THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Reportable

Case no: JR2319/2015

In the matter between**:**

SOUTH AFRICAN POLICE SERVICE Applicant

and

MARINDA ERASMUS First Respondent

FRANCOIS VAN DER MERWE *N.O.* Second Respondent

Heard: **19 July 2017**

Delivered: **28 September 2017**

Summary: **Review application of private arbitration award i.t.o. the Arbitration Act 42 of 1965 – limited scope of review of private arbitration awards – not permitted for an applicant to raise defence for the first time on review which defence was neither pleaded nor fully and properly canvassed before the Arbitrator in an attempt to establish a reviewable irregularity i.t.o. section 33(1)(b) of the Arbitration Act.**

JUDGMENT

MALAN AJ:

Introduction

[1] The matter before this Court concerns an opposed application in terms of which the applicant (SAPS) seeks an order premised on section 33(1)(b) of the Arbitration Act,[1] (the Arbitration Act) to have the award issued by the second respondent (*the Arbitrator*) on 15 October 2015 (the award) reviewed and set aside.

[2] The award was issued following a private arbitration held pursuant to an arbitration agreement (the arbitration agreement) concluded between SAPS and the first respondent (Mrs Erasmus). In terms of the arbitration agreement the parties agreed *inter alia* on the appointment of the Arbitrator as well as his powers. The parties also agreed on the Arbitrator's terms of reference namely, *'… to decide all issues and disputes as they appear from the pleadings to be filed and as may be amended from time to time before the Arbitrator.'*

[3] At the time of conclusion of the arbitration agreement, the dispute between the parties had in fact already been referred to this Court for determination under case number JS793/14 and pleadings had already been exchanged between the parties. (The reason why the parties elected to have their dispute removed from this Court and determined by way of private arbitration is not clear). However, this matters not. Consequently, the pleadings before the Arbitrator were the statement of claim already delivered by Mrs Erasmus and SAPS' reply thereto under case number JS793/14. There were no amendments to these pleadings either before or during the arbitration.

Synopsis of relevant background

[4] Mrs Erasmus commenced employment with SAPS during 1979 and is currently still employed by SAPS.

[1] Act 42 of 1965.

[5] During June 1995, SAPS embarked upon what was called the 'Representivity and Equal Opportunity Program' (REOP). The aim of the REOP program was to enhance employment equity within the fixed establishment of SAPS and to ensure equal development opportunities for suitable candidates from designated groups with the view to achieve the requisite levels of representivity within SAPS. This program was to be headed by a REOP manager. Commissioner Holtzman was appointed as the head of REOP.

[6] Mrs Erasmus was accepted into the REOP program. On 4 March 1996, she was appointed as Senior Superintendent (the rank of Colonel) as the Station Commander Kimberley.

[7] On 14 May 1996, the office of the National Commissioner announced that a task team under Deputy National Commissioner Chetty was mandated to draft the REOP policy and then manage the process of evaluation of candidates. Pursuant to this, 231 candidates were evaluated by an evaluation panel in June and July 1996.

[8] On 1 October 1996, Mrs Erasmus was appointed as Head of Specific Projects of the National Crime Prevention Strategy (NCPAS) at SAPS' head office. However, by the end of 1997, of the 227 original REOP candidates, 180 had not yet been appointed in incumbent positions. Mrs Erasmus was one of these.

[9] On 11 December 1997, Divisional Commissioner Steenkamp issued a directive to facilitate the outstanding REOP candidate appointments to be made (Guideline 1). On 21 January 1998, Divisional Commissioner Steenkamp issued a second directive again setting out an evaluation and appointment process (Guideline 2).

[10] During February 1998 and March 1998, a number of evaluations were conducted and completed. During March 1998, Mrs Erasmus was evaluated

as a REOP candidate in terms of Guidelines 1 and 2. I interpolate to state that the extent of the evaluation and its effect was central to the arbitration proceedings and the award forming the subject matter of this review application. I deal with this later in this judgment.

[11] Of the 180 REOP candidates evaluated during February and March 1998, 139 of them were recommended for promotion and appointment. I understand Mrs Erasmus' pleaded case before the Arbitrator to be that she was one of the 139 candidates recommended for promotion. Accordingly, so Mrs Erasmus claims, on 24 March 1998 she was found to be a suitable candidate for placement by the evaluation panel chaired by Divisional Commissioner Eloff. Consequently, she was recommended for promotion to the rank of Brigadier. On 1 August 1998, she was appointed to the position of Head of NCPAS, which is a position for someone at the rank of Brigadier. On 17 August 1998 she accepted this position. On 29 October 1998, a final information bulletin was sent by the Chairperson of the REOP National Evaluation Panel to the National Commissioner, setting out the conclusion of the REOP process and the placement of the candidates. In particular, it was recorded that the 139 successful candidates would be placed in available posts as soon as possible, but effective 1 April 1999. The National Commissioner was asked for his approval of these placements, which he did on 18 November 1998.

[12] I understand SAPS' pleaded case before the Arbitrator to deny the above on the basis that follows. SAPS contended that Mrs Erasmus was not evaluated in accordance with the Guidelines because she was not evaluated by her Commander at the time. SAPS denied further that Mrs Erasmus was found to be a suitable candidate to be promoted to the rank of Brigadier or that she was in fact promoted. SAPS pleaded that following an evaluation of Mrs Erasmus during October 1998 a recommendation was made that she be re-evaluated a year later, in other words during October 1999. Lastly, SAPS pleaded that the signatures and comments of the moderating committee were not completed and agreed to by SAPS and accordingly constituted irregularities.

[13] The aforesaid dispute between the parties was central to the issues before the Arbitrator and accordingly his terms of reference as provided for in the arbitration agreement.

[14] On 13 August 1998, a third directive was issued in respect of those evaluations and appointments not yet completed (Guideline 3). There were no evaluations done after 28 August 1998.

[15] On 31 March 1999, SAPS dismissed Mrs Erasmus contending that she was medically unfit to fulfil her duties. Aggrieved by the aforesaid, Mrs Erasmus challenged her dismissal in this Court under case number JR112/09 contending that her dismissal was unlawful and constituted an unfair dismissal. On 23 October 2013, Lagrange J issued an order in terms of which Mrs Erasmus' discharge was declared to be unlawful and set aside.

[16] On 1 April 2014, SAPS required Mrs Erasmus to resume her duties at the rank of Colonel. Mr Erasmus argued that her reinstatement by SAPS at the rank of Colonel, following the order by Lagrange J, did not take into account the fact that at the time of her dismissal she had already been promoted and appointed to the rank of Brigadier pursuant to the REOP program as set out above. Simply put, Mrs Erasmus claimed that SAPS had to reinstate her at the rank of Brigadier. SAPS disagreed and contended that Mrs Erasmus had never been appointed to the rank of Brigadier. As mentioned earlier in this judgment, it is this dispute that Mrs Erasmus initially referred to this Court for determination under case number JS793/14 which the parties in turn referred to private arbitration before the Arbitrator in terms of the arbitration agreement.

Issues which the Arbitrator was called upon to determine

[17] In terms of clause 4 of the arbitration agreement the parties agreed that the Arbitrator was called upon to determine the following issues:

17.1. Whether Erasmus has a legal right to be appointed/promoted to the rank of Brigadier; and

17.2. If so, to determine the date of appointment/promotion to the rank of Brigadier and the date from which Erasmus is to be remunerated as Brigadier.

The Arbitrator's findings

[18] Following the arbitration proceedings, the Arbitrator found that:

18.1. Erasmus was promoted to the rank and level of Director/Brigadier;

18.2. There was nothing improper, invalid or unlawful concerning the promotion; and

18.3. The effective date of the promotion to be the same date that applied to other REOPs namely, 1 April 1999.

[19] It is these findings that SAPS is challenging by way of this review application.

Grounds of review

[20] SAPS claims that it was denied a full and fair determination of the issues before the Arbitrator because, so it contends, the Arbitrator:

20.1. committed a gross irregularity in the conduct of the arbitration proceedings by failing to have regard to the South African Police Service Act[2], ('SAPS Act'); and

20.2. exceeded his powers by ordering the appointment of Erasmus in breach of the SAPS Act.

[2] Act 68 of 1995

[21] Central to the aforesaid grounds of review is SAPS' attack on the following finding by the Arbitrator:

> '[52] The defence that the promotion had to be approved by the National Commissioner [him]self (sic) I do not accept because it was neither pleaded nor was I directed to any provision that states or implies that no REOP promotion could occur without the National Commissioner's approval. In any event, the REOP was a unique exercise, by all indications not regulated by the usual policies and practices for promotion (for example that the National Commissioner had to approve all promotions to rank of brigadier), and run somewhat haphazardly.'

Relevant legal framework

[22] The award sought to be reviewed in this instance is an award by a private arbitrator pursuant to an arbitration agreement concluded between the parties. As such, the legal principles applicable to review applications in terms of sections 145 and 158(1)(g) of the LRA, (as enunciated in *Sidumo and another v Rustenburg Platinum Mines Ltd and others*[3] and some of the other cases since *Sidumo*[4] do not find application in this review.

[23] The Constitutional Court in *Lufuno Mphaphuli and Associates (Pty) Ltd v Andrews and another*[5] (*per* O'Regan J), writing for the majority, set out the policy basis for the limited scope of intervention by the Courts when dealing with private arbitrations:

> 'Courts should be respectful of the intention of the parties in relation to procedure. In so doing, they should bear in mind the purposes of private

[3] 2008 (2) SA 24 (CC); also reported at (2007) 28 ILJ 2405 (CC) and also at [2007] 12 BLLR 1097 (CC).
[4] See: *Health and Other Service Personnel Trade Union of SA and others v Member of the Executive Council for Health, Eastern Cape and others* (2017) 38 ILJ 890 (LAC); *Democratic Nursing Organisation of SA on behalf of Du Toit and another v Western Cape Department of Health and others* (2016) 37 ILJ 1819 (LAC); *MacDonald's Transport Upington (Pty) Ltd v Association of Mineworkers and Construction Union and others* (2016) 37 ILJ 2593 (LAC); *Head of Department of Education v Mofokeng and others* (2015) 36 ILJ 2802 (LAC); *Gold Fields Mining SA (Pty) Ltd v CCMA* [2014] 1 BLLR 20 (LAC); *Herholdt v Nedbank Ltd* (2013) 34 ILJ 2795 (SCA); *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others* 2008 (2) SA 24 (CC); also reported at (2007) 28 ILJ 2405 (CC) and also at [2007] 12 BLLR 1097 (CC).
[5] 2009 (4) SA 529 (CC).

arbitration which include the fast and cost-effective resolution of disputes. If courts are too quick to find fault with the manner in which arbitration has been conducted, and too willing to conclude that the faulty procedure is unfair or constitutes a gross irregularity within the meaning of section 33(1), the goals of private arbitration may well be defeated.'

[24] This cautionary sentiment is reflected in the conclusion reached by Van Dijkhorst AJA in *Stocks Civil Engineering (Pty) Ltd v Rip NO and another*:[6]

'A court is entitled on review to determine whether an arbitrator in fact functioned as arbitrator in the way that he upon his appointment impliedly undertook to do, namely by acting honestly, duly considering all the evidence before him and having due regard to the applicable legal principles. If he does this, but reaches the wrong conclusion, so be it. But if he does not and shirks his task, he does not function as an arbitrator and reneges on the agreement under which he was appointed. His award will then be tainted and reviewable.... An error of law or fact may be evidence of the above in given circumstances, but may in others merely be part of the incorrect reasoning leading to an incorrect result. In short, material malfunctioning is reviewable, a wrong result per se not (unless it evidences malfunctioning). If the malfunctioning is in relation to his duties, that would be misconduct by the arbitrator as it would be a breach of the implied terms of his appointment.'

[25] Since it is a review of a private arbitration award, it can only be reviewed on the grounds set out in section 33 of the Arbitration Act.[7] SAPS's review application is premised on section 33(1)(b) of the Arbitration Act.

[26] Section 33(1)(b) of the Arbitration Act reads as follows:

'(1) Where-

(a) …

[6] (2002) 23 ILJ 358 (LAC).

[7] *NUM obo Employees v Grogan NO and another* (2010) 31 ILJ 1618 (LAC) at 33. Also see *Volkswagen SA (Pty) Ltd v Koorts NO and others* (2011) 32 ILJ 1892 (LAC); *Member of the Executive Council: Department of Health (Eastern Cape) v Van der Walt NO and another* (2011) 32 ILJ 944 (LC); *Clear Channel Independent (Pty) Ltd v Savage NO and another* (2009) 30 ILJ 1593 (LC).

(b) an arbitration tribunal has committed any gross irregularity in the conduct of the arbitration proceedings or has exceeded its powers; or

(c) …

the court may, on the application of any party to the reference after due notice to the other party or parties, make an order setting the award aside.'

[27] In *Commercial Catering and Allied Workers Union and others v Pick 'n Pay Retailers (Pty) Ltd and others*[8] the Court stated the following in respect of the meaning of 'gross irregularity' in general:

'… In order for there to be a gross irregularity warranting interference on review, two conditions must be met: firstly, the omission on the part of the arbitrator must involve his or her having misconceived the nature of the enquiry or his or her duties in connection with the enquiry, and thus result in his preventing a fair trial of the matter. Secondly, there must not exist material that would serve to justify the arbitrator's decision, because 'if there was material before the [arbitrator], justifying the action taken, the court would not be entitled to interfere even if an irregularity had been committed'. Put differently, if an arbitrator was caused by inappropriate means to reach one conclusion whereas if he had adopted appropriate means he might have reached another conclusion favourable to the applicant, then the award is reviewable.'

[28] In *Telcordia Technologies Inc v Telkom SA Ltd*,[9] the Supreme Court of Appeal stated as follows:

'[85] The fact that the arbitrator may have either misinterpreted the agreement, failed to apply South African law correctly, or had regard

[8] (2012) 33 ILJ 279 (LC) at para 8. See also the oft quoted *Goldfields Investment Ltd and another v City Council of Johannesburg and another* 1938 TPD 551.

[9] *Commercial Catering and Allied Workers Union and others v Pick 'n Pay Retailers (Pty) Ltd and others* (2012) 33 ILJ 279 (LC) at para 7. See also *Telcordia Technologies Inc v Telkom SA Ltd* 2007 (3) SA 266 (SCA) at para 69 and pars 85 – 87; *Tao Ying Metal Industry (Pty) Ltd v Pooe NO and others* 2007 (5) SA 146 (SCA); (2007) 28 ILJ 1949 (SCA).

to inadmissible evidence does not mean that he misconceived the nature of the inquiry or his duties in connection therewith. It only means that he erred in the performance of his duties. An arbitrator 'has the right to be wrong' on the merits of the case, and it is a perversion of language and logic to label mistakes of this kind as a misconception of the nature of the inquiry - they may be misconceptions about meaning, law or the admissibility of evidence but that is a far cry from saying that they constitute a misconception of the nature of the inquiry. To adapt the quoted words of Hoexter JA: it cannot be said that the wrong interpretation of the Integrated Agreement prevented the arbitrator from fulfilling his agreed function or from considering the matter left to him for decision. On the contrary, in interpreting the Integrated Agreement the arbitrator was actually fulfilling the function assigned to him by the parties, and it follows that the wrong interpretation of the Integrated Agreement could not afford any ground for review by a court.

[86] Likewise, it is a fallacy to label a wrong interpretation of a contract, a wrong perception or application of South African law, or an incorrect reliance on inadmissible evidence by the arbitrator as a transgression of the limits of his power. The power given to the arbitrator was to interpret the agreement, rightly or wrongly; to determine the applicable law, rightly or wrongly; and to determine what evidence was admissible, rightly or wrongly. Errors of the kind mentioned have nothing to do with him exceeding his powers; they are errors committed within the scope of his mandate. To illustrate, an arbitrator in a 'normal' local arbitration has to apply South African law but if he errs in his understanding or application of local law the parties have to live with it. If such an error amounted to a transgression of his powers it would mean that all errors of law are reviewable, which is absurd.

[87] In support of this I revert to *Doyle v Shenker*, a case that dealt with a review on the ground of a gross irregularity in the proceedings. Innes CJ said in a passage that speaks for itself:

'Now a mere mistake of law in adjudicating upon a suit which the magistrate has jurisdiction to try cannot be called an irregularity in the proceedings. Otherwise a review would lie in every case in which the

> decision depends upon a legal issue, and the distinction between procedure by appeal and procedure by review, so carefully drawn by statute and observed in practice, would largely disappear. Yet in this case it is a mistake of law alone which is relied upon as constituting gross irregularity. There is neither allegation nor suggestion that the magistrate, his attention having been drawn to sec. 37, deliberately refused to apply his mind to it, or to consider it. The position, if the section means what the applicant contends, is that the magistrate either honestly misinterpreted or completely overlooked it. In either event it would not, I am afraid, be the first occasion on which a court of law has misread a statutory provision or overlooked one not brought to its notice at the trial. Whichever supposition were the correct one, the result would be (still assuming the correctness of the applicant's interpretation) an unfortunate error of law which, but for the special prohibition of the statute would afford good ground for an appeal. But there would be no gross irregularity in the proceedings, and therefore no justification for a review.'

Application of the legal principles to the facts

[29] In essence, the dispute before the Arbitrator concerned the question whether or not Mrs Erasmus was promoted and appointed to the rank of Brigadier. The Arbitrator considered this dispute in the context of the REOP program, as he was required to do, given the material evidence and documents the parties placed before him.

[30] The defence raised by SAPS on review is not the same as the defences it pleaded before the Arbitrator. Before the Arbitrator, SAPS denied that Mrs Erasmus was evaluated in accordance with the Guidelines applicable to the REOP Program. It also denied that she was found to be a suitable candidate to be promoted and appointed to the rank of Brigadier or that she was in fact promoted and appointed as such. It contended that a recommendation was made that she be re-evaluated a year later. On review, SAPS elected to raise a completely different defence. SAPS no longer challenges the evidence that Mrs Erasmus was recommended to be promoted and appointed to the rank of Brigadier in terms of the REOP Program. SAPS now

contends, in contradiction to its defence during the arbitration, that in terms of the SAPS Act only the National Commissioner had the authority to promote and appoint Mrs Erasmus to the rank of Brigadier and he did not promote or appoint her as such. SAPS contends further that the National Commissioner did not delegate his authority to anyone in the REOP Program. Consequently, SAPS now denies that there was any valid promotion or appointment of Mr Erasmus to the rank of Brigadier.

[31] SAPS, in its review application, initially claimed that the aforegoing defence was pleaded and therefore an issue properly before the Arbitrator. Mr Bruinders, counsel for SAPS did not pursue this line of argument, wisely so in my view, at the hearing of this matter.

[32] The fundamental purpose of pleadings is to draw the proverbial battle lines for the dispute between the parties. In other words, to identify definitely the nature and parameters of the issues in dispute and to be determined. This is not only for the benefit of the parties but also the decision-maker.[10]

[33] The following *dictum* in *Knox D'Arcy AG and another v Land and Agricultural Development Bank of SA*[11] is directly applicable *in casu*:

> 'It is trite that litigants must plead material facts relied upon as a basis for the relief sought and define the issues in their pleadings to enable the parties to the action to know what case they have to meet. And a party may not plead one issue and then at the trial, ... attempt to canvass another which was not put in issue and fully investigated.'

[10] *Prince v President, Cape Law Society and others* [2000] ZACC 28; 2001 (2) SA 388 (CC); 2001 (2) BCLR 133 (CC) at para 22; *Albany Bakeries Ltd v Van Wyk and others* (2005) 26 ILJ 2142 (LAC) at para 25; *Bafokeng Rasimone Platinum Mine (Pty) Ltd v Commission for Conciliation, Mediation and Arbitration and others* (2015) 36 ILJ 3045 (LC); *Imprefed (Pty) Ltd v National Transport Commission* (1993) 3 SA 94 (A) at 107; [1993] 2 All SA 179 (A) at 188; *Rumanal (Pty) Ltd v Hubner* 1976 (1) SA 643 (E). See *Nieuwoudt v Joubert* 1988 (3) SA 84 (SE) at 90H-I where the court said that the 'purpose of pleadings is to define the issues, and to enable the other party to know what case he has to meet'.

[11] [2013] 3 All SA 404 (SCA) at para 35. See also *Smith v Kit Kat Group (Pty) Ltd* (2017) 38 ILJ 483 (LC) at para 67; *Naidoo v Minister of Police and others* [2015] 4 All SA 609 (SCA) at para 30; *Minister of Safety and Security v Slabbert* [2010] 2 All SA 474 (SCA) at para 11.

[34] Having regard to the Arbitrator's terms of reference contained in the arbitration agreement, the Arbitrator was bound by the pleadings. The defence set out by SAPS in its reply to Mrs Erasmus' statement of claim is the case which she came to meet at the arbitration. One does not have to go far to appreciate that had Mrs Erasmus been made aware that she will face a different defence during the arbitration, she, being represented by counsel during the arbitration, would have given due consideration to the facts and legal principles concerning the SAPS Act, as well as the issue of SAPS denying delegation of the National Commissioner's authority (perhaps even raise estoppel to the aforesaid), especially given the fact that the REOP Program was a unique process with its own guidelines, policies and procedures. In the circumstances, I am of the view that it is not now open for SAPS to rely on this defence, let alone dress up this defence as a question of law in order to cross dress it as a gross irregularity committed by the Arbitrator. his should not be permitted.

[35] SAPS also argued that there was in any event a duty on the Arbitrator to familiarise and equip himself with a full understanding and appreciation of the legal framework within which he had to determine the dispute between the parties. For this argument, Mr Bruiders relied on *National Commissioner of the SAPS and another v Cohen NO and others.*[12] In *Cohen*, the facts related to the arbitrator's failure to take into account new regulations in a promotion dispute concerning rank translation entailing promotion of an employee and falling within the scope of definition of "unfair labour practice. The facts in *Cohen* are distinguishable from the facts in this case. In *Cohen* the interpretation and application of the regulations were the focal point of the issues placed in dispute between the parties. The regulations were the legal framework raised by the parties and consequently within which the arbitrator had to determine the issues placed in dispute between the parties. In the present matter, the Arbitrator's terms of reference were very specific. Simply put, consider and determine the issues raised in the pleadings. SAPS did not, in its pleadings, raise non-compliance with the SAPS Act or the absence of a delegation of authority as its defence. Consequently, the

[12] [2009] 3 BLLR 239 (LC).

parties did not specifically require the Arbitrator to consider the SAPS Act as the legal framework within which to determine the dispute. On the contrary, the framework in which the Arbitrator was called upon to determine the dispute, given the documentary and oral evidence properly before him, was the unique REOP Program with its own guidelines, policies and procedures. It cannot reasonably be expected of the Arbitrator to mine through all legislation that might possibly be applicable to the dispute. Or, more particularly, each one of the many sections in the SAPS Act and then unilaterally decide which section or sections might possibly have an influence, either way, on the dispute between the parties, without his attention having specifically been drawn thereto.

[36] It would not only have been grossly irregular had the Arbitrator regarded himself unconstrained by the pleadings but also resulted in him exceeding his powers in terms of section 33(1)(b) of the Arbitration Act.[13] I am of the considered view that in the circumstances of this case it was not open for the Arbitrator to *mero motu* raise a defence not pleaded by SAPS. Had the Arbitrator done so, this might have denied Mrs Erasmus a fair hearing in contrast to the complaint by SAPS in this review that the Arbitrator denied it a fair hearing.

[37] It was open for SAPS during the arbitration to apply for an amendment to its pleadings to include the defence it now raises on review. It elected not to do so.

[38] SAPS has also contended, as a basis for its review application, that it raised the issue of the application of the SAPS Act and delegation of authority in the course of the arbitration through evidence, and as such, the Arbitrator should have considered and pronounced on this issue in any event. In the absence of SAPS having pleaded non-compliance with the SAPS Act and the lack of a delegation of authority as its defence, it could still have placed reliance on this defence, had this defence been fully canvassed by both

[13] *Lufuno supra* at [175].

parties in the evidence before the Arbitrator.[14] Save for a brief mention of the SAPS Act and the absence of a delegation of authority by the National Commissioner, SAPS did not place sufficient evidence before the Arbitrator for me to conclude that this defence was fully canvassed at the arbitration by both parties. Once again, SAPS did not apply for an amendment of its pleadings during the arbitration to incorporate this defence.[15]

[39] In the result, I am not convinced that SAPS' criticism directed at the Arbitrator's finding that he does not accept the defence that the promotion had to be approved by the National Commissioner because it was neither pleaded nor was he directed to any provision that states or implies that no REOP promotion could occur without the National Commissioner's approval, is justified, let alone a basis to sustain its grounds of review and for this Court to conclude that the Arbitrator failed to apply his mind, committed a gross irregularity and exceeded his powers.

Costs

[40] The parties were *ad idem* that given the ongoing employment relationship between them, each party should pay their own costs.

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

Order

1. The application is dismissed.

2. Each party to pay their own costs.

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L Malan

Acting Judge of the Labour Court of South Africa

[14] *South British Insurance Co Ltd v Unicorn Shipping Lines (Pty) Ltd* 1976 (1) SA 708 (A) at 714G; *Minister of Safety and Security v Slabbert* [2010] 2 All SA 474 (SCA) at para 12.
[15] *Imprefed supra* at 191.

Appearances:

For the applicant:	Advocate V Bruinders
Instructed by:	The State Attorney.
For the respondent:	Mr S Snyman of Snyman attorneys