court, having set aside an award of an arbitrator, may determine the dispute in the manner it considers appropriate, which includes making its own finding, in place of the arbitrator, as to the merits of the

[29] Id at para 13.

matter.[30] In *Rustenburg Platinum Mines Ltd v Commission for Conciliation, Mediation and Arbitration and Others*[31] the Court said:

> '…. Section 145(4)*(a)* gives the court the widest possible powers necessary to determine disputes. Such powers given to the court in this section are those powers given to the arbitrator. Put differently, when the court exercises its discretion in terms of s 145(4)*(a)* it sits as an arbitrator in the arbitration hearing. ….'

[46] This matter dates back to 2010. This in itself strongly motivates a situation of it being brought to an end now, once and for all.[32] Furthermore, the evidentiary material placed before the first respondent and now before me is unlikely to change in any material way in any subsequent arbitration proceedings. The merits of the matter was fully canvassed by the parties. The facts in this matter are either common cause or not disputed, fully ventilated in the affidavits, and the outcome in this matter in essence turns on a point of law. As the Court said in *SA Bank of Athens Ltd v Cellier NO and Others*[33]:

> '…. The material presented before me is sufficient to enable me to determine the dispute in accordance with s 145(4)*(a)* of the Labour Relations Act, so as to bring this matter to finality ….'

[47] I accordingly see no need to refer this matter back to the bargaining council for determination *de novo*, and shall decide the merits of the applicant's case of enforcement of the main agreement against the second respondent, for myself.

[48] As reflected in the summary of facts set out above, this matter in essence revolves around costs awards made in favour of the applicant as bargaining council, in various disputes before arbitrators appointed by the applicant to

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[30] See *SA Police Service v Safety and Security Sectoral Bargaining Council and Others* (2012) 33 ILJ 1933 (LC) at paras 138 – 139; *Qavile v Commission for Conciliation, Mediation and Arbitration and Others* (2003) 24 ILJ 153 (LAC) at para 7.
[31] (2007) 28 ILJ 417 (LC) at para 14.
[32] See *Billiton Aluminium SA Ltd t/a Hillside Aluminium v Khanyile and Others* (2010) 31 *ILJ* 273 (CC) at para 46; *Strategic Liquor Services v Mvumbi NO and Others* (2009) 30 *ILJ* 1526 (CC) at paras 12–13.
[33] (2009) 30 ILJ 197 (LC) at para 38.

conduct dispute resolution between the second respondent as employer party on the one hand, and a variety of different employee parties on the other. The applicant itself, other than facilitating the dispute resolution process under its constitution and main agreement, was never actually a party to these proceedings.

[49] It is clear that in terms of the main agreement of the applicant, there are instances where, even in the case of dispute resolution between employer and employee parties, costs would or may be payable to the applicant as bargaining council. The question is how the applicant is supposed to go about recovering these costs, where the party in the dispute resolution process liable to pay the same has failed to do so. *In casu*, the total amount so payable, as claimed by the applicant, was R116 021.00. The second respondent did not pay, and the applicant wants to enforce payment.

[50] In a nutshell, the case of the applicant is simply that by failing to pay the above amount, the second respondent is in breach of the provisions in the main agreement, and in particular clause 2.41 in section 2 of part D. The applicant's then contends that because the second respondent is so in breach of the main agreement, the applicant is then entitled to enforce this part of the main agreement against the second respondent, using the enforcement provisions as contained in clause 19 of its constitution and section 33A of the LRA. It must now be decided whether this approach is competent in law.

[51] In order the decide this matter, it is necessary to interpret the constitution and main agreement of the applicant, as a whole, with particular consideration of the dispute resolution functions of the applicant in terms thereof, as well as the dispute resolution processes prescribed therein. With the constitution and main agreement being written agreements, the proper approach to be followed in interpreting the same is found in *Natal Joint Municipal Pension Fund v Endumeni Municipality*[34] where the Court said:

> '…. Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or

[34] 2012 (4) SA 593 (SCA) at para 18. See also *Bothma-Batho Transport (Edms) Bpk v S Bothma en Seun Transport (Edms) Bpk* 2014 (2) SA 494 (SCA) at para 12.

> provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective, not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document. Judges must be alert to, and guard against, the temptation to substitute what they regard as reasonable, sensible or businesslike for the words actually used. To do so in regard to a statute or statutory instrument is to cross the divide between interpretation and legislation; in a contractual context it is to make a contract for the parties other than the one they in fact made. The "inevitable point of departure is the language of the provision itself", read in context and having regard to the purpose of the provision and the background to the preparation and production of the document.'

[52] In actually considering the main agreement of a bargaining council, the Court in *Commercial Workers Union of SA v Tao Ying Metal Industries and Others*[35] said:

> 'The proper approach to the construction of a legal instrument requires consideration of the document taken as a whole. Effect must be given to every clause in the instrument and, if two clauses appear to be contradictory, the proper approach is to reconcile them so as to do justice to the intention of the framers of the document. It is not necessary to resort to extrinsic evidence if the meaning of the document can be gathered from the contents of the document.'

[53] As a point of departure in considering the constitution and main agreement of the applicant, it is pointed out that the applicant as bargaining council is empowered by the LRA to conduct dispute resolution by way of conciliation and arbitration, in section 51(9)[36]. In *National Bargaining Council for the Road*

[35] (2008) 29 ILJ 2461 (CC) at para 90.
[36] The section provides: 'A bargaining council may, by collective agreement- (a) establish procedures to resolve any dispute contemplated in this section; (b) provide for payment of a dispute resolution

Freight Industry and Another v Carlbank Mining Contracts (Pty) Ltd and Another[37] the Court held:

> 'Section 51(9) provides that a bargaining council may, by collective agreement, establish procedures to resolve any dispute contemplated in the section.'

[54] The constitution of the applicant, in clause 3.1.4, provides that part of the powers and functions of the applicant shall be the conducting of dispute resolution as contemplated by section 51 of the LRA. In the constitution itself a dispute resolution process is prescribed, in the form of conciliation and arbitration. The arbitration procedure is found in clause 14, and clause 14.1 provides that the procedure in this clause shall apply to all arbitrations conducted under the auspices of the applicant. Of importance in the current matter, is that the arbitrator appointed by the applicant in terms of this procedure is given the power to make any appropriate costs award, in two instances.[38] The first is where a party to the proceedings asks for it, and the second is where the arbitration proceedings have been 'unnecessarily' delayed or postponed. In the latter instance, it is not necessary for a party to request the costs order, and it is clearly left up to the arbitrator to decide. The crisp point is however that the award of costs is left up to the arbitrator to determine, in any instance.

[55] Also of importance is clause 14.9, which reads: 'Unless ordered otherwise by the arbitrator in terms of this clause 14, the Council shall bear the costs of the arbitrator, the venue and any interpreter'. Clearly, this can only mean that where an arbitrator does not make a determination as to costs in terms of clause 14.2.4, the council (applicant) shall bear the costs of the arbitration. This surely cements the interpretation that all issues with regard to costs in the arbitration proceedings are left up to the arbitrator in that particular dispute.

[56] Of final relevance *in casu*, and where it comes to the constitution of the applicant, is that provision is made for dispute resolution rules being made,

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levy; and (c) provide for the payment of a fee in relation to any conciliation or arbitration proceedings in respect of matters for which the Commission may charge a fee in terms of section 115 (2A) (l)….'.

[37] (2012) 33 ILJ 1808 (LAC) at para 8

[38] See clauses 14.2.3 and 14.2.4.

and save where specifically otherwise provided, the provisions of the LRA with regard to dispute resolution will remain applicable.[39] There being no provision to the contrary, section 138(10) of the LRA thus remains applicable, which provides that: 'The commissioner may make an order for the payment of costs according to the requirements of law and fairness in accordance with rules made by the Commission ….'. Of course, reference to 'commissioner' must just be construed as being the bargaining council arbitrator.

[57] The dispute resolution rules as contemplated by clause 4.18 of the constitution are then found in section 2 of part D of the main agreement. As stated above, these are very similar to the CCMA Rules and in fact mirrors the same in most material respects. As such, the entire section 2 of part D must be read as a whole, and in the context of it seeking to establish the rules that would be applicable to the dispute resolution functions of the applicant under clauses 12, 13 and 14 of its constitution. Whilst it is so that the CCMA Rules do not contain a provision similar to clause 2.41, it must be said that it being part of section 2 of part D of the main agreement, clause 2.41 must still be considered in the context of being part of the rules regulating dispute resolution between litigating parties under the auspices of the applicant, as a whole.

[58] The applicant has in effect argued that clause 2.41 must be considered on its own, as establishing a right and benefit in favour of the applicant itself under the main agreement. The applicant argued that as it is not a party to the dispute resolution process, it would be entitled to institute separate proceedings in its own name to secure these benefits. Mr Lawrence, representing the applicant, illustrated the applicant's argument by way of an example, being that what if the arbitrator, in the case where there was a postponement contrary to rule 2.23, does not direct that the responsible party pay the fee of the arbitration? He argued that surely in terms of clause 2.41, the applicant is entitled to that fee and should be able to institute proceedings in its own name to recover it. For the reasons I will now set out, I however cannot agree with Mr Lawrence's contentions.

[39] Clauses 14.18 and 14.19.

[59] From the outset, it must be considered that the provisions of clause 14 of the constitution and section 2 of part D of the main agreement relate to, and apply to, dispute resolution proceedings conducted between two litigating parties under the auspices of the applicant. Where it comes to the issue of costs, it is the arbitrator in this dispute resolution process that decides which of the litigating parties must pay costs, to what extent, and to whom. Provision is then made in this context, in terms of clause 2.41 of the main agreement, which must be read with clause 14.2.4 of the constitution, that the arbitrator has the power to order such a party to pay costs to the applicant in certain instances. But this power does not detract from the fact that it is still a costs order in the course of the conducting of arbitration dispute resolution between two litigating parties.

[60] The point is that even if the applicant is the beneficiary, so to speak, of clause 2.41 costs orders, these costs orders do not have independent existence outside the ambit of the arbitration dispute resolution process between the litigating parties. It has to be, and can only be, the arbitrator in such proceedings that must decide if any of the litigating parties pays costs to the council. The applicant cannot institute separate proceedings, in its own name as a party itself, purely on the basis of clause 2.41, simply to claim costs it contends would be due to it in terms of this clause. If the arbitrator in the dispute resolution process between the two litigating parties does not determine it, then no costs accrue to the applicant. This is the only interpretation that is consistent with the power afforded to the arbitrator in clause 14.2.4, especially if read with clause 14.9, which provides that if the arbitrator does not decide this issue, then the applicants remains liable for the costs of the arbitration proceedings.

[61] In my view, clause 2.41 is thus nothing else but the rule in the dispute resolution process seeking to give effect to the power of the arbitrator in terms of clause 14.2.4 of the constitution. It serves to provide guidance to the arbitrator as to when he or she should make a costs award as contemplated by this clause in the constitution. This is actually evident from the provisions of clause 2.41 itself, which still requires the arbitrator to rule on vexatious and frivolous postponements, decide on costs payable to the applicant for

arbitrations longer than three days, and decide on costs of the applicant where an arbitration is postponed due to non-compliance with a rule.[40] Always, the decision on costs remains that of the arbitrator, and if he or she does not make such a decision, then the costs of the arbitration proceedings remain the responsibility of the applicant, *in toto*, and the applicant cannot after the fact seek to hold a litigating party liable for the same by instituting new enforcement proceedings against such party.

[62] It would be up to the applicant to properly train and instruct any arbitrator appointed by it to conduct dispute resolution, as to the powers the arbitrator has where it comes to costs, and in particular that in certain instances, costs may be payable to the applicant. Arbitrators should be informed by the applicant that they can make these kind of costs awards, even if it not asked for by a party. The applicant should brief its arbitrators to make proper provision for this, in awards or rulings issued by such arbitrators. Of course, it would still be up to and in the discretion of the arbitrator to decide whether to make such an award, considering the requirements of law and fairness.

[63] So, in short, the applicant can only recover those costs awarded to it by arbitrators in the course of the dispute resolution proceedings conducted by the two litigating parties, under the auspices of the applicant. These costs can be awarded in an arbitration award, or ruling, issued by the arbitrator, which then records that costs are payable to the applicant. If the arbitrator makes no such determination in the course of such proceedings, then the council remains liable for all costs of the arbitration proceedings, meaning the costs of the arbitrator, venue, interpreter and any related costs. The applicant cannot institute separate proceedings after the fact, in its own name as a litigating party, to claim costs in terms of clause 2.41.

[64] Accordingly, it follows that the applicant cannot institute enforcement proceedings as contemplated by clause 19 of its constitution, part F of its main agreement, or section 33A of the LRA, to claim costs not specifically awarded to it by an arbitrator conducting dispute resolution between the two litigating parties in arbitration proceedings conducted under the auspices of the

[40] Clause 2.41(2), (3) and (4).

applicant. Such proceedings for such purpose will be incompetent, and at odds with the clear terms of the applicant's constitution and main agreement.

[65] In this case, however, the applicant in most instances was indeed awarded costs in several rulings and/or awards made by various arbitrators in the course of the conduct of arbitration proceedings under the auspices of the applicant as bargaining council, conducted between the second respondent as employer party and various employee parties. The next consideration then is what can the applicant do to execute these costs awarded, in the case of a litigating party failing to pay the same? Would enforcement proceedings as contemplated by Section 19 of the constitution and section 33A of the LRA then be competent? In my view, this latter question must be answered in the negative, for the reasons I will now set out.

[66] Firstly, the purpose of enforcement proceedings under section 19 of the constitution and section 33A of the LRA is to determine liability in the first place. In other words, these enforcement proceedings establish the liability of the errant party, and direct it to comply. In the matter of costs awards made to the applicant under the circumstances discussed above, liability has already been determined and a party has already been directed to pay. There is no need to enforce that which has already been determined, and in effect enforced. The point can be illustrated by a simple example. Assume the applicant is awarded R3 000.00 in costs, by an arbitrator in the dispute resolution process, because of a postponement sought by the employer party, and the employer is directed to pay these costs to the applicant. The employer party then does not pay. Assuming then the applicant institutes enforcement proceedings in terms of clause 19 of the constitution and section 33A of the LRA to enforce payment of the sum of R3 000.00. All the arbitrator in these enforcement proceedings can then do is to again order the employer to pay R3 000.00, which the first arbitrator in the first mentioned proceedings has already ordered the same employer to pay. What, with respect, is the point in this?

[67] Mr Lawrence, for the applicant, sought to answer this by contending that because the applicant was not a party to the dispute resolution proceedings in

which the costs award in favour of the applicant was made, the applicant was unable to use the provisions of sections 143 or 158(1)(c) of the LRA to execute the award of costs in its favour, and thus needed to become a 'party' by way of the clause 19 and section 33A enforcement proceedings. However, this contention is not correct. Considering section 143, it provides for the enforcement of an arbitration award as if it was a Court order. It does not provide that only a party to the arbitration award can enforce it, which in my view indicates that anyone entitled to a benefit (relief) under such arbitration award can utilize section 143 to enforce it.

[68] Further, the applicant's main agreement has its own provisions relating to the execution of arbitration awards, as contained in clause 2.40 in section 2 of part D of the main agreement. In terms of section 51(8) of the LRA, these main agreement execution provisions have preference over section 143 of the LRA, in any event. In terms of this clause 2.40, application can be made in terms of form 7.18A[41] to certify the award, and once the arbitration award is certified, it can be executed by a warrant of execution where it concerns the payment of a sum of money.[42] Critically, and in terms of clause 2.40(3), it is provided that an arbitration award susceptible to execution under this clause includes an award of costs. There is equally no prescription that only the actual litigating parties to the dispute resolution process can utilise these provisions.

[69] In my view, it is clear that clause 2.40 is intended to be used by anyone who is entitled to a benefit in terms of an arbitration award. In the case of costs awarded by an arbitrator under the main agreement, this would include the applicant as well, even though it is not actually a party to the proceedings. Once the arbitrator orders a litigating party to pay costs, whether such costs are in favour of the other litigating party or the applicant as bargaining council or both, such award can be executed by either in terms of clause 2.40 if not satisfied by the party liable to pay. The applicant can thus execute costs awards made in its favour, in the course of dispute resolution proceedings conducted under its auspices, by bringing application in terms of form 7.18A for certification of the award, in its own name. Then, and once certified, the

[41] The prescribed form is published under the Labour Relations Regulations under GN R1442 in GG 25515 of 10 October 2003.
[42] See clause 2.40(2)

applicant can proceed to have a warrant of execution issued against the errant litigating party for the amount in costs due to it under the award. This is the only interpretation that in my view makes common sense.

[70] Therefore, I cannot agree with Mr Lawrence's contention that the applicant cannot use section 143. Despite the fact that the applicant in my view can use this section, there is simply no need for the applicant to do so in any event, as the applicant can simply execute under clause 2.40 in section 2 of part D of its own main agreement. In *Motor Industries Bargaining Council v Osborne and Others*[43] the Court said:

> 'The effect of s 51 (8) read with the subsections to which it refers is that the procedure in s 143 would be available to enforce an award of a bargaining council without the need to make the award an order of the Labour Court. Upon certification by the Director of the CCMA, an award is deemed to be an order of the Labour Court, for purposes of enforcing it. This is intended to be a more expeditious and less expensive means for a successful patty to enforce an award. …. However, s 51(9) permits a bargaining council to exclude the operation of the LRA in the circumstances contemplated in that subsection, by establishing its own procedures by means of a collective agreement'

The applicant thus has proper recourse *in casu*, in terms of clause 2.40 in section 2 of part D of the main agreement. This clause allows for the execution of costs awards, and this includes execution by the applicant of costs awards in its favour. There is simply no reason to again pursue enforcement proceedings under section 33A of the LRA and clause 19 of the applicant's constitution.[44]

[71] The matter has one final nuance. This lies in the real purpose and context of section 33A of the LRA as read with clause 19 of the applicant's constitution. The real purpose of section 33A was to enable bargaining councils to enforce, on behalf of employees under their jurisdictions, the provisions of the bargaining council main agreements where it comes to employment conditions

[43] (2003) 24 ILJ 1700 (LC) at 1703.
[44] Or in terms of part F of the main agreement itself.

and benefits applicable to such employees under the collective agreements. This is apparent from section 33A(2), which reads:

> 'For the purposes of this section, a collective agreement is deemed to include-
> (a) any basic condition of employment which in terms of section 49 (1) of the Basic Conditions of Employment Act constitutes a term of employment of any employee covered by the collective agreement; and
> (b) the rules of any fund or scheme established by the bargaining council.'

Section 33A must also be read with the provisions of section 33, which empowers bargaining council inspectors in a manner similar to labour inspectors under the BCEA, considering that such bargaining council inspectors can issue compliance orders under section 33A(3)[45]. Clause 19.2 of the applicant's constitution makes provision for the issue of such compliance orders. It is thus all about enforcement of employment conditions and benefits, applicable to employees.

[72] The scheme that emerges from sections 33 and 33A of the LRA, as read with clauses 19 of the applicant's constitution and part F of the applicant's main agreement, is clear. It is designed to enforce employment conditions and benefits of employees in the sector, as regulated by the applicant's collective agreements. This would also include levies and contributions payable to the council in terms of the main agreement itself relating to the funding and administration of the applicant as bargaining council. Where an errant employer does not comply with these employment conditions and benefits, and does not pay the prescribed levies and/or contributions, compliance is then enforced using section 19 of the constitution as read with section 33A of the LRA, ultimately culminating in arbitration proceedings, where an arbitrator determines the errant employer's liability in the first instance, and if found to be liable, directing compliance and even dispense punishment. Steenkamp J dealt with similar considerations in the clothing sector in *National Bargaining Council for the Clothing Manufacturing Industry v J 'n B Sportswear CC and*

[45] The section reads: 'A collective agreement in terms of this section may authorise a designated agent appointed in terms of section 33 to issue a compliance order requiring any person bound by that collective agreement to comply with the collective agreement within a specified period.'

Another[46] and held as follows, with specific reference to the main agreement of that bargaining council:

> 'Firstly, the powers of designated agents derive from ss 33 and 33A of the LRA read with schedule 10 thereof, as well as clause 15.6.2 of the council's constitution. These provisions empower an agent, after conducting an investigation of a specific complaint, to 'issue a compliance order' directing the employer to comply with the collective agreement to the extent of the deficit revealed by the investigation.
>
> These 'orders' are not enforceable against the employer, and if contested, must be arbitrated through the usual dispute-resolution procedures of the council concerned, in this case through referral to a member of the relevant panel of arbitrators for adjudication of the dispute in terms of clause 15.6.3.5 of the council's constitution.'

This is the proper context and purpose of the enforcement proceedings in terms of clause 19 of the applicant's constitution and section 33A of the LRA, and not what the applicant now intends to use these proceedings for *in casu*. Therefore, and for the applicant to seek to use enforcement proceedings under clause 19 of its constitution as read with section 33A of the LRA, to claim costs in terms of clause 2.41, is entirely inappropriate.

[73] The applicant's claim under clause 19 of its constitution, as read with section 33A of the LRA, is thus a bad claim. It was not appropriate for the applicant to have instituted enforcement proceedings under these provisions against the second respondent. The applicant should have proceeded to execute the various awards and rulings in its favour, with regard to costs awarded against the second respondent, in favour of the applicant, by way of clause 2.40 of the main agreement as read with section 143 of the LRA.

[74] The ultimate conclusion of the first respondent is thus correct. It was not an issue of jurisdiction, which I have already dealt with, but it was simply a bad claim. In finding that the applicant could not bring its claim under section 33A and that the applicant needed to use section 143 to execute the costs awards,

[46] (2011) 32 ILJ 1950 (LC) at paras 34 – 35.

the first respondent correctly decided the merits of the matter. The only mistake he made is classifying this determination as a jurisdictional finding. As the Court said in *Tao Ying Metal Industries*[47]:

> 'Whatever the commissioner sought to convey by her statement, this does not detract from the key findings of the commissioner ….'

[75] The first respondent's award must thus be sustained, not on the basis of a want of jurisdiction, but on the basis that the applicant's claim was a bad claim, and it was not competent in law in terms of clause 19 of its constitution as read with section 33A of the LRA. Consequently, the applicant's review application falls to be dismissed.

Concluding remarks

[76] Nothing in this judgment can be construed to detract from the fact that the second respondent may owe the applicant amounts awarded to it in costs, as appears from the record, in terms of the various awards and rulings referred to. The applicant should just have enforced this debt owed to it in terms of clause 2.40 in section 2 of part D of its main agreement.

[77] I can find no reason on the record to indicate why the second respondent did not pay these amounts actually awarded. This kind of behaviour by the second respondent is unacceptable, and indicates an attitude of non-compliance, which is to be discouraged. In my view, this is a relevant consideration where it comes to the issue of costs. In terms of section 162 of the LRA, I have a wide discretion where it comes to the issue of costs. Therefore, and even though the second respondent was ultimately successful in its opposition of the review, I intend to make no order as to costs.

Order

[78] In the premises, I make the following order:

[47] (*supra*) at para 86.

1. The applicant's review application is dismissed.

2. There is no order as to costs.

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S.Snyman

Acting Judge of the Labour Court

Appearances:

For the Applicant: Mr I Lawrence of Edward Nathan Sonnenbergs

For the Second Respondent: Advocate T Ngckaitobi

Instructed by: Werksmans Attorneys