

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)

Case No: 30236/2021

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ~~YES~~ NO

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ NO

(3) REVISED.

DATE: 22.9.2022

SIGNATURE:

In the matter between:

**SOUTH AFRICAN MUNICIPAL WORKERS
UNION**

Applicant

and

**IMBEU DEVELOPMENT AND PROJECT
MANAGEMENT (PTY) LTD**

First Respondent

ADV NASREEN RAJAB-BUDLENDER SC

Second Respondent

JUDGMENT

Todd AJ

Introduction

1. This is an application to review and set aside an arbitration award issued by the second respondent dated 21 May 2021.
2. The applicant seeks to set aside the award in part, specifically that part of the award made in relation to claim A brought in the arbitration proceedings, and that part made

in relation to the counter claim that had been brought by the applicant (as defendant in the arbitration proceedings).

3. The application is brought under the provisions of section 33(1)(a) and (b) of the Arbitration Act 42 of 1965 (**the Act**).
4. The applicant also seeks ancillary relief, including the stay of an application brought by the first respondent separately to make the arbitration award an order of court, or to stay the enforcement of that award pending the determination of this application.
5. The first respondent opposes the application. In essence it submits that none of the grounds of complaint brought by the applicant bring the matter within the ambit of section 33(1)(a) or (b) of the Act.
6. The main issue for determination, then, is whether the award stands to be reviewed applying the provisions of either section 33 (1)(a) or (b) of the Arbitration Act.

Summary of background facts

7. The underlying dispute has its origins in a service level agreement entered into between the first respondent and the applicant on 5 September 2018. The agreement was for the provision of project management services specifically for the purpose of formulating a “turnaround strategy” for the applicant. The turnaround project was initially envisaged to encompass six distinct stages at a total projected cost of a little over R9 million, excluding VAT.
8. Shortly thereafter, on 10 September 2018, the first respondent submitted an initial invoice in the amount of R1,050,410 in respect of stage one of the project. The applicant made an initial payment against this invoice on 8 October 2018 in an amount of R250,000.
9. On 9 January 2019 the applicant made a further payment in an amount of R250,000. This time the payment was made, for reasons and in circumstances that are unclear, into the bank account not of the first respondent but of its project manager, one Fred van Rhyneveld.
10. On 10 January 2019 the first respondent cancelled the agreement on grounds of its alleged repudiation by the applicant. The first respondent sought payment of the balance due under its invoice in respect of stage one of the project. It also sought

payment for costs incurred or resources committed in respect of the second and third stages of the project.

11. The applicant resisted the first respondent's claims for payment of any further amounts, on grounds essentially that it disputed the validity of the agreement, contending that it was a "simulated agreement" whose purpose was to defraud the applicant or "to syphon money" from the applicant for the benefit of signatories of the agreement
12. On 18 and 19 July 2019 the parties held a meeting with their respective representatives in an effort to resolve the dispute. The parties agreed on a payment plan under which the applicant would pay an agreed number of monthly instalments of R67,000 to settle the amount due in respect of stage one of the project.
13. On 9 September 2019 the applicant made an initial payment to the first respondent under that agreement.
14. The applicant made no further payments under the payment plan, and again contested the legality of the service level agreement and disputed that services had been performed to justify the invoice that had been rendered.
15. In approximately May 2020 the parties agreed to submit the dispute that had arisen to arbitration under the AFSA rules. On 13 May 2020 the second respondent was appointed as arbitrator. In pre-arbitration meetings held on 21 May 2020 and 4 June 2020 the parties agreed to a timetable for the delivery of pleadings. This resulted in the first respondent delivering a statement of claim on 12 June 2020, and the applicant delivering a statement of defence and counterclaim on 22 June 2020.
16. In its statement of claim the first respondent brought two separate claims. Claim A was for an amount of R738 840.00 inclusive of VAT in respect of work performed and invoiced for stage one of the project. Claim B was for an amount of R2,557,520 excluding VAT in respect of damages arising from the alleged repudiation of the agreement, encompassing work done and resources committed for the second and third stages of the project.
17. In response the applicant contended that the conclusion of the agreement had not been properly authorised by the applicant and that the agreement represented a simulated transaction fraudulently entered into by representatives of the first respondent with unauthorised representatives of the applicant. The applicant brought

a counter claim for repayment of the amount of R561,570 that had been paid by it in respect of the first stage of the project, on the grounds of unjustified enrichment.

18. Various further pleadings were filed in consequence of this, and at a further pre-arbitration meeting held on 2 October 2020 the parties agreed to deliver expert reports.
19. The arbitration proceedings took place on 16 and 17 February 2021, with oral submissions made on 15 March 2021. The second respondent delivered her award on 21 May 2021.

The second respondent's award

20. In her award, the second respondent identified the issues that she was required to decide as being the following:
 1. Whether the service level agreement was validly concluded.
 2. If valid, whether [the first respondent] is entitled to the amounts claimed under Claims A and B; and
 3. Whether [the applicant] is entitled to the amount claimed in its counter claim for unjustified enrichment.
21. In the proceedings in this court the parties were in agreement that this correctly identified the issues that the second respondent was required to decide in the arbitration.
22. In her award the second respondent summarised the terms of the service level agreement and the essential contentions of the parties regarding its validity, including the evidence of the witness led by each party in relation to that issue.
23. That evidence traversed the content and minute of the meeting held between the parties and their representatives on 18 and 19 July 2021 "when the amounts outstanding were discussed and a payment plan was negotiated".
24. The second respondent found the minutes of that meeting to show that the applicant had, at that stage, despite the existing contention that the terms of the contract were irregular, negotiated the terms of the payment plan under which the applicant would pay R67,000 per month until the amount due in respect of stage one had been paid. The applicant refused, however, to pay for any part of the work ostensibly performed

in respect of stages two and three, which formed the subject matter of Claim B in the arbitration.

25. The second respondent also referred to confirmation of that payment plan reflected in an email sent on behalf of the applicant to the first respondent's attorneys on 6 December 2019. She dealt with this in the following passages in her award:

"30. The fact that [the applicant] continued to accept that it owed [the first respondent] payment for invoices rendered long after it was concerned that the contract was irregular, is further clear from the email from Ms Kekane to [first respondent's] attorney as late as 6 December 2019 – in which she accepted that [applicant] owed [first respondent] R431,000 which she stated that it would pay in instalments over 7 months – and that it had already paid [first respondent] R569,000. The dispute at this point according to Ms Kekane's email, appeared to concern only whether [applicant] owed [first respondent] for payment of the second and third stages – where no work was done."

31. It is only later that [applicant] adopted the approach that the invalidity of the SLA precluded [first respondent] from being compensated for work done under the SLA.

32. Ms Kekane also testified that there was no proof that any work was done in respect of any of the stages. She requested this documentation several times and was not provided with any of the necessary reports of work done. Despite this, she negotiated a payment plan as described above with [first respondent], and [applicant] made a payment of R61,570."

26. The second respondent went on to consider the implications of the Turquand Rule and the doctrine of ostensible authority, and ultimately concluded that the service level agreement had been validly concluded.
27. This disposed of the first issue that she was required to decide.
28. The second respondent then continued by concluding that the agreement or payment plan reflected in the July 2019 minutes, referred to above, and recorded in subsequent emails between the parties, was binding on the parties. She therefore resolved the

second issue that she was required to decide, insofar as it concerned Claim A, on the basis that the first respondent was entitled to an order for payment of the amount agreed by the applicant in July 2019, as reflected in the minutes of those meetings.

29. Her reasoning in this regard was essentially as follows:

“48. In the present matter, absent [applicant’s] agreement of July 2019 that it was obliged to pay [first respondent] for the amounts outstanding under the contract, an argument may validly have been made that [first respondent¹] failed to provide sufficient services to justify payment under the contract. [Applicant’s] conduct in negotiating a payment agreement with [first respondent] notwithstanding its knowledge of other irregular conduct on the part of its office bearers and the possibility that the present contract was concluded in the absence of CEC approval, precludes it from now claiming that the SLA was fraudulent.”

30. The second respondent went on to make an award in respect of Claim A in the outstanding amount due under the payment plan agreed in July 2019, being an amount of R677,270. She dismissed Claim B in its entirety. This was how she disposed of the second issue that she was required to decide.

31. As regards the counterclaim, for repayment of the amounts already paid by the applicant, the second respondent concluded that in light of her finding that the applicant had accepted an obligation to pay the first respondent the amount found to be due under Claim A, it followed that no counterclaim could lie for unjustified enrichment in respect of the amounts claimed. She dismissed the counterclaim, so deciding the third issue in the proceedings.

Summary of applicable legal principles

32. Section 33(1)(a) of the Act provides for the review and setting aside of an award where the arbitrator has misconducted herself in relation to her duties as arbitrator.

¹ erroneously referred to in the award as applicant

33. Section 33(1)(b) of the Act provides for an award to be reviewed and set aside where an arbitrator has committed any gross irregularity in the conduct of the arbitration proceedings or has exceeded her powers.
34. In *Lufuno Mphaphuli and Associates (Pty) Ltd v Andrews and another*² the Constitutional Court considered whether the relatively narrow grounds of review provided for in section 33(1) of the Arbitration Act were consistent with the constitution. It concluded that they were:

"[235] To return then to the question of the proper interpretation of section 33(1) of the Arbitration Act in the light of the Constitution. Given the approach not only in the United Kingdom (an open and democratic society within the contemplation of section 39(2) of our Constitution), but also the international law approach as evinced in the New York Convention (to which South Africa is a party) and the UNCITRAL Model Law, it seems to me that the values of our Constitution will not necessarily best be served by interpreting section 33(1) in a manner that enhances the power of courts to set aside private arbitration awards. Indeed, the contrary seems to be the case. The international and comparative law considered in this judgment suggests that courts should be careful not to undermine the achievement of the goals of private arbitration by enlarging their powers of scrutiny imprudently. Section 33(1) provides three grounds for setting aside an arbitration award: misconduct by an arbitrator; gross irregularity in the conduct of the proceedings; and the fact that an award has been improperly obtained. In my view, and in the light of the reasoning in the previous paragraphs, the Constitution would require a court to construe these grounds reasonably strictly in relation to private arbitration."

35. In *Telcordia Technologies Inc. v Telkom SA Ltd*³ the SCA emphasized that errors of law, like errors of fact, do not render an arbitrator's award liable to be set aside on review:

² 2009 (6) BCLR 527 (CC)

³ 2007 (3) SA 266 (SCA)

"[85] The fact that the arbitrator may have either misinterpreted the agreement, failed to apply South African law correctly, or had regard 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." (footnotes excluded)

36. The scope of an arbitrator's powers are determined by the issues that the parties have agreed to submit to her, in what are usually described as the arbitrator's terms of reference. An arbitrator who exceeds the scope of what has been submitted to her exceeds her powers and her award is susceptible to review under the provisions of section 33(1)(b) of the Arbitration Act. In *Telcordia* (supra) the SCA referred with

approval to the decision of the UK House of Lords in *Lesotho Highlands Development Authority v Impregilo SpA*⁴:

*"[52] The term 'exceeding its powers' requires little by way of elucidation and this statement by Lord Steyn says it all:*⁵

'But the issue was whether the tribunal "exceeded its powers" within the meaning of section 68(2)(b) [of the English Act]. This required the courts below to address the question whether the tribunal purported to exercise a power which it did not have or whether it erroneously exercised a power that it did have. If it is merely a case of erroneous exercise of power vesting in the tribunal no excess of power under section 68(2)(b) is involved. Once the matter is approached correctly, it is clear that at the highest in the present case, on the currency point, there was no more than an erroneous exercise of the power available under section 48(4). The jurisdictional challenge must therefore fail.'"

37. And in *Palabora Copper (Pty) Ltd v Motlokwa Transport and Construction (Pty) Ltd*⁶ the SCA summarized the ambit of section 33(1)(b) as follows:

"[8] This provision was the subject of detailed consideration by this Court in Telcordia. It suffices to say that where an arbitrator for some reason misconceives the nature of the enquiry in the arbitration proceedings with the result that a party is denied a fair hearing or a fair trial of the issues that constitutes a gross irregularity. The party alleging the gross irregularity must establish it. Where an arbitrator engages in the correct enquiry, but errs either on the facts or the law, that is not an irregularity and is not a basis for setting aside an award. If parties choose arbitration, courts endeavour to uphold their choice and do not lightly disturb it. The attack on the award must be measured against these standards." (footnotes omitted)

⁴ [2005] UKHL 43 paragraph 24

⁵ [footnote included as in the extract cited] *Lesotho Highlands Development Authority v Impregilo SpA* [2005] UKHL 43 para 24. Emphasis added. Cf *Bull HN Information Systems Inc v Hutson* 229 F 3d (1st Cir 2000) 321 at 330: 'To determine whether an arbitrator has exceeded his authority . . . courts "do not sit to hear claims of factual or legal error . . ." . . . and "[e]ven where such error is painfully clear, courts are not authorized to reconsider the merits of arbitration awards" . . .'

⁶ 2018 (5) SA 462 (SCA)

38. Restating these legal principles is, of course, more straightforward than applying them to the facts in any particular case. I turn now to consider the parties' respective submission in the present matter.

The parties' submissions

39. Mr Ndou, who appeared for the applicant, submitted in the first instance that the second respondent's treatment of the matter amounted to a gross irregularity of the kind contemplated by s33(1)(a) of the Act. He submitted that a mistake that prevented the aggrieved party from having its case fully and fairly determined constituted a gross irregularity, and that ultimately the crucial question is whether a mistake perpetrated by the arbitrator prevented a fair trial of the issues⁷.
40. Mr Ndou accepted that where an arbitrator engages in the correct inquiry but errs either on the facts or the law, that is not an irregularity and is not a basis for setting aside an award.
41. He submitted, however, that an arbitration award may be set aside if the arbitrator has determined matters that have not been pleaded or agreed upon. In this regard he referred to *Hos+Med Medical Aid Scheme v Thebe ya Pelo Healthcare*⁸, where the SCA stated the following:
- "[30] In my view it is clear that the only source of an arbitrator's power is the arbitration agreement between the parties and an arbitrator cannot stray beyond their submission where the parties have expressly defined and limited the issues, as the parties have done in this case, to the matters pleaded. Thus, the arbitrator, therefore also the appeal tribunal, had no jurisdiction to decide a matter not pleaded."*
42. Referring to *Total Support Management (Pty) Ltd v Diversified Health Systems (South Africa) (Pty) Ltd*⁹ Mr Ndou submitted that while even a "gross or manifest mistake" does not constitute misconduct, it may constitute evidence of misconduct which may in turn justify an inference of "wrongful and improper conduct".

⁷ as contemplated in *Goldfields Investments Limited v City Council of Johannesburg* 1938 TPD 551, referred to in *Telcordia* at paragraph [73]

⁸ 2008 (2) SA 608 (SCA)

⁹ 2002 (4) SA 661 (SCA) at paragraph [21]

43. Applying these authorities, Nr Ndou focused his submissions on the contention that the second respondent had, in the first instance, failed to determine the quantum of Claim A by reference to the case as pleaded by the parties, and had failed to resolve the dispute over the quantum of that claim by reference to the expert evidence introduced by the parties. Instead, the second respondent had relied on an acknowledgement of indebtedness by representatives of the applicant in a meeting held during July 2019, in respect of which a minute had been introduced and oral evidence led.
44. By deciding the quantum of Claim A in this way, Mr Ndou submitted, the second respondent failed to determine the real issue that had been submitted to her, which was the quantification of the claim as determined by the evidence of experts introduced by each side and narrowed in an agreed joint minute.
45. In further support of this submission Mr Ndou relied on the decisions in *Future Rustic Construction (Pty) Ltd v Spillers Waterfront (Pty) Ltd*,¹⁰ in which the court set aside an award and remitted the matter to the arbitrator after he had failed to determine separate amounts awarded in respect of each of a number of separate claims; in *Hos+Med*¹¹, in which the court set aside the decision of an arbitration appeal panel on grounds that they had determined the matter on the basis of an issue not submitted to them; and in *Rand Water v Zuikerbosch Biocal Products CC and Taroline (Pty) Ltd Joint Venture*¹², in which the court similarly held that the arbitrator had no jurisdiction to decide an aspect of the matter before him that had not been pleaded.
46. The second main focus of Mr Ndou's attack on the award concerned the manner in which the second respondent dealt with the applicant's counterclaim. He submitted that by resolving the counterclaim in the manner which she did the second respondent simply failed to deal properly or at all with an issue that fell squarely within her terms of reference.
47. Mr Sibuyi, who appeared for the first respondent, referred to the cautionary admonition in *Lufuno Mphaphuli* in the extract referred to above, at paragraph [235] of that judgment.

¹⁰ 2011 (5) SA 506 (KZD)

¹¹ *supra*

¹² [2018] ZA GPPHC 679, see paragraphs [19] and [20]

48. He submitted that compelling reasons were required to interfere with an arbitration award in terms of section 33 of the Arbitration Act, and he referred to the recent trend of decided cases on this topic which supported his argument that deference should be shown to an arbitration award properly made.
49. Mr Sibuyi submitted that the applicant had adopted a broad scattergun approach in seeking to challenge the award for a wide range of reasons that ultimately simply expressed dissatisfaction or disagreement with the reasoning and outcome of the award. None of these contentions, he submitted, fell within the ambit of an attack under section 33 of the Act.
50. Mr Sibuyi pointed out that the larger of the first respondent's claims in the arbitration, Claim B, had been dismissed by the second respondent, and submitted that there were no grounds to contend that the arbitrator had not independently assessed each parties' arguments and applied her mind to the appropriate determination of the issues that had been referred to her.
51. *Telcordia*, Mr Sibuyi submitted, establishes that a litigant cannot complain about the outcome or results of the arbitration. He submitted that in the present matter the Applicant had no genuine grievance about the arbitration process or method, but was clearly simply aggrieved by the outcome.
52. Mr Sibuyi submitted that the decisions in *Palabora*, *Hos+med*, *Rand Water* and *Future Rustic Construction* could all be distinguished on their facts - different issues had arisen in those cases.

Evaluation

53. I have carefully considered the grounds on which the applicant seeks to attack the award, and the authorities referred to by Mr Ndou.
54. It is indeed so that the second respondent determined the matter on a basis that was not contended for or dealt with by the parties in their pleadings. The award might reasonably be criticized on grounds that it resolved Claim A, and consequently the counterclaim, by way of a short cut. The arbitrator concluded in effect that the applicant had previously acknowledged and accepted liability in a certain amount in respect of Claim A, and made an award in that amount. Having done so it followed, in her view,

that the applicant could not succeed with its counterclaim for unjustified enrichment in respect of amounts for which it had accepted liability.

55. The fact that the arbitrator's reasoning was different to the case pleaded by the first respondent in the arbitration does not, however, by itself take the matter outside the ambit of the arbitrator's terms of reference.
56. In *Hos+Med* the arbitration agreement had expressly restricted the arbitrator's terms of reference to what was contained in the pleadings. This fact was at the heart of the decision in that matter. The same was not the case here.
57. Although the court in *Rand Water* referred to *Hos+Med* before concluding that the arbitrator in that matter had no jurisdiction to decide something not pleaded, and as a result set aside part of the award in that matter, the reason for this in *Rand Water* was that the arbitrator had made an award for payment of certain costs incurred for the removal of sludge in respect of a period for which no claim had been made in the proceedings at all.
58. In *Future Rustic Construction* the arbitrator had made a composite award in respect of multiple separate claims without determining amounts payable in respect of the different claims, and the matter was remitted to the arbitrator for reconsideration and a requirement that the arbitrator furnish the separate amounts awarded in respect of each claim.
59. In my view each of these situations is distinguishable from the facts in the present matter. None of these matters establishes a general principle that an arbitrator exceeds her powers if she determines an issue that has been placed before her on a basis different from that contended for by the parties. There is no evidence before me that the terms of reference or any agreement by the parties expressly curtailed the second respondent's powers by reference to the contentions raised in the pleadings. Although the second respondent decided the matter on a different basis from that contended for by the first respondent, she determined and made an award in respect of each of the two Claims that had been submitted to her, and also decided the counterclaim.
60. As indicated, there was no express limitation on the second respondent's powers that restricted her to determining the claims on the basis contended for by the parties in

their respective pleadings. Having regard to the terms of the arbitration clause in the agreement between the parties, and the timing and content of the pleadings, which were fairly rudimentary and were delivered after an initial pre-arbitration meeting had been held regarding the conduct of the proceedings, it seems to me that these were pleadings intended to assist the arbitrator rather than to define her powers. That means that even if the second respondent erred, by misunderstanding the pleadings or by deciding the matter on a basis that neither party had thought of, this did not take her outside the ambit of the powers entrusted to her.

61. In summary, in my view, the arbitrator's powers were not constrained in a manner that restricted her to deciding the matters referred to her on a basis pleaded by either party. The second respondent was called upon to determine whether the agreement was validly concluded, whether amounts claimed under Claim A and Claim B were due and payable, and whether the amount claimed in the counterclaim was payable. She did those things. She did so on the basis of evidence introduced at the arbitration. If her decision was incorrect, or wrongly explained, or a result of an error of law, or based on reasoning different from what was contended by either party in their pleadings, that did not take her outside the ambit of what she was appointed to do.
62. As regards the counterclaim, the approach of the arbitrator was that having concluded that the relevant agreement had been validly concluded (a conclusion not challenged in these review proceedings), and that an amount was indeed due and payable under it in respect of Claim A, over and above the amount that had already been paid (which was the subject of the counterclaim) it necessarily followed that the counterclaim should fail.
63. Even if that decision was not correct it was a decision reached, rightly or wrongly, on a matter that had been referred to her. This is quite different, it seems to me, from the position in *Palabora* where, in respect of the counterclaim in that matter, the court concluded that the effect of certain rulings of the arbitrator effectively prevented the party raising the counterclaim from pursuing its claim and so prevented a fair trial of that issue.
64. I am satisfied, in short, that the complaints advanced by Mr Ndou are complaints about how the arbitrator reasoned her conclusion and reached her decision within the ambit of powers that were indeed entrusted to her, and that they do not establish that she

strayed outside the powers entrusted to her. Put differently, the complaints raised concern the process of reasoning adopted by the arbitrator in determining matters that were within her powers to decide.

65. To the extent that the second respondent erred, this constituted the mistaken exercise of a power conferred on her (adopting the words of the House of Lords in *Lesotho Highlands Development Authority supra*). The conclusions that the applicant attacks, whether rightly or wrongly reached by the second respondent, were conclusions reached within the exercise of the powers and functions entrusted to her.
66. In those circumstances, the application stands to be dismissed.
67. Although the both parties had initially sought punitive costs, both agreed that there were no grounds for persisting with an order to that effect. Both submitted, however, that costs should follow the result. I agree.

Order

68. In the circumstances I make the following order:

The application is dismissed, with costs.



C Todd
Acting Judge of the High Court of South Africa

REFERENCES

For the Applicant:	Mr P Ndou.
Instructed by:	Ndou Attorneys
For the First Respondent:	Mr D Sibuyi
Instructed by:	DMS Attorneys
For the Second Respondent:	Adv. T Mhlanga
Instructed by:	Harris Nupen Molebatsi
Hearing date:	06 September 2022
Judgment delivered:	22 September 2022