

**IN THE HIGH COURT OF SOUTH AFRICA**  
**FREE STATE DIVISION, BLOEMFONTEIN**

**Case no: 6008/2022**

**Reportable: YES/NO**

**Of Interest to other Judges: YES/NO**

**Circulate to Magistrates: YES/NO**

In the matter between:

**U'FEZELA SECURITY SERVICES (PTY) LTD**

**t/a SENFORCE**

Applicant

and

**ARNOLD ZONDANE ZENZILE**

First Respondent

**R MOTSAMAI N.O.**

Second Respondent

**CORAM:** MHLAMBI, J *et* OPPERMAN, J

**HEARD ON:** 22 May 2023

**DELIVERED ON:** 30 May 2023. The judgment was handed down electronically by circulation to the parties' legal representatives by email and release to SAFLII on 30 May 2023. The date and time for hand-down is deemed to be 30 May 2023 at 16h00

**JUDGMENT BY:** OPPERMAN, J

**SUMMARY:** Review – Small Claims Court – section 46(c) of the Small Claims Court Act 61 of 1984 – alleged gross irregularity in the proceedings

& the resultant violation of the rules of natural justice by the Commissioner – reasons for judgment in terms of Rule 53 of the Uniform Rules of Court

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## JUDGMENT

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- [1] The review lies before this court in terms of section 46(c)<sup>1</sup> of the Small Claims Court Act 61 of 1984 (the Act)<sup>2</sup> and unopposed.<sup>3</sup>
- [2] The grounds of review are that the Commissioner ignored the submissions made by the applicant, failed to apply her mind to the issues which had been raised on behalf of the applicant and failed to reflect on it before reaching her conclusion. It was further submitted that these serious transgressions in the proceedings also constituted a violation of the rules of natural justice.
- [3] Crucial is that the applicant attacks the method or process used during the proceedings by the Commissioner.
- [4] Factually; the applicant that is a private security services provider and that

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<sup>1</sup> 46. Grounds of review. —

The grounds upon which the proceedings of a court may be taken on review before a provincial or local division of the Supreme Court of South Africa are—

(a) absence of jurisdiction on the part of the court;

(b) interest in the cause, bias, malice, or the commission of an offence referred to in Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, on the part of the commissioner; and [Para. (b) substituted by s. 36 (1) of Act No. 12 of 2004.] Wording of Sections

(c) gross irregularity with regard to the proceedings.

<sup>2</sup> It is trite that a judgment of the Small Claims Court cannot be appealed against, so no litigant can appeal against the judgment of the Commissioner; this in terms of section 45 of the Act.

<sup>3</sup> In the instance the notice of motion, founding affidavit and annexures thereto were filed on the Commissioner, personally, on 5 December 2022. The same was served on 6 December 2022 on the first respondent in terms of Rule 4(1)(a)(ii) of the Uniform Rules of this court. There was no reply in any form whatsoever from any of the respondents until the registrar of this court inquired about a possible record of the proceedings on 18 May 2023. I was informed, as is the law, that there was not any record.

employs more than four hundred registered security officers, relies on the following:<sup>4</sup>

16. The matter came before the Commissioner on 25 October 2022. The applicant was represented by its director, Mr Wilhelm Hoffman (Mr Hoffman).<sup>5</sup>
17. Upon being requested to clarify the substance of his claim, the first respondent informed the Commissioner that the matter concerned the disparity between what he was paid and the payment rates to which he should have been entitled as a Grade C security officer. Additionally, he complained that the applicant had never provided him with payslips.<sup>6</sup>
18. In response to the Commissioner's inquiry regarding the applicant's rebuttal to the allegations, Mr Hofmann (sic) informed the Commissioner that he had a copy of the first respondent's payslips, his learnership registration form, the learnership agreement and the workplace-based learning programme agreement with him and that these documents dismantled any notion that there was any merit in the first respondent's claim.<sup>7</sup>
19. Mr Hofmann (sic) then asked the Commissioner for leave to hand the documents to her so that he could explain, with reference to the documents, why the first respondent's claim was unsustainable.<sup>8</sup>
20. The Commissioner declined to receive the documents and, without further deliberation, proceeded to grant judgment against the applicant for the

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<sup>4</sup> Heads of argument for the applicant.

<sup>5</sup> Review application: page 12 at paragraph 24.

<sup>6</sup> Review application: page 12 at paragraph 25.

<sup>7</sup> Review application: page 13 at paragraph 30.

<sup>8</sup> Review application: page 13 at paragraph 31.

amount claimed by the first respondent<sup>9</sup> in circumstances where the first respondent was never a registered security officer, much less a grade C security officer. The rates that the first respondent based his claim on did not apply to him, but only applied to PSiRA Registered security officers.<sup>10</sup>

[5] On 19 May 2023<sup>11</sup> the Commissioner filed her reasons for the verdict, judgment and order. This is five months after the reasons were due in terms of Rule 53(1)(b) and as the Commissioner was invited to do in the applicant's notice of motion. This is unacceptable.<sup>12</sup> Be that as it may; the Commissioner maintained in conclusion on the application and relevant to the issue, that:<sup>13</sup>

- Applicant was supposed to furnish the Commissioner (second respondent) with deposit slip proof or electronically transfer proof that shows that the money was deposited into the bank account of the first respondent in full on a monthly basis and furthermore was supposed to show Second respondent (sic) the Contract of employment that shows as to how much was the first respondent supposed to receive on a

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<sup>9</sup> Review application: page 13 at paragraph 32.

<sup>10</sup> Review application: page 12 at paragraph 26.

<sup>11</sup> The review was heard on 22 May 2023 in the High Court.

<sup>12</sup> In *Maepa v Minister of Police* (63797/2020) [2022] ZAGPPHC 469 (4 July 2022) it was correctly ruled that:

[4] The primary purpose of rule 53 is to facilitate and regulate review applications. Rule 53 implores a decision-maker to deliver the record of proceedings sought to be corrected or set aside. Van Loggerenberg, explains that rule 53(1) is primarily intended to operate in favour and to the benefit of an applicant in review proceedings, and that an applicant should not be deprived of the benefit of this procedural right unless there is clear justification therefor. In *General Council of the Bar of South Africa v Jiba and Others* it was held that compliance with rule 53 regarding timeframes and providing a complete record is not just a procedural process, but a substantive requirement that serves to ensure that the substance of the decision is properly put to the fore at an early stage. Legodi J explained that the availing of the record to an applicant is to ensure that a party aggrieved by the decision:

"is properly informed as to the route to follow. The rule serves as a tool to ensure that any challenge to the proceedings sought to be reviewed is well considered and properly pleaded. For this purpose, the applicant or aggrieved party is under subrule (4) given an opportunity, by delivery of a notice and accompanying affidavit, to amend, add to or vary the terms of his notice of motion and supplement the supporting affidavit if need be. Similarly, the decision-maker is, in terms of subrule (5)(b), given the opportunity to deliver an affidavit he or she may desire in answer to the allegations made therein and any further reasons contemplated in subrule (1)(b). (Accentuation added)

<sup>13</sup> The pages and paragraphs in the document: "REVIEW REASONS" were not numbered.

monthly basis (sic) a salary to enable the second respondent to check as to whether indeed there is an outstanding salary or not.

○ **Evaluation of the conflicting versions**

- The Applicant version was not supported enough by documentary proof however the version of the first respondent was supported enough by the bank statement.
- In consideration of the evidence before Court, second respondent finds that the first respondent was a credible witness.

○ **An assessment of the legal position**

- Second respondent (Commissioner) did not commit a gross irregularity in terms of Section 46(c) of the Act. The proper procedure was followed.
- Second respondent stand by her judgment that Applicant must pay the first respondent R8 900.

[6] The peculiarity of this review is that there does not exist a record to guide the court to the truth. There is not any record because it is the law; section 3 of the Act finds application:

3. Nature of courts and force of process. —

(1) Subject to the provisions of subsection (2), *a court shall not be a court of record.* (Accentuation added)

(2) The presiding officer shall record or cause to be recorded the verdict, judgment or order of the court and shall sign it.

(3) The process of a court shall be served or executed in the prescribed manner.

(4) Every process of a court shall be of force throughout the Republic.

[7] The record of proceedings is an important element of the review as it is an important tool in determining objectively what considerations were probably operative in the mind of the decision-maker when he or she made the decision sought to be reviewed.<sup>14</sup> The Legislature might have to consider, in our constitutional ethos, to cause Small Claims Courts to become courts of record.

[8] The adjudication of the review must, now and here, be made on the evidence placed before the court in the applicant's founding affidavit and the Commissioner's reasons for judgment. The Commissioner does not deny the legally inappropriate conduct alleged; not in the reasons for judgment nor by way of opposing the review under sworn statement. The evidence adduced by the applicant must consequently be decisive and conclusive of the issue.

[9] The Legislature intended to give Commissioners a fairly free hand in order to effect speedy and inexpensive adjudication of cases. However, this object should not be so predominant that the quality of the administration of justice is prejudiced. Counsel for the applicant is correct when he pointed out in their heads of argument that:

1. Although the process in the Small Claims Court is informal and inquisitorial, the approach to be adopted is essentially no different to that

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<sup>14</sup> Joffe, MM *et al*, LexisNexis, Civil Procedure, *High Court Motion Procedure*, 1. Uniform Rule of Court, 1.18 Reviews (Rule 53), last updated: July 2022 - SI 15 with reference to *Helen Suzman Foundation v Judicial Services Commission and Others* [2017] 1 All SA 58 (SCA); 2017 (1) SA 367 (SCA) at paragraph 13; 2018 (4) SA 1 (CC), *Jockey Club of South Africa v Forbes* [1993] 1 All SA 494 (A); 1993 (1) SA 649 (A) at 660D–F, *Afrisun Mpumalanga (Pty) Ltd v Kunene NO and Others* 1999 (2) SA 599 (T) and *Fizik Investments (Pty) Ltd t/a Umkhombe Security Services v Nelson Mandela Metropolitan University* 2009 (5) SA 441 (SE), <https://www.mylexisnexis.co.za/Index.aspx> on 26 May 2023.

in any other civil court. The Commissioner is required to listen to the relevant evidence, weigh it to determine what is probable and reach a conclusion according to the law.<sup>15</sup>

2. The rules of natural justice are applicable in proceedings in the Small Claims Court<sup>16</sup> and a court on review may intervene in cases where the rules of natural justice have not been observed.<sup>17</sup>
3. Broadly speaking, two basic principles are said to form the rules of natural justice.<sup>18</sup> The first is that the affected individual should, as a rule, be given the opportunity to state his or her case before the intended prejudicial action is taken (the so-called *audi alteram partem* rule). This includes the right to present and refute evidence. The second principle is that of impartiality (the so-called *nemo iudex in sua causa* principle). Its purpose is to ensure the absence of bias and of any interest, whether pecuniary or personal, on the part of the decision-taker.

[10] The fact that the Commissioner ignored and refused the applicant's request to provide documents and an explanation of the applicant's defence, is a gross irregularity and constitute a reviewable violation of the rules of natural justice.

## **[11] ORDER**

1. The decision of the second respondent on 25 October 2022 in case number: 417/2022 in the Small Claims Court, Bloemfontein and in terms of which judgment was granted in favour of the first respondent against the applicant for payment of the sum of R8 900.00; is reviewed and set aside.

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<sup>15</sup> At paragraph 22 of the heads of argument with reference to *Nationwide Car Rentals (Pty) Ltd v Commissioner, Small Claims Court, Germiston, and another* 1998 (3) SA 568 (W) at page 569.

<sup>16</sup> At paragraph 24 of the heads of argument with reference to *Kele v Trafalgar Garage* 1989 (4) SA 1011 (E).

<sup>17</sup> At paragraph 25 of the heads of argument with reference to *Smit v Seleka en Andere* 1989 (4) SA 157 (O).

<sup>18</sup> At paragraph 26 of the heads of argument with reference to Baxter, *Administrative Law*, (Juta, 1984) at pages 542 to 568.

2. Leave is granted to the first respondent to apply on the papers in this application (supplemented insofar as may be necessary) for an order that the proceedings in the Small Claims Court, Bloemfontein under case number: 417/2022 be reopened; provided that notice of such application shall be given to the applicant and the second respondent not later than 15 days from the date of this order.<sup>19</sup>
3. The first respondent to pay the costs of the application for review.

**M OPPERMAN, J**

**I concur,**

**JJ MHLAMBI, J**

**APPEARANCES**

On behalf of the applicant

**ADVOCATE WA VAN ASWEGEN**

Free State Society of Advocates, Bloemfontein

Phatshoane Henney Attorneys

BLOEMFONTEIN

On behalf of the first & second respondents

**Unopposed**

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<sup>19</sup> *Da Silva v Pillay NO and another* [1997] 2 All SA 217 (D).