

THE REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case Number: **3834 / 2024**

In the matter between:

PRISTINE SEAFOODS (PTY) LTD

Applicant

and

COLLECTIVE DREAM STUDIOS (PTY) LTD

First Respondent

ADVOCATE DARRYL COOKE N.O.

Second Respondent

Coram: Wille, J

Heard: 13 September 2024

Delivered: 9 October 2024

JUDGMENT

WILLE, J:

INTRODUCTION

[1] This is a review application of a ‘remittal award’ (and the ‘further award’) concerning arbitration proceedings instituted by the first respondent against the applicant piloted about four years ago. The dispute arose nearly a decade ago and initially concerned the sale and purchase of five marine fishing vessels. The purchaser took delivery of the fishing vessels, and the vessels sailed from these shores to commence their fishing operations.¹

[2] About a year later, the first respondent concluded another discrete agreement in terms of which the first respondent sold two further marine vessels to the ‘purchaser’ and delivery of these vessels took place (locally) a couple of months after the agreement was concluded.²

[3] The total purchase price was not paid in connection with this second agreement, and this agreement contained a reservation of ownership clause pending full payment of the purchase price. It was not disputed that possession of the subject marine vessels would pass to the purchaser on delivery. However, it was recorded explicitly that if all the payments were not made in terms of the agreement, ownership in the vessels would revert to the first respondent.³

[4] Because the total purchase price was not paid and there was a shortfall in the purchase price, a demand for payment was made, and the first respondent invoked the arbitration clause contained in the sale agreements. The first respondent’s demand for payment was met with the allegation from the purchaser that the purchased marine vessels suffered from latent material mechanical defects. Thus, the purchaser made an election (so it said) to abide by the terms and conditions of the agreements but to claim a reduction in the purchase price because of fraud

¹ The vessels went to Mozambique, where they conducted their fishing operations through a “subsidiary”.

² These two vessels sailed to Mauritius, from which location the purchaser ran its Mauritian fishing operations.

³ It was not disputed that the purchaser (“Afritex”) did not pay the purchase price for the vessel “*Noelle Marie*” in full.

committed by the first respondent in connection with the condition of the marine vessels sold to the purchaser.⁴

[5] In addition, the purchaser contended for alleged loss of profits and reserved the right to proceed against the first respondent's representative in his personal capacity for the recovery of the damages suffered by the purchaser because of his alleged fraudulent non-disclosures.⁵

[6] Thereafter, the original purchaser ceded and assigned all its rights and obligations to the applicant concerning the two purchase and sale agreements. This cession (from a foreign company to the applicant being a local company) effectively prevented the first respondent from obtaining security for its costs in the ensuing legal proceedings.⁶

CONTEXT

[7] Amidst settlement negotiations between the first respondent and the erstwhile purchaser, the applicant (as cessionary) commenced action proceedings against the first respondent for a reduction in the purchase prices of the marine fishing vessels and the alleged loss of profits because of the alleged latent defects to the marine fishing vessels that were allegedly fraudulently concealed by the first respondent's representative.⁷

[8] Even though the first respondent had notified the cedent in writing of a change of domicile for legal proceedings, the applicant saw fit to cause a summons to be served on the first respondent's previous domicile address. This address and location had since been reduced to a pile of rubble when the summons was 'served' by the sheriff, and these action proceedings, not surprisingly, did not come to the attention of the first respondent.⁸

⁴ The claim was that the reduced price contended for exceeded the balance owing on the purchase price,

⁵ In summary, the applicant alleged that the first respondent's representative committed fraud.

⁶ In the subsequent action proceedings, the first respondent could not obtain security for costs.

⁷ This was by way of a summons.

⁸ This much is a common cause fact.

[9] This culminated in the granting of a default judgment against the first respondent, which necessitated the launch of a rescission application by the first respondent to set aside the default judgment. The applicant filed a notice of intention to oppose this rescission application but failed to file any answering papers. This judgment was ultimately rescinded.⁹

[10] After that, the first respondent caused one of the marine fishing vessels to be judicially attached as security for its claim against the applicant, and the vessel so attached remains under attachment. The applicant and the first respondent then agreed that arbitral proceedings would determine, among other things, this vessel's ownership.¹⁰

[11] Notwithstanding that the parties agreed to arbitral proceedings (in terms of the agreements wherein the applicant sought to enforce by claiming a reduction in the purchase prices of the vessels supplied by the first respondent), the applicant insisted that the matter proceed by way of action proceedings.¹¹

[12] Unsurprisingly, a special plea followed at the instance of the first respondent, which ultimately determined that the action proceedings be stayed, pending the outcome of the arbitration between the parties.¹²

[13] After over half a decade of litigation, the second respondent returned an award in favour of the first respondent. The applicant was ordered to redeliver the vessel to the first respondent. In addition, the applicant was: (a) directed to pay the first respondent a monthly amount until the vessel was re-delivered to the first respondent, and (b) to pay interest on the aforesaid monthly amount from the date of the award until the date of payment.¹³

[14] In favour of the applicant, the arbitrator declared that the applicant was entitled to a reduction in the purchase price of the vessels in respect of the following

⁹ On 14 May 2018. A punitive costs order was awarded against the applicant.

¹⁰ This is what the arbitration essentially was about. The vessel is the "*Nolle Marie*".

¹¹ The applicant progressed with action proceedings.

¹² The first respondent filed a special plea for a stay of the action proceedings.

¹³ The "leading" award.

defects: (a) the excessive sediment in the fuel tanks of all the vessels, except one of them; (b) the leaks in the refrigeration systems on all the vessels; (c) a non-functional bait freezer in one of the vessels, and (c) rotten deck planking on two of the vessels. The actual amounts that would eventually be allocated to these defects were conveniently referenced as the 'actionable defects' and stood over for later determination.¹⁴

THE 'REVIEW' APPLICATIONS

[15] More than a year ago, the applicant launched an application for a review and setting aside of and/or substitution of the leading award, alternatively, the remittal of the leading award. The first respondent brought a counter-application seeking an order that: (a) the subject vessel be re-delivered to the first respondent, (b) the applicant sign all the necessary documentation and take such necessary steps to transfer ownership of the subject vessel to the first respondent on an urgent basis, and (c) certain of the prayers in the leading award be made an order of the court.¹⁵

[16] By way of a subsequent court order, the leading award was remitted to the second respondent for the re-hearing and reconsideration. The costs associated thereby were ordered to stand over for later determination. The aspects of the leading award that required reconsideration by the second respondent needed to be specified but were regrettably left unspecified. The leading award was only 'remitted' and thus remained binding on the applicant.¹⁶

[17] After that, the remittal hearing occurred before the second respondent, and he heard further arguments on the leading award that had been remitted to him and arguments regarding the quantification of the actionable defects and costs. The first respondent made a tender concerning the quantum of these actionable defects. The applicant accepted this tender.¹⁷

¹⁴ This was procedurally correct as "cancellation" of the agreements was never an issue for determination.

¹⁵ This was formulated as a counter-application.

¹⁶ This is so also because the terms of the leading award were not amended.

¹⁷ This issue at least was settled between the parties.

[18] The remittal award and further award followed, which confirmed the tender. Significantly, the second respondent did not alter the leading award in any manner whatsoever other than 'cost-related' issues. The applicant was ordered to pay one-third of the first respondent's costs in the arbitration incurred before the publication of the leading award and subsequent expenses relating to the quantum determination and costs (save for those parts of the arbitration in respect of which costs orders had already been made).¹⁸

[19] After the remittal award and further awards were handed down, the applicant chartered the current application to review and set aside the entire remittal award (including, as I understand it, the leading award and the further award) and the substitution thereof with an order for the initial relief sought by the applicant in the initial arbitration proceedings.¹⁹

CONSIDERATION

RES JUDICATA

[20] The first respondent advances that the second review is an abuse of the court process because the applicant is precluded from bringing this second review application concerning the same issues (and 'awards') by applying the principle of *res judicata*. It says this because this review application: (a) was between the same parties; (b) seeks the same relief on the same grounds, and (c) was brought after the first review application was litigated to finality.²⁰

[21] The first respondent's case is that the applicant, by operation of the doctrine of *issue estoppel*, was prevented from revisiting the validity of the leading award and the further awards, albeit now clothed in a second review application, irrespective of the relief now sought.²¹

¹⁸ Other than those costs relating to the quantum determination and the associated costs to that.

¹⁹ The applicant sought the same relief save for a validity declaration and a belated constitutional challenge.

²⁰ The first respondent also contended for this position because the remittal order was not detailed.

²¹ This is so because the applicant sought the same relief.

[22] Issue estoppel applies where an issue of fact or law is an essential element of a prior final judgment (in this case, the actual ‘awards’). The issue may not be revisited in subsequent proceedings before another court, even if a different cause of action is relied upon or other relief is claimed.²²

[23] Our courts have recognized that a strict application of issue estoppel could result in unfairness in some unusual circumstances. However, this is typically applied in cases where the nature of the issue is in dispute or at least open to some doubt. The first application for review and the second application for review undoubtedly dealt with the same issues before the same parties.²³

[24] Issue estoppel applies when relief based on other causes of action is sought in a subsequent case if it involves determining the same issue of fact or law.²⁴

[25] I take the following from *Ekurhuleni*, where it was held as follows:

*‘...the submission that res judicata does not apply because of the lack of sameness in the cause of action is misconceived. Sameness is determined by the identity of the question previously set in motion...’*²⁵

[26] Issue estoppel developed precisely because requiring sameness between the two causes of action allows parties to re-litigate the same issue by garbing these up in different causes of action. The authority not to apply issue estoppel for reasons of justice and equity needs to be evaluated regarding what is often referred to as the *Henderson* principle. This principle provides, among other things, that when a given matter becomes a subject of litigation:

‘...the court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of a matter which might have been brought forward

²² Smith v Porritt and Others 2008 (6) SA 303 (SCA) at para [10].

²³ The second review application was no more than a repetition of the first review application.

²⁴ Aon SA (Pty) Ltd v Van Den Heever 2018 (6) SA 38 (SCA) at [40].

²⁵ Ekurhuleni Metropolitan Municipality v Germiston Municipal Retirement Fund 2017 (6) BCLR 750 (CC) at [31].

*as part of the subject in a contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case...*²⁶

[27] This doctrine has been fully assimilated into our law. The principle applies equally to claims of *res judicata* and allegations based on issue estoppel. Further, and most importantly, the applicant elected to persist with precisely the same issues in the second review application even though there was seemingly no urgent need for this relief, bearing in mind that the leading award had only been remitted by way of the first application for review.²⁷

[28] The core relief sought in the first review application is identical to the relief sought in the second. Further, the amended notice of motion in the second review application, in essence, remains the same as the review relief sought in the central prayers of the original notice of motion. The applicant belatedly seeks a constitutional and a 'validity' declaration in the additional prayers. The first review application failed regarding the constitutional and validity declaration, and this has yet to be the subject of any appeal. What one is left with is that the applicant seeks the same relief on the same grounds.²⁸

[29] The first respondent contends that the attempt by the applicant to re-litigate its failed review application on the same grounds as before amounts to an abuse of the process and warrants a punitive costs order against the applicant's attorneys of record. I agree that the applicant is attempting to re-litigate a 'resuscitated' award, which was only sent back to the second respondent through a remittal. Put another way, if the leading award had been reviewed, the award would have been completely set aside and sent to a new arbitration tribunal.²⁹

[30] Thus, for issue estoppel to apply, it is unnecessary for the previous court to expressly determine the issue because it would undermine the purpose of *res*

²⁶ *Henderson v Henderson* (1843) 3 Hare 100 at 114-115, [1843-1860] All ER Rep 378 at 381-2.

²⁷ The leading award was only remitted, and the details of the remittal were absent from the remittal order.

²⁸ Nothing had changed from the core averments in the founding affidavit in the first review application.

²⁹ The terms of the leading award were not set aside.

judicata and issue estoppel to hold otherwise. It would allow litigants to freely exit from any award granted that expressly addresses the issue of fact or law that was structural to the decision.³⁰

[31] Accordingly, the doctrine of issue estoppel applies as set out in the first respondent's contentions involving *res judicata*. The doctrine inevitably precludes the same issues from being raised again in the fresh review proceedings as the footing for any new causes of action, whether in contract, delict or constitutionally framed. To allow this would undermine the finality of judicial decision-making (and arbitral decision-making) and cast doubt over the trustworthiness of judicial decisions (awards).³¹

[32] Put another way, it would be grossly unfair if the doctrine were not to apply, as the applicant would then be allowed to escape the consequences of both awards and have the matter arbitrated afresh. This would undermine the rule of law and open the door to recurring legal challenges to the same conduct, contrary to conventional legal principles.³²

FAIR HEARING AND BIAS

[33] 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 may constitute a gross irregularity. The applicant's case is entirely different. The applicant contends that the second respondent was required to render a decision that, when objectively considered, was fair and that a reasonable and rational decision-maker would have made when faced with the same evidence presented during the proceedings. This is undoubtedly an impermissible attempt to equate the review of administrative decisions tainted by an error of law with the review of private arbitration awards.³³

³⁰ The same issues of fact and law that were structural to the leading award featured in the remittal award.

³¹ The leading award was final in nature, as it was not set aside by the remittal order.

³² The leading award was not set aside by the remittal order.

³³ *Total Support Management (Pty) Ltd and Another v Diversified Health Systems (SA) (Pty) Ltd and Another* 2002 (4) SA 661 (SCA) at para [24].

[34] The applicant contends for the legal position that the alleged factual and legal errors *per se* result in the unfairness and unreasonableness of the awards. Thus, the applicant attacks the rationality of the awards. Self-evidently, it cannot be that the alleged grave errors of fact and law determine whether the decision was fair, reasonable, rational or impartial, even in private arbitrations.³⁴

[35] The applicant avers that the arbitrator's findings display a perception of bias. This complaint goes to the second respondent's alleged compromised impartiality and independence. This is a constitutional argument invoking the immutable principles of natural justice, in which judicial impartiality and independence are the bedrock of any fair and just legal system.³⁵

[36] The test to be applied involves the reasonableness of the apprehension of bias and the reasonableness of the litigant holding such apprehension. The applicant says that the second respondent's impartiality was compromised and, as a result thereof, the fairness of the arbitration proceedings became irreparably compromised, with the applicant being disadvantaged as a result thereof. Because of the presumption of judicial impartiality (which applies equally to arbitrations), the applicant bears the onus of rebutting this presumption.³⁶

[37] The immutable need for an absence of bias on the part of an adjudicator requires and involves the adjudicator being able to assess and decide the facts and disputes before him or her with an open mind. Bias or reasonable suspicion of bias equates with actual and apparent bias. Some foreign jurisprudence is helpful in this regard. The test essentially boils down to the following question:

*'...whether a fair-minded observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased...'*³⁷

[38] Self-evidently, an arbitrator, like a judge or similar judicial officer or adjudicator, must act impartially and judiciously. Thus, the standard of impartiality

³⁴ A clear distinction must be drawn between appeals and reviews.

³⁵ Section 34 of the Constitution of the Republic of South Africa, 1996.

³⁶ The applicant failed in this connection.

³⁷ James Maurici (2007) "The Modern Approach to Bias", *Judicial Review*, 12:4, 251-260.

required of judicial officers exercising public powers is the same as that expected of arbitrators. A private arbitration does not fall within the purview of administrative action and arises through the exercise of private rather than public powers.³⁸

[39] The applicant could not provide details (or sufficient details) regarding these allegations of impartiality. Thus, nothing before me cast a long shadow over the arbitration process or the awards that flowed from them. The claims made by the applicant did not cumulatively (nor separately) endorse or sustain the reasonableness of the applicant's contentions that the impartiality of the second respondent was compromised or that he was biased.³⁹

[40] The applicant's argument goes instead to the results of the arbitration awards and not the method, as the applicant makes out no case that the procedure followed by the arbitrator prevented it from having a fair opportunity to present its case. The applicant seeks to rely on alleged incorrect findings of fact and law, none of which amount to irregularities on the arbitrator's part, thus preventing the applicant from having a fair hearing.⁴⁰

[41] There is a difference between an allegation of bias and an allegation that a party did not enjoy a fair hearing. Sometimes, these concepts overlap, but drawing a clear distinction is essential. Determining whether the arbitration was fair is a matter of objective judicial assessment.⁴¹

[42] At the same time, bias (as already alluded to) is assessed through the eyes of a reasonable, fair-minded, informed observer. A trial is unfair (and so is an arbitration) when the judicial conduct disrupts the presentation of the case and prevents the court (or tribunal) from properly appraising the case on its merits.⁴²

[43] The alleged complaints about these adverse findings and rulings (if they exist) are grounds for appeal and are not review grounds. I say this because it is

³⁸ Ramsden, *The Law of Arbitration: South African and International Arbitration* at page 66.

³⁹ Insufficient detail was provided by the applicant on this score.

⁴⁰ These are all grounds of appeal (if they exist).

⁴¹ Ramsden, *The Law of Arbitration: South African and International Arbitration* at page 66.

⁴¹ *Technology Corporate Management v De Sousa* 2024 (5) SA at [261].

⁴² *Technology Corporate Management v De Sousa* 2024 (5) SA at [261].

advanced that the arbitrator misdirected himself on questions of fact and on issues of law. The applicant relies on these to contend for the position that the arbitrator committed gross irregularities or committed misconduct.⁴³

[44] These complaints by the applicant are not indicative that the second respondent, in any manner, did not apply his impartial mind to the matter. The central complaint by the applicant is that the arbitrator ignored persuasive jurisprudence and instead relied on principles from academic authors and lower courts to find that the applicant could not rely on the fact that the applicant's obligation to perform had not yet arisen because of the first respondent's alleged lack of performance.⁴⁴

[45] The second respondent carefully reasoned that he did not ignore the binding jurisprudence relied on by the applicant but rather explained that the facts of that matter (as referenced) were very different from those in the present matter. The second respondent also relied upon a judgment from our apex court in support of his reasoning and explained why he arrived at the conclusions that he reached.⁴⁵

[46] In addition, the second respondent also explained (in his remittal award) that he was not persuaded to alter his leading award. At best, for the applicant, these issues may be interpreted as an error of law (I do not believe they are) by the second respondent. Still, I need help understanding how this translates to an allegation of a clear perception of bias on the part of the second respondent. Self-evidently, it could not be said that the second respondent's finding on this score is judicially reviewable.⁴⁶

OWNERSHIP AND RE-DELIVERY

[47] Under this rubric, the applicant relies on what it believes to be alleged incorrect fact-finding. The second respondent considered the alleged engine, electrical, and mechanical defects and explained why the complaints were not

⁴³ As referenced in sections 33 (1)(a) and (b) of the Arbitration Act.

⁴⁴ Smith v Van der Heever NO1996 (4) SA 950 (A)

⁴⁵ Botha and Another v Rich NO and Others 2014 (4) SA 124 (CC) at [45].

⁴⁶ These are appeal grounds (if they indeed even exist).

actionable in law. In the second respondent's remittal award, he explained why his reasoning was not susceptible to a re-consideration and the applicant did not fully engage with this.⁴⁷

[48] In summary, the applicant sought to elevate several perceived alleged errors of fact and law on the part of the second respondent in the hope of reaching an artificial threshold which would equate to the denial of a fair hearing. This process is no doubt impermissible as it fails to appreciate the clear distinction between an appeal and a review. In addition, no issues were highlighted in the remittal order that specifically required another determination or re-hearing by the second respondent.⁴⁸

REMAINING ISSUES AND THE COUNTER-APPLICATION

[49] As alluded to previously, the case by the applicant is predicated upon alleged errors of law and fact-finding errors. As already stated, these are impermissible grounds to contend for a review of the leading, remittal, and further awards. The legal position that finds application in this application and the counter-application is set out in the now-settled jurisprudence, illustrating the test to be applied where an alleged error of law may give rise to an irregularity. The 'test' has been described as follows:

*'...the error of law gives rise to the irregularity; the reviewable irregularity would be the refusal to hear that party and not the error of law. Likewise, an error of law may lead an arbitrator to exceed his powers or to misconceive the nature of the inquiry...'*⁴⁹

[50] This, in turn, goes to the nature of the enquiry in the setting of an alleged gross irregularity in private arbitration proceedings. The duties of an arbitrator and the scope of an arbitrator's powers are best illustrated in the following terms:

⁴⁷ This was supported by the fact that the remittal order did not "set aside" the leading award.

⁴⁸ The second respondent, in any event, gave the applicant another arbitral "hearing"

⁴⁹ *Telcordia Technologies Inc v Telkom SA Ltd* 2007 (3) SA 266 (SCA) at [69].

‘...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...’⁵⁰

[51] In addition, our apex court has considered the correct procedural approach to a review of a private arbitration award. The legal test to be adopted in this case may be summarised as follows:

‘...In each case, the question will be whether the procedure followed afforded both parties a fair opportunity to present their case...’⁵¹

[52] It cannot be suggested (by any stretch of the imagination) that the applicant in this case was not afforded a fair opportunity to present its case during both these extended arbitration proceedings. Thus, the applicant’s case does not meet the threshold for judicial review and the counter-application must succeed.⁵²

COSTS

[53] The first respondent vigorously contends for a costs order ‘*de bonis propriis*’ against the applicant’s firm of attorneys of record because of the frivolous and technical approach adopted in connection with this second review application. I am afraid that I must disagree as some of the points for consideration were at least ‘arguable’ legal concerns. Further, many difficulties arose because of the lack of detail in the remittal order.⁵³

[54] I must, however, record that the entire approach by the applicant’s legal team leaves much to be desired. Whether this approach amounted to a material departure from the responsibility of their office has, in my view, not been clearly

⁵⁰ Telcordia Technologies Inc v Telkom SA Ltd 2007 (3) SA 266 (SCA) at [85].

⁵¹ Lufuno Mphaphuli & Associates (Pty) Ltd v Andrews and Another 2009 (4) SA 529 (CC) at [261].

⁵² The applicant was afforded a complete opportunity to present its case to the second respondent.

⁵³ The remittal order did not specify the issues required for “reconsideration” by the second respondent.

demonstrated in these papers. What is abundantly clear is that the unfortunate approach adopted by the applicant's legal team most certainly necessitated the need to employ senior counsel on behalf of the first respondent. Further, a costs order on the attorney and client scale is warranted.⁵⁴

ORDER

[55] The following order is granted:

1. The applicant's application for the review and setting aside of the award of the second respondent dated 12 January 2024 in terms of section 33(1) of the Arbitration Act 42 of 1965 ("the Act") is dismissed.
2. The applicant is with this ordered to redeliver the '*Noelle Marie*' to the first respondent.
3. The applicant is directed to take all steps necessary to transfer ownership of the '*Noelle Marie*' into the first respondent's name.
4. The applicant shall pay the first respondent US\$15,000 monthly from 1 August 2017 until the '*Noelle Marie*' is redelivered to the first respondent.
5. The applicant shall pay the first respondent interest on the aforesaid monthly amounts at 10.5% per annum from 12 January 2024 until the payment date (both days inclusive).
6. The applicant is entitled to a reduction in the purchase price of the vessels in respect of the following defects:
 - a. excessive sediment in the fuel tanks of all the vessels, except the *Mackenzie Marie*

⁵⁴ The applicant contended for a "re-hearing" the same issues that were presented in the initial review application

- b. leaks in the refrigeration systems on all the vessels
- c. non-functional (leaking) bait freezer on the *Mackenzie Marie*, and
- d. rotten deck planking on the *Noelle Marie* and the *Conlan James*.

(“the actionable defects”)

7. The first respondent shall pay the applicant US\$56,400, together with interest at 10.5% *per annum*, from 12 January 2024 until the payment date as compensation for the actionable defects (both days inclusive).

8. The amount owed by the first respondent to the applicant, as set out in paragraph 7 above, shall be set off against the amount owed by the applicant to the first respondent, as set out in paragraph 4 above.

9. The applicant shall pay one-third of the first respondent’s costs in the arbitration incurred before 17 March 2023 and subsequent costs relating to the quantum determination and costs hearing, which took place on 28 to 30 November 2023 (save for those parts of the arbitration in respect of which costs orders had already been made).

10. The cost orders in the arbitration made before 17 March 2023 are made and confirmed as court orders.

11. The applicant is directed to pay the costs of the review application and the counter-application on the scale as between attorney and client, including the costs of counsel on scale C.

E. D. WILLE
Cape Town