



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JR 965/2021

In the matter between:

TEBALO BRIAN MOHLABANE

Applicant

and

WORLEY RSA (PTY) LIMITED

First Respondent

**THE COMMISSION FOR CONCILIATION,
MEDIATION AND ARBITRATION**

Second Respondent

DAN PRETORIUS N.O

Third Respondent

Heard: 27 February 2024

Delivered: 8 March 2024

This judgment was handed down electronically by consent of the parties' representatives by circulation to them via email. The date for hand-down is deemed to be 8 March 2023.

JUDGMENT

PRINSLOO, J

Introduction

- [1] The Applicant seeks to review and set aside a jurisdictional ruling dated 11 May 2021 wherein the Third Respondent (arbitrator) found that the Applicant had cited the wrong party as the employer in his unfair discrimination dispute and that the Second Respondent (CCMA) had no jurisdiction to adjudicate the dispute. The application for review was filed outside of the prescribed 6-week period and the Applicant had applied for condonation for the late filing of the application. I have considered the application for condonation and I am satisfied that good cause had been shown and that the late filing of the review application is to be condoned.
- [2] The First Respondent (Respondent) opposed the review application.

Background facts

- [3] This matter has a long history and it is necessary to set out its history to provide context to the matter. The Applicant was employed by Worley Parsons RSA (Pty) Ltd as a C&I senior engineer until his employment was terminated on 31 August 2016 due to the employer's operational requirements.
- [4] Worley Parsons RSA (Pty) Ltd, registered as a company under company number 1989/002048/07, was renamed as Worley RSA (Pty) Ltd (the Respondent in this application) under the same company number.
- [5] The Respondent is a subsidiary of a global multinational group, the Worley Group, and in April 2019 the holding company of the Worley Group acquired the whole of the energy, chemical and resources division from another internationally based group of consulting engineers, called the Jacobs Engineering Group. The Jacobs Engineering Group had a subsidiary in South Africa, called Jacobs Matasis (Pty) Ltd, with registration number 2010/019115/07. Worley RSA (Pty) Ltd and Jacobs Matasis (Pty) Ltd are two separate legal entities, both situated in South Africa, each with its own employees, management, projects, clients and bank accounts. The only link between the entities is that they are both subsidiaries and part of the Worley Group. Jacobs Matasis subsequently underwent a name change and is now known as Worley Matasis (Pty) Ltd.

- [6] In October 2019, Jacobs Matasis (Pty) Ltd (Jacobs) advertised a post of a senior C&I designer, for which the Applicant applied in November 2019. In December 2019, the Applicant was interviewed by Zoe Egling, the recruiter for Jacobs and the Applicant was informed on 10 December 2019 that his application was not successful.
- [7] On 10 December 2019, the Applicant referred an unfair discrimination dispute on arbitrary grounds in terms of the provisions of section 10 of the Employment Equity Act¹ (EEA) to the CCMA. The matter was set down for conciliation on 14 January 2020 and after conciliation failed, the dispute was set down for arbitration on 29 April 2021.
- [8] On 31 March 2021, the Respondent filed a notice of motion with the CCMA, raising a point *in limine* and seeking the dismissal of the Applicant's dispute. The Respondent's case was that it was not the employer of the Applicant and that the CCMA lacked jurisdiction to determine the dispute.
- [9] The Respondent filed an affidavit explaining that the Applicant was dismissed by Worley RSA in 2016. In 2019 Worley Limited, the holding company globally, acquired a division of Jacobs Engineering Group and acquired shares in Jacobs Matasis (Pty) Ltd. Jacobs is a company with limited liability and duly registered and incorporated in accordance with the company laws of South Africa and Jacobs and the Respondent remain separate legal entities and separate employers. The Respondent's case was that it did not advertise the position of senior C&I designer, which the Applicant applied for, it was not the employer of the position which was the subject of the discrimination dispute and that the Applicant was not entitled to any relief from the Respondent in this regard.
- [10] The Applicant opposed the Respondent's point *in limine* on the basis that "*the respondent is no longer trading as Worley Parsons but Worley since the acquisition of Jacobs Engineering Consulting Firm for a tune of USD 3.2 billion with effect from 26 April 2019. At the time of my dismissal in 2016 August 30, the HR Manager involved was Mr Craig Duncan who is still being considered*

¹ Act 55 of 1998, as amended.

as HR Manager and remains an employee of Worley as well as being cited as respondent on(sic) this matter”.

- [11] The matter was set down for hearing on 29 April 2021 and it is evident from the transcribed record that the parties made submissions on the issue of jurisdiction.
- [12] The Respondent submitted that Worley RSA (Pty) Ltd is part of a global group of companies, being the Worley Group, of which the Respondent is a subsidiary. The holding company, Worley Ltd, acquired a division from the Jacobs Engineering Group, with a South African subsidiary Jacobs Matasis (Pty) Ltd. Worley RSA (Pty) Ltd and Jacobs Matasis (Pty) Ltd are separate legal entities and are both part of the Worley Group of companies.
- [13] The Respondent's case was that the advert for which the Applicant applied and was not successful, was not placed by Worley RSA and it did not participate in the interviews and the position was not the Respondent's, but it was a position within Jacobs and the advert was placed by Jacobs and the interviews were conducted by Jacobs.
- [14] It was submitted that, before the CCMA could assume jurisdiction, it must be established that the applicant is indeed an employee. In terms of section 6 of the EEA, the definition of an employee includes an applicant for employment and as the dispute was referred in terms of section 6 of the EEA, the CCMA had to determine whether Mr Mohlabane was an applicant for employment. The entity which advertised the position the Applicant applied for and that conducted the interviews, was Jacobs and not the Respondent. The Respondent is therefore not the employer and the Applicant could not apply for a position with the Respondent that did not advertise, interview or fill the position of senior C&I designer. The Applicant had cited the wrong employer for purposes of his EEA dispute.
- [15] The Respondent submitted that Mr Craig Duncan was no longer employed by Worley RSA, but he moved to Worley Qatar on 1 October 2019. Furthermore, the Worley Group is a globally-based multinational and it is not uncommon for employees within the group to use an email address ending in '@worley.com'

and that such an email address was not an indicator that Worley RSA (Pty) Ltd and Jacobs Matasis (Pty) Ltd are the same company – they are separate companies linked to the same holding company.

- [16] The Respondent also made submissions regarding all the disputes that the Applicant had referred against the Respondent, none of which was either successful or properly prosecuted. It was submitted that *“...it is abundantly clear to the respondent that Mr Mohlabane, the applicant in this matter, now has, is starting a crusade against Worley RSA and as you can see we are dealing with no less than six case in the space of five years...”*
- [17] The Applicant submitted that he was invited for the interview and given feedback on the outcome of the interview by Worley. He disputed that there are different and separate legal entities and insisted that there is only one organisation in existence, namely Worley, after Jacobs Matasis, Worley RSA and Worley Parsons all merged. When the position of senior C&I designer was advertised and interviewed, the merge had already happened and *“we are left with one organisation”*. The Applicant's views were informed by the fact that one email address of '@worley.com' was used and the fact that Mr Craig Duncan, who was involved in his retrenchment at the Respondent in 2016, was still the HR manager for Worley RSA.

The arbitrator's findings

- [18] The arbitrator found that the Applicant indeed cited the wrong employer and that as a result, the CCMA did not have jurisdiction to adjudicate the dispute. The arbitrator's findings were based on the fact that Worley RSA (Pty) Ltd and Worley Matasis (Pty) Ltd did not have the same company number and that they are separate companies, with separate employees, management and projects, each operating independently in South Africa. The arbitrator further found that the Respondent did not advertise any C&I post in late 2019.

Applicable legal principles

- [19] Before I deal with the grounds for review and the merits of this application, I deem it prudent to set out relevant principles applicable to review applications.

- [20] Affidavits in review applications serve two primary purposes: to define the issues between the parties and to place the essential averments and evidence before the other parties and the court. Rule 7A of the Labour Court Rules² (Rules) provides for the delivery of four sets of affidavits in review applications, to wit a founding, supplementary, answering and replying affidavit. In recognition of the fact that the record obtained by an applicant in a review application may reveal that averments made in the founding affidavit were erroneously made or omitted, Rule 7A(8)(a) permits the applicant to deliver a supplementary affidavit within 10 days after the record is made available. This affords the applicant the opportunity to supplement and amend the factual and legal grounds upon which he or she relies in light of the record. A weak founding affidavit can be augmented by a supplementary affidavit.³
- [21] As a general principle, the applicant in a review application must make out his or her case in the founding affidavit, as may be supplemented by a supplementary affidavit, if necessary, after the transcribed record becomes available. Rule 7A(2)(c) of the Rules provides that the notice of motion must be supported by an affidavit, setting out the factual and legal grounds upon which the applicant relies to have the decision or proceedings corrected or set aside.
- [22] As to the requirement of setting out the legal grounds upon which the applicant relies in the founding affidavit, this requires the applicant to set out, with sufficient precision and detail, the grounds for review and the bases on which such grounds are relied upon.
- [23] The role of the reviewing Court is limited to deciding issues that are raised in the applicant's founding (and supplementary) affidavit. This was confirmed by the Constitutional Court in *Commercial Workers Union of SA v Tao Ying Metal Industries and Others*⁴ (*Tao Ying*), where it was held that:

‘...the role of the reviewing court is limited to deciding issues that are raised in the review proceedings. It may not on its own raise issues which were not raised by the party who seeks to review an arbitral award. There is much to be

² GN 1665 of 1996: Rules for the Conduct of Proceedings in the Labour Court.

³ C Bosch, A Myburgh, ‘Reviews in the Labour Courts’, LexisNexis at p 438 – 441.

⁴ [2008] ZACC 15; (2008) 29 ILJ 2461 (CC) at para 66.

said for the submission by the workers that it is not for the reviewing court to tell a litigant what it should complain about. In particular, the LRA specifies the grounds upon which arbitral awards may be reviewed. A party who seeks to review an arbitral award is bound by the grounds contained in the review application. A litigant may not on appeal raise a new ground of review. To permit a party to do so may very well undermine the objective of the LRA to have labour disputes resolved as speedily as possible.'

[24] A party who seeks to review an arbitration award is bound by the grounds for review contained in the review application, subject to one qualification, namely that the Court is obliged to deal with a point of law apparent from the papers.⁵

[25] The test to be applied on review, as set out in *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others*⁶ (*Sidumo*), as whether the decision reached by the arbitrator is one that a reasonable decision maker could not reach, is well known and established.

[26] However, it is now settled law that the test a reviewing court will apply to decisions relating to jurisdiction is different to the *Sidumo* test. The test to be applied when reviewing an arbitrator's decision relating to the jurisdiction of the CCMA is whether the decision was, objectively speaking, correct, and the review test as laid down in *Sidumo* does not find application in reviewing such a finding.⁷

[27] In *De Milander v Member of the Executive Council for the Department of Finance: Eastern Cape and others*⁸ the Labour Appeal Court (LAC) held that:

'Thus the issue before the commissioner, whether or not there had been a dismissal, was a jurisdictional issue. This means that if there was no dismissal the bargaining council did not have jurisdiction to entertain the dispute referred to it by the appellant (*SA Rugby Players Association & others v SA Rugby (Pty)*)

⁵ *Tao Ying supra* at para 67.

⁶ [2007] ZACC 22; (2007) 28 ILJ 2405 (CC) at para 110.

⁷ *SA Rugby (Pty) Ltd v SA Rugby Players' Association & another* [2008] ZALAC 3; (2008) 29 ILJ 2218 (LAC) (*SA Rugby*), *Member of the Executive Council, Department of Health, Eastern Cape v Odendaal and others* [2008] ZALC 161; (2009) 30 ILJ 2093 (LC) (*Odendaal*), *Asara Wine Estate & Hotel (Pty) Ltd v Van Rooyen & others* [2011] ZALCCT 21; (2012) 33 ILJ 363 (LC) (*Asara*), *Majatladi v Metropolitan Health Risk Management and others* [2013] ZALCCT 15; (2013) 34 ILJ 3828 (LC) (*Majatladi*).

⁸ (2013) 34 ILJ 1427 (LAC) at para 24.

Ltd & others; SA Rugby (Pty) Ltd v SARPU & another (2008) 29 ILJ 2218 (LAC); [2008] 9 BLLR 845 I (LAC) at para 39). The question whether, on the facts of the case, a dismissal had taken place within the ambit of s 186(1)(b) involves the determination of the jurisdictional facts. A jurisdictional ruling is subject to review by the Labour Court on objectively justifiable grounds and not on the reasonableness test approach as enunciated in *Sidumo*. The test is whether, objectively speaking, the facts which would give the GPSSBC jurisdiction to entertain the dispute existed.’

[28] In *Phaka and others v Bracks NO and others*⁹, the LAC held that:

‘The appellants sought review of the award of the arbitrator on the basis that the conclusion reached by him was not a decision that a reasonable decision maker or arbitrator in that position could have reached. This is an incorrect approach. When the jurisdiction of the arbitrator is in question the issue is whether he objectively had jurisdiction in law and fact. The arbitrator’s finding was that as the appellants were not employees he had no jurisdiction to determine their referrals of unfair dismissal and unfair labour practice disputes to the bargaining council. The court on review in such an instance is required to determine whether that finding was correct. The arbitrator either had jurisdiction or he did not. A finding that he had jurisdiction because he might reasonably have assumed as much is wholly untenable in principle. No legal power may be exercised without authority. The standard of review enunciated in *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others* that in order to succeed in a review the applicant must establish that the award was one that could not have been made by a reasonable decision maker, applies only to the review of determinations of the fairness of a dismissal or labour practice. It has no application to the determination of jurisdiction.’

[29] It is within the ambit of the aforesaid principles and the test to be applied on review, that the Applicant’s application for review is to be considered.

⁹ [2014] ZALAC 73; (2015) 36 ILJ 1541 (LAC) at para 29.

Grounds for review

- [30] *In casu*, the Applicant filed a founding affidavit but no supplementary affidavit. There are three grounds for review as set out in the Applicant's founding affidavit, which I will deal with in turn.

Jurisdiction

- [31] The first ground for review is that the arbitrator had no jurisdiction to review and set aside an "*award issued on 14 January 2020 whereby same point in limine was dismissed when the matter was referred to arbitration*".
- [32] It is common cause that the dispute was set down for conciliation on 14 January 2020, that the dispute remained unresolved and that a certificate of outcome was issued, referring the dispute for arbitration. The matter was set down for arbitration in April 2021, when the Respondent raised the issue of jurisdiction as a point *in limine*.
- [33] There is no merit in the Applicant's first ground for review.
- [34] There was no evidence placed before this Court to show that the jurisdictional issue was raised and considered at the stage of conciliation and that a jurisdictional ruling was issued by the conciliating arbitrator. What is evident is that after the conciliation was unsuccessful, a certificate of outcome, referring the dispute for arbitration, was issued. The certificate of outcome is not a jurisdictional ruling but merely certifies that an attempt was made to conciliate the dispute.
- [35] There is no evidence to show that the issue of the CCMA's jurisdiction to adjudicate the dispute was considered on 14 January 2021 or that a ruling on jurisdiction was issued on the said date.
- [36] The jurisdictional point was raised at the arbitration hearing and was decided by the arbitrator. The arbitrator had regard to the affidavits filed as well as the oral submissions made in respect of jurisdiction and she made a finding, based on the evidence placed before her. The arbitrator did not 'review and set aside' any ruling, as no ruling was issued on 14 January 2021.

- [37] A certificate of outcome does not confer jurisdiction – it is merely a recordal that, on a particular date, a dispute remained unresolved and it has no legal significance beyond that, apart from entitling a party to refer the dispute to arbitration or the Labour Court, depending on the nature of the dispute. If a jurisdictional issue was not raised or decided at conciliation, it may be raised and must be determined at arbitration, irrespective of the issuing of a certificate of outcome.¹⁰

Section 189 of the LRA

- [38] The Applicant's second ground for review is that the arbitrator failed to take into consideration that he was dismissed by the Respondent in terms of section 189 of the LRA and *'ought to be considered'* that the LRA is clear *"on requirement to consider those who were laid off on section 189 first, provided that they are still interested in employment offer"* and that the arbitrator *"misdirects herself by failing to deal with this requirement as outline (sic) by LRA and argued during arbitration"*.
- [39] There is no merit in this ground for review. Firstly, there is no such requirement in the LRA, as alleged by the Applicant. The arbitrator cannot be accused of failing to deal with a non-existing requirement.
- [40] Secondly, the arbitrator considered the issue of jurisdiction in respect of the Applicant's dispute in terms of section 6 of the EEA. The dispute before the arbitrator was one relating to the EEA and the arbitrator was not required or mandated to consider any dispute in terms of section 189 of the LRA.
- [41] Thirdly, section 10(1) of the EEA specifically excludes a dispute about an unfair dismissal. An unfair discrimination dispute, pursued in terms of the EEA, does not include an unfair dismissal dispute and the Applicant's complaint that the arbitrator should have considered the fact that he was dismissed and ought to have been considered for employment, is incompetent and bad in law.

¹⁰ Myburgh et al, 'Reviews' at p 156 – 161.

Third ground for review

[42] The Applicant's third ground for review is that the jurisdictional ruling is riddled "with contradictions that does (*sic*) not advance fair administration of justice. And prejudice is suffered by applicant".

[43] I already alluded to the fact that an applicant is required to set out, with sufficient precision and detail, the grounds for review and the bases on which such grounds are relied upon. It is critical that the factual foundation of the review application, including the relevant evidence or reference thereto, be canvassed in the founding or supplementary affidavit and that it be linked to the applicant's grounds for review, supported by the evidence adduced at the arbitration proceedings.

[44] This ground for review is too vague and it is unsubstantiated.

The arbitrator was biased

[45] It is evident from the Applicant's review application that it is interspersed with allegations that the arbitrator was biased.

[46] Bias in the context of a review application is regarded as a patent gross irregularity. The principles related to the concept of bias have been set out by the Courts and a brief overview of those principles is necessary.

[47] In *Turnbull-Jackson v Hibiscus Coast Municipality and others (Ethekwini Municipality as amicus curiae)*,¹¹ the Court dealt with unfounded allegations of impropriety made against public officers, and held:

'Allegations of bias, the antithesis of fairness, are serious. If made with a sufficient degree of regularity, they have the potential to be deleterious to the confidence reposed by the public in administrators. The reactive bias claim stems from unsubstantiated allegations of corruption and incompetence. These are serious allegations, especially the one of corruption. Yes, if public officials are corrupt, they must be exposed for what they are: an unwelcome, cancerous scourge in the public administration. But accusations of corruption against the

¹¹ 2014 (11) BCLR 1310 (CC) at para 35.

innocent may visit them with the most debilitating public opprobrium. Gratuitous claims of bias like the present are deserving of the strongest possible censure.'

[48] In *Sepheka v Du Point Pioneer (Pty) Ltd*,¹² the Court threw caution as follows in respect of allegations of bias:

'Any allegation of bias, especially on the part of a Judge of this Court, must be substantiated by a proper factual basis, must not be based on mere speculation and conjecture, and must be proved by the party alleging bias.'

[49] It is a trite principle of law that in order to succeed with a claim of bias, more than mere conjecture must be shown. It happens that in the normal course of events, litigants could harbour a sense of apprehension against those administering justice. This of course does not mean that, anytime when a litigant is not happy with the proceedings or that the judgment or outcome is not in that party's favour, a claim of bias would suffice.

[50] The Courts have time and time again warned against litigants making unfounded allegations of bias on the part of presiding officers tasked to decide disputes, without cogent proof to substantiate the allegation.¹³

[51] It is a natural result of adversary litigation that one party would be successful favour of the other party, does not render the presiding officer or decision maker biased. More is required.

[52] *In casu*, the Applicant claims that the arbitrator was biased. To succeed with this as a ground for review, the Applicant had to prove bias and had to substantiate this claim by a proper factual basis. The Applicant dismally failed to do so, in fact, he did no more than to make vague and unsubstantiated allegations of bias.

¹² (2019) 40 ILJ 613 (LC) at para 16.

¹³ See for example *Sappi Kraft (Pty) Ltd t/a Tugela Mill v Majake NO and Others* (1998) 19 ILJ 1240 (LC) at para 48; *SMCWU v Party Design CC* [2001] 6 BLLR 667 (LC) at para 12.

Conclusion

- [53] The test to be applied in a review application such as this one is whether the arbitrator was, objectively speaking, right or wrong in finding that the CCMA has no jurisdiction to adjudicate the dispute.
- [54] There is not a single averment in the Applicant's founding affidavit to the effect that the arbitrator's findings were wrong. 'Correctness', the test to be applied *in casu*, does not feature in the Applicant's pleaded case and the jurisdictional ruling is not attacked on the ground that it is wrong. In fact, there is not a single averment made to support a case on the basis that the arbitrator or the outcome was wrong.
- [55] The Applicant has failed to make allegations to sustain this application, which is fatal to his case. In *Tao Ying*, it was confirmed that the role of the reviewing court is limited to deciding issues that are raised in the review proceedings. This Court, sitting as a review Court, is not to embark on a fact-finding mission in order to find facts or evidence to support the Applicant's grounds for review.
- [56] The Applicant did no more than to launch a vague and unsubstantiated attack and to raise grounds for review that have nothing to do with the question of whether the arbitrator was correct in finding that the CCMA lacked jurisdiction.
- [57] The Applicant dismally failed to make out a case for review and it follows that the application for review has to fail.

Costs

- [58] In so far as costs are concerned, this Court has a broad discretion in terms of section 162 of the LRA to make orders for costs according to the requirements of the law and fairness.
- [59] The requirement of law has been interpreted to mean that the costs would follow the result. In considering fairness, the conduct of the parties should be taken into account and *mala fides*, unreasonableness and frivolousness are factors justifying the imposition of a costs order.

- [60] In *Zungu v Premier of the Province of KwaZulu-Natal and Others*,¹⁴ the Constitutional Court confirmed that the rule that costs follow the result does not apply in labour matters. The Court should seek to strike a fair balance between unduly discouraging parties from approaching the Labour Court to have their disputes dealt with and, on the other hand, allowing those parties to bring to this Court (or oppose) cases that should not have been brought to Court (or opposed) in the first place.
- [61] Mr van As for the Respondent submitted that a cost order should be awarded in favour of the Respondent as the Applicant came to Court with a meritless application. He further submitted that this is the sixth unfair discrimination claim against the Respondent as the Applicant believes he is entitled to an eternal recall position and to be given preference every time a position is advertised and when he is not successful, he claims discrimination. The Applicant is a vexatious litigant, who has dragged the Respondent to the CCMA and this Court on numerous occasions on matters without merit and there is a tipping point where ill-founded litigation should be met with an order for costs.
- [62] The Applicant submitted that he is not employed and would not be in a position to pay costs. He had been rejected by the Respondent and he is unable to find an amicable solution to resolve his disputes with the Respondent.
- [63] This is a case where the Court has to strike a balance, considering the requirements of law and fairness. The generally accepted purpose of awarding costs is to indemnify the successful litigant for the expense he or she has been put through by having been unjustly compelled to initiate or defend litigation. In *Public Servants Association of SA on behalf of Khan v Tsabadi NO and Others*¹⁵ it was emphasized that:

‘...unless there are sound reasons which dictate a different approach, it is fair that the successful party be awarded her costs. The successful party has been compelled to engage in litigation and compelled to incur legal costs in doing so. An appropriate award of costs is one method of ensuring that much earnest thought and consideration goes into decisions to litigate in this Court, whether

¹⁴ (2018) 39 ILJ 523 (CC) at para 24.

¹⁵ (2012) 33 ILJ 2117 (LC) at para p 2119 I-J.

as applicant, in launching proceedings or as respondent opposing proceedings.'

- [64] In my view, this is a case where it is appropriate to make a cost order. A cost order is a method of ensuring that decisions to litigate in this Court are taken with due consideration of the law and the prospects of success.
- [65] I am alive to the fact that the Applicant is an individual. This Court is ordinarily reluctant to make orders for costs against individual employees, for whom the prospect of an adverse costs order may serve to inhibit the exercise of what they perceive as their rights. This is however not an immutable rule.
- [66] *In casu*, the Applicant approached this Court on review and the grounds for review he had raised, had no merit, considering the applicable legal principles. I am also considering the fact that the Applicant has no hesitation to institute legal proceedings against the Respondent, without any consideration of the merits thereof. The Applicant cannot continue to drag the Respondent to meritless litigation, without any consequences, when the Respondent has to incur costs to defend such litigation.
- [67] Fairness dictates that the Respondent cannot be expected to endure enormous costs defending litigation where more thought and consideration had to be put in before approaching this Court. It seems to me that in the present circumstances, the interests of justice require that the Applicant pays at least a portion of the Respondent's costs. In my view, a sum equivalent to 20% of the Respondent's costs will best serve those interests.
- [68] In the premises, I make the following order:

Order

1. The late filing of the application for review is condoned;
2. The review application is dismissed;
3. The Applicant is to pay the costs of the application, limited to 20% of the First Respondent's taxed costs.



Connie Prinsloo

Judge of the Labour Court of South Africa

Appearances:

On behalf of the Applicant:

In person

On behalf of the First Respondent:

Advocate M van As

Instructed by:

Werksmans Attorneys

LABOUR COURT