



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No: J326/21

In the matter between:

THE UNIVERSITY OF SOUTH AFRICA

Applicant

and

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

First Respondent

WILLEM KOEKEMOER N.O.

Second Respondent

PHUMLANI ZWELITHINI RAPHAEL ZWANE

Third Respondent

Heard: 20 August 2024

**Delivered: 03 January 2025 (This judgment was handed down electronically by
circulation to the parties' legal representatives by email, publication on the
Labour Court website and release to SAFLII. The date and time for handing-
down is deemed to be 10h00 on 03 January 2025.)**

JUDGMENT

NAVSA, AJ

Introduction

- [1] The applicant (UNISA), in Part B of its application, seeks an order to review and set aside the jurisdictional ruling made by the second respondent (Commissioner Koekemoer).¹ UNISA has sought condonation for the late filing of its review application.
- [2] UNISA's condonation application and review application is opposed by the third respondent (Mr Zwane).
- [3] The jurisdictional ruling that forms the subject matter of the review application was handed down on 6 December 2020. UNISA contends that the ruling did not come to its attention until 2 February 2021.
- [4] In placing reliance on section 145 of the Labour Relations Act² (the LRA), UNISA asserts that its review application was required to have been brought within six weeks by 16 March 2021. UNISA brought its review application on 25 March 2021, and asserts that the degree of lateness, in those circumstances, is minimal. UNISA contends further that it would be in the interests of justice for condonation to be granted.
- [5] Mr. Zwane, conversely, contends that it is highly unlikely that UNISA was unaware of the jurisdictional ruling issued on 6 December 2020, and that he would suffer prejudice were condonation to be granted.
- [6] UNISA has demonstrated good cause for condonation to be granted, and there is no material prejudice to Mr. Zwane. On the basis of the trite legal principles governing applications for condonation, and in the exercise of this

¹ In Part A of the application UNISA sought urgent relief that the arbitration proceedings set down for hearing on 6 April 2021 under case no. GATW 2504-20 ("unfair labour practice case") and case no GATW8092-20 ("unfair dismissal case") be stayed pending the review in Part B of its Notice of Motion. On 1 April 2021, the Honourable Justice Cele stayed the arbitration proceedings pending the review in Part B.

² No. 66 of 1995.

Court's discretion, condonation is granted, for the late delivery of UNISA's review application.

- [7] In the jurisdictional ruling, under scrutiny, Commissioner Koekemoer found that UNISA failed to establish *res judicata* and ruled that the CCMA has jurisdiction to arbitrate upon the unfair dismissal dispute of Mr. Zwane.

Background and litigation history

- [8] On 30 September 2015, Mr. Zwane was appointed as the Chief Financial Officer for UNISA.

- [9] A memorandum of agreement (agreement) was signed between UNISA and Mr. Zwane. Of particular significance in the agreement, for purposes of the review application, are clause 12 which deals with the *termination of service*, and clause 13 which concerns *arbitration*.

- [10] Clause 12, *termination of service*, provides in Clause 12.4 for misconduct to be dealt with in terms of Clause 13, the arbitration clause.

- [11] Clause 13 of the agreement, in turn, provides for the submission to and decision by arbitration of all disputes between the parties, in so far as it relates to the interpretation or application of the agreement, the carrying into effect of the agreement, any rights and obligations arising from the agreement, and the termination or purported termination of the agreement.

- [12] Clause 13.4 of the agreement provides that the arbitration shall be subject to the arbitration legislation for the time being in force in the Republic of South Africa.

- [13] Clause 13.8 of the agreement, importantly, provides as follows:

"The decision of the arbitrator shall be final and neither party will have any further recourse including but not limited to recourse at the CCMA, Labour Court, High Court etcetera."

- [14] Mr. Zwane accepts that an employment agreement existed between UNISA and himself but denies that such an agreement contained a private arbitration

clause which ousts the jurisdiction of the Commission for Conciliation, Mediation and Arbitration (CCMA). Before Commissioner Koekemoer, much was made of a disputed copy of the agreement being provided to the CCMA as opposed to the original version of the agreement.

- [15] While employed by the University, the Companies and Intellectual Property Commission (the CIPC) brought an application in the High Court, Pretoria to have Mr. Zwane disqualified from serving as a Director and/or declared a delinquent in terms of the provisions of the Companies Act³ (“the Companies Act”).
- [16] On 8 August 2019, the High Court, Pretoria per the Honourable Tuchten J granted an order to such effect.
- [17] UNISA contends that this ultimately set in motion, together with other alleged infractions on the part of Mr. Zwane, a referral to private arbitration in terms of Mr. Zwane’s contract of employment.
- [18] Consequently, on or about 9 October 2019, UNISA issued a notice of arbitration to Mr. Zwane.
- [19] On 21 October 2019, UNISA issued an amended notice of arbitration to Mr. Zwane. UNISA indicated that the relief sought would include, amongst others, that Mr. Zwane be declared to have committed gross misconduct and/or to have committed a material breach of the terms of his contract of employment.
- [20] On 21 October 2019, Mr. Zwane was given a notice of intention to suspend him and was given until 22 October 2019 to show cause why he should not be suspended.
- [21] On 22 October 2019, the Vice-Principal and Vice-Chancellor of the University, Professor Makhanya (Professor Makhanya) issued Mr. Zwane with a notice of suspension.

³ No. 71 of 2008.

- [22] On 17 January 2020, a pre-trial meeting was held between the parties before Advocate Malowa (Malowa) who had been appointed as the private arbitrator. The pre-trial minute records in clause 14, that Mr Zwane accepted that the forum had jurisdiction subject to the raising of points *in limine* by Mr. Zwane.
- [23] Mr. Zwane contends that the private arbitration process was a *forced one*.
- [24] On 5 February 2020, Mr. Zwane referred an unfair labour practice dispute to the CCMA under case number GATW 2504-20, in which he alleged, amongst others, that he had been unfairly suspended. The unfair labour practice dispute was set down for conciliation on 4 March 2020. It ultimately remained unresolved, and a certificate of non-resolution was issued to that effect.
- [25] On 18 May 2020, Advocate Malowa handed down his findings together with his reasons. Mr. Zwane was found guilty of six charges.
- [26] On 28 May 2020 and after consideration of the aggravating and mitigating factors submitted, Advocate Malowa found that an appropriate sanction would be to dismiss Mr. Zwane from UNISA's employment.
- [27] Neither Advocate Malowa's findings on the merits nor his findings on sanction formed part of the material placed on record before Commissioner Koekemoer in consideration of the jurisdictional point of *res judicata* raised by UNISA. On 29 May 2020, Professor Makhanya issued Mr. Zwane with a formal letter of dismissal.
- [28] On or about 3 June 2020, Mr. Zwane referred an unfair dismissal dispute to the CCMA under case number GATW 8092 – 20 in which he alleged that his dismissal was both procedurally and substantively unfair.
- [29] On 21 September 2020, Mr Zwane filed a consolidation application in which he sought to consolidate his unfair labour practice dispute and his unfair dismissal dispute. Mr. Zwane requested that the two matters be heard on 22 September 2020.
- [30] On 22 September 2020, UNISA raised a point *in limine*, claiming that the CCMA lacked jurisdiction. From the transcript of the CCMA proceedings on

22 September 2020, Mr. Maluleke, a Senior Legal Advisor at UNISA, and on its behalf, asserted the following:

- 30.1 The matter had already been arbitrated before a private arbitrator Advocate Malowa, who had dismissed Mr. Zwane.
- 30.2 There was a contract between UNISA and Mr. Zwane, and this contract was the subject of contention during the private arbitration process.
- 30.3 Mr. Zwane's complete signed contract was on his personnel file with UNISA.
- 30.4 Clause 13 of the contract was read into the record by Mr. Maluleke.
- 30.5 Mr. Zwane is required to have brought a review application in respect of the private arbitration award.
- 30.6 Following on from the private arbitration award a dismissal letter was issued to Mr. Zwane.
- 30.7 He was uncertain if the CCMA had the documents that he had and sought to place reliance on, namely the contract and the letter of dismissal. If the CCMA did not, he sought an indulgence that they should be filed with the CCMA in order for the jurisdictional point to be properly ventilated.

[31] On 22 September 2020, Commissioner Koekemoer indicated to Mr. Maluleke that the CCMA did not have the documents referred to by him and asked for copies to be made available to the CCMA.

[32] On 22 September 2020, Mr. Zwane, in response to the jurisdictional point raised, took issue with the copy of the employment contract that Mr. Maluleke had read from. He took issue with its validity and called for the original employment contract to be produced by UNISA. Mr. Zwane also disputed the pre-trial minutes, and that he had been afforded an opportunity to raise the preliminary points that he had wanted to. Mr. Zwane also repeated his

assertions that he had participated in the private arbitration process under duress. Mr. Zwane was cross-examined by Mr. Maluleke.

[33] On 22 September 2020, Commissioner Koekemoer enquired into whether there was an original version of the employment contract. Mr. Maluleke once more re-iterated that the original version of the contract was in Mr. Zwane's personnel file, and that UNISA would make it available to the CCMA.

[34] On 30 September 2020, there was a further sitting at the CCMA in which Commissioner Koekemoer referred to the directive that he had issued around the contract of employment. Commissioner Koekemoer invited both parties to make further oral submissions.

34.1 Mr. Maluleke, on behalf of UNISA, made submissions that there had already been a private arbitration process which had finalised the matter, and that the matter was accordingly *res judicata*.

34.2 Mr. Maluleke made further submissions that UNISA had a copy of the employment contract, and as the original contract could not be located, a copy was able to be used and relied on by UNISA in terms of the law of evidence.

34.2 Mr. Zwane stressed that the original contract of employment had still not been provided by UNISA, now, over a week later.

[35] On 2 October 2020, Commissioner Koekemoer recorded that the parties had submitted some documents via e-mail upon his request, but that various relevant documents were still outstanding. Commissioner Koekemoer recorded the following, concerning the *point in limine*, and issued a ruling in the following terms:

'Points in Limine'

11. The respondent raised a point in limine claiming that the CCMA lacked jurisdiction, as there is an agreed upon private arbitration clause

contained in the contract of employment and an award rendered in terms of this clause, which award is final.

12. The applicant opposed these claims and submitted the contrary.
13. I ruled that the respondent should submit the originally signed contract of employment and any additional documents the parties wish to submit by 30 September at 09h00 to enable me to determine jurisdiction...

Ruling

25. From the premises that the applicant will have to establish jurisdiction as provided for in Rule 22 of the CCMA rules, case management is directed to enrol the matter for an in limine hearing.
26. The parties are also referred to Rule 31 of the CCMA rules and is directed to serve and file the jurisdictional points accordingly.'

[36] On 22 October 2020, Commissioner E Harmse (Commissioner Harmse) issued a combined ruling for both the unfair labour practice dispute and the unfair dismissal dispute.

[37] Concerning the unfair dismissal dispute Commissioner Harmse referred to Commissioner Koekemoer's ruling on 2 October 2020. Commissioner Koekemoer had instructed Mr. Zwane to bring a proper application in terms of rule 31, and that Mr. Zwane had not complied with that instruction. Mr. Zwane was once more instructed by Commissioner Harmse, on this occasion, to comply with rules 22 and 31 of the CCMA rules concerning jurisdiction and to also address the question of consolidation of the two disputes.

[38] On or about 27 October 2020, Mr. Zwane brought the application concerning jurisdiction in terms of rules 22 and 31 of the CCMA Rules.

[39] On 8 November 2020, this was met by UNISA filing a notice of exception and a special plea, and on 10 November 2020 by UNISA filing a notice of application to strike out. Answering affidavits and replying affidavits were also

exchanged between the parties in the rule 22 application, with Mr. Zwane also filing written submissions.

The 6 December 2020 jurisdictional ruling

- [40] On 6 December 2020, Commissioner Koekemoer issued a jurisdictional ruling in respect of the unfair dismissal dispute.
- [41] Commissioner Koekemoer referenced the two occasions in which the jurisdictional point of *res judicata* had been addressed by the parties, namely on 22 September 2020 and 30 September 2020. He also referred to his ruling on 2 October 2020, and the imposition of timelines by Commissioner Harmse on 22 October 2020, in respect of the rule 22 application.
- [42] On 25 November 2020, when the matter was once more scheduled for an *in limine* hearing and the parties were not in attendance, Commissioner Koekemoer reconsidered his ruling of 2 October 2020, and due to apparent ambiguities in his ruling of 2 October 2020, rescinded, out of his own accord, the 2 October 2020 ruling.
- [43] Commissioner Koekemoer, having done so, then dealt with the *point in limine* taking into consideration the testimony of Mr. Zwane on 22 September 2020, and the submissions and evidence up to and including 30 September 2020. He did not regard any pleadings or submissions delivered post 30 September 2020 due to objections raised by UNISA in the subsequent pleadings
- [44] Commissioner Koekemoer in outlining the background to the dispute accepted that there had been a hearing but stated that whether the hearing amounted to a private arbitration in terms of the contract of employment between Mr. Zwane and UNISA, remained an open question.
- [45] Commissioner Koekemoer, in his analysis of the parties' respective submissions, noted his concern that the original contract of employment between the parties had not been presented, and that the question pertaining to a valid arbitration clause remained open.

[46] Commissioner Koekemoer also took issue with the fact that neither the final notice of private arbitration with the relevant terms of reference, nor the signed private arbitration award itself was presented, and believed that it would not be fair to uphold the plea of *res judicata* given the circumstances of the case.

[47] Commissioner Koekemoer accordingly made the following ruling:

'Ruling

36. The respondent failed to establish *res judicata*.
37. I herewith rule that the CCMA has jurisdiction to arbitrate upon this dismissal dispute of the applicant.
38. Case management is herewith directed to schedule this matter before another commissioner for arbitration as soon as possible.
39. Pertaining to the consolidation application the applicant delivered on 21 September 2020, I am not prepared to consolidate the two cases.'

Legal principles and analysis

[48] The applicant has effectively raised five grounds of review in terms of the reasonableness test as set out in *Sidumo and another v Rustenburg Platinum Mines Ltd and others*⁴:

- 48.1 First, that the Commissioner exceeded his powers in finding that the CCMA had jurisdiction in circumstances where the parties agreed through a contract of employment that any misconduct, including a termination, will be dealt with through private arbitration.
- 48.2 Second, that the Commissioner committed a gross irregularity in finding that only an original agreement could prove a valid arbitration clause, in circumstances where a copy of the agreement was before it and evidenced the arbitration clause.

⁴ (2007) 28 ILJ 2405 (CC).

- 48.3 Third, that the Commissioner misconducted himself or committed a gross irregularity in making the jurisdictional ruling before affording the parties the right to be heard.
- 48.4 Fourth, the Commissioner exceeded his powers by rescinding his own ruling in circumstances where he was yet to assume jurisdiction of the matter.
- 48.5 Fifth, the Commissioner rescinded his own ruling in circumstances where none of the jurisdictional facts in section 144 of the LRA were met.

Jurisdiction ruling reviews

[49] It is trite that the CCMA and bargaining councils are not courts of law, and do not enjoy the status of courts of law. As administrative bodies charged with the execution of statutory functions, the jurisdiction of the CCMA and bargaining councils are governed and constrained by the statute/s which empower them.⁵

[50] In *SA Rugby Players Association and others v SA Rugby (Pty) Ltd and others*⁶, the Labour Appeal Court stated this position as follows:

‘The CCMA is a creature of statute and is not a court of law. As a general rule, it cannot decide its own jurisdiction . It can only make a ruling for convenience. Whether it has jurisdiction or not in a particular matter is to be decided by the Labour Court....This means that, in the context of this case, the CCMA may not grant itself jurisdiction which it does not have. Nor may it deprive itself of jurisdiction by making a wrong finding that it lacks jurisdiction which it actually has. There is, however, nothing wrong with the CCMA enquiring whether it has jurisdiction in a particular matter provided it is understood that it does so for purposes of convenience and not because its decision on such issue is binding in law on the parties’

(Emphasis added)

⁵ *SA Municipal Workers Union on behalf of Mgcineni v SA Local Government Bargaining Council and others* (2024) 45 ILJ 2367 (LC) at para 15.

⁶ (2008) 29 ILJ 2218 (LAC) at para 40.

- [51] Administrative tribunals such as the CCMA cannot finally determine their own jurisdiction, and their findings on jurisdictional facts are provisional, made for the sake of convenience.
- [52] UNISA seeks to have a jurisdictional ruling reviewed and set aside. The test in reviewing a jurisdictional ruling is simply whether the arbitrator was right or wrong, and not whether his or her conclusion was reasonable as set out in *Sidumo*. There are as the Honourable van Niekerk J (as he then was), aptly puts it, '*no shades of reasonableness that enter the equation*.'⁷
- [53] The test in relation to jurisdictional findings in its simplest form, is one of correctness, not reasonableness.⁸
- [54] A jurisdictional ruling is thus subject to review by the Labour Court on objectively justifiable grounds. The test is whether, objectively speaking, the facts which would give the CCMA jurisdiction to entertain the dispute existed.⁹
- [55] The Labour Court has stated that the Commissioner's decision is of no real consequence, as the Labour Court must decide the jurisdictional issue *de novo* based on the record filed in the review proceedings.¹⁰
- [56] The question of the record and what was placed before the Commissioner in consideration of the jurisdictional point of *res judicata*, on the facts of this case, takes on critical importance.
- [57] The Labour Court has expressed the view that in deciding whether a commissioner has exceeded his jurisdiction in making an award, the

⁷ *Department of Public Works and another v Vukela and others* (2022) 43 ILJ 2319 (LC) at para31.

⁸ See also: *Global Outdoors Systems v Du Toit and Others* (2011) 32 ILJ 1100 (LC) at para 18; See also *CTP Ltd t/a Caxton Newspapers Division v Mphaphuli NO and others* (2015) 36 ILJ 1042 (LC) at para 16.

⁹ *City of Cape Town v SA Municipal Workers Union on behalf of Jacobs and others* (2009) 30 ILJ 1983 (LAC) at paragraphs 27 - 28 ; See also *Phera v Education Labour Relations Council and others* (2012) 33 ILJ 2839 (LAC); See also *De Milander v Member of the Executive Council for the Department of Finance: Eastern Cape and others* (2013) 34 ILJ 1427 (LAC) at para 24; *Phaka and others v Bracks NO and others* (2015) 36 ILJ 1541 (LAC).

¹⁰ *Uber SA Technology Services (Pty) Ltd v National Union of Public Service and Allied Workers and others* (2018) 39 ILJ 903 (LC) at paras 63 – 64; See also *University of South Africa v Stapelberg NO and others* (2019) 40 ILJ 2610 at para 27.

reviewing court is not necessarily confined to the record of the arbitration proceedings.¹¹

- [58] However, in *Phera v Education Labour Relations Council and others*¹², the Labour Appeal Court stressed that the question the Labour Court should consider, when reviewing a Commissioner's jurisdictional ruling, was:

‘...whether the material that was placed before the commissioner established that the bargaining council had jurisdiction to entertain the dispute. The starting point is the nature of the dispute...’

[Emphasis added]

- [59] The general approach adopted by the courts, is to determine the jurisdictional fact on the record which served before the arbitrator without being bound by any of the findings made by the arbitrator in respect of the jurisdictional fact.¹³
- [60] The nature of the dispute is that UNISA contends that the CCMA lacked jurisdiction by virtue of a contract of employment wherein the parties agreed that any misconduct will be dealt with through private arbitration. A private arbitration award was handed down which is final and binding between the parties.
- [61] UNISA relies on the principle of *res judicata*. If the principle applies, the CCMA will not have jurisdiction as the unfair dismissal dispute, including on the merits would have been finally determined. If, however, the principle does not apply, the CCMA would have jurisdiction, with the unfair dismissal dispute then being required to be enrolled for arbitration at the CCMA.

Res judicata

- [62] *Res judicata* is available where another court (or tribunal) of competent jurisdiction has already finally pronounced on the same issues between the

¹¹ *City of Tshwane Metropolitan Municipality v SA Local Government Bargaining Council and others* (2012) 33 ILJ 191 (LC) at paras 4 – 5; See also *Independent Institute of Education (Pty) Ltd v Mbileni and others* (2013) 34 ILJ 1538 (LC) at para 9.

¹² (2012) 33 ILJ 2839 (LC) at para 14.

¹³ *Distinctive Choice 721 CC t/a Husan Panel Beaters v Dispute Resolution Centre (Motor Industry Bargaining Council) and Others* (2013) 34 ILJ 3184 (LC) at paras 74 – 75.

parties. Fundamentally, the previous judgment must have been given by a competent court, the matter must have involved the same parties and must have been based on the same cause of action with respect to the subject matter or thing.¹⁴

Evaluation

- [63] It is the correctness standard that finds application in respect of the review of the jurisdictional ruling dated 6 December 2020.
- [64] Private arbitration, as statutorily embodied in section 33 of the Arbitration Act¹⁵, flows from the consent of the parties to the arbitration agreement, who define the powers of adjudication.
- [65] An arbitration agreement concluded in terms of the Arbitration Act has certain consequences. In terms of section 28 of the Arbitration Act, arbitration awards are normally final and binding and not subject to appeal.
- [66] UNISA sought to place reliance on a private arbitration clause in the employment contract between the two parties, and yet the contract of employment was never properly placed before the CCMA.
- [67] The best evidence to have been produced would have been in the form of the original contract of employment, but even on the copies that were adduced it did not definitively settle the question whether there was a private arbitration clause in the employment contract.
- [68] The transcripts of the proceedings before the CCMA reveals that issues were taken by Mr. Zwane with the contract of employment and that the existence of a private arbitration clause in the contract was placed in dispute. Mr. Maluleke, on behalf of UNISA, was required to have placed material on the record before Commissioner Koekemoer in support of the defence raised of *res judicata*.

¹⁴ *National Education Health and Allied Workers Union on behalf of Kgekwané v Department of Development Planning and Local Government Gauteng* (2015) 36 ILJ 1247 (LAC) at para 26; See also *Nestlé (SA) Pty Ltd v Mars Inc* 2001 (4) SA 542 (SCA) at para 16; See also *Democratised Transport Logistics and Allied Workers Union on behalf of Tshiwili v Bidvest Services (Pty) Ltd t/a Bidvest Prestige Cleaning Services* (2023) 44 ILJ 2727 (LC) at para 11.

¹⁵ No. 42 of 1965.

- [69] Mr. Maluleke was afforded a number of different opportunities to provide the original contract of employment reflecting the private arbitration clause, and any other relevant documentation in support of the defence of *res judicata*. The record of the proceedings before the CCMA reflect that these opportunities were regrettably spurned by UNISA.
- [70] UNISA seems to suggest that Commissioner Koekemoer did not afford the parties the right to be heard, but this is directly contradicted by the record of the proceedings at the CCMA. UNISA was afforded adequate and ample opportunity to make submissions, to cross-examine Mr. Zwane, to provide supporting documentation, and to make further oral submissions, in respect of its jurisdictional point raised of *res judicata*.
- [71] Even if regard is had to the submissions made on paper that were not taken into consideration by Commissioner Koekemoer, which this Court, on the authorities is entitled to do, UNISA did no more than file a notice of exception and a special plea, a notice of application to strike out, and an answering affidavit. UNISA did not take advantage of yet a further opportunity to place new material before Commissioner Koekemoer on the *res judicata* point.
- [72] UNISA's submissions on paper did not move the needle any further towards the CCMA's jurisdiction being ousted. Fundamentally UNISA did not attach the prior private arbitration award (on merits and sanction) that would have proven the final pronouncement on the issue of Mr. Zwane's misconduct and supported its jurisdictional point of *res judicata*.
- [73] It is difficult to understand why the final private arbitration findings on the merits and sanction were simply not placed before Commissioner Koekemoer by UNISA at any point in time, given that the defence of *res judicata* was being relied upon by the institution.
- [74] Critically, at no point was the final private arbitration findings on the merits or on sanction part of the material that was placed before Commissioner

Koekemoer. The record reflects that the letter of dismissal was referred to and placed before Commissioner Koekemoer. This was insufficient.

- [75] The determination of the jurisdictional issue is the Labour Court's to make.
- [76] In the absence of and without a final private arbitration award (on the merits and sanction) being part of the material that was placed before Commissioner Koekemoer, the defence of *res judicata* raised by UNISA cannot succeed, and it must then follow that the jurisdiction of the CCMA has not been ousted.¹⁶
- [77] I am mindful that there does seem to be a private arbitration award, but this material and evidence (only produced at the review stage) was, inexplicably, never placed before Commissioner Koekemoer. UNISA as pointed out earlier in this judgment had more than ample opportunity to do so, and UNISA is unfortunately the architect and author of its own misfortune. This Court is bound by the law.
- [78] Commissioner Koekemoer's decision in relation to the jurisdictional point raised by UNISA was thus correct and is upheld by this Court.
- [79] In my view the CCMA, on the objective facts, as well as on the material that was placed before Commissioner Koekemoer, considering the applicable law, does have jurisdiction to entertain Mr. Zwane's unfair dismissal dispute.

Costs

- [80] With reference to the issue of costs, this Court has a broad discretion to make costs orders in accordance with the requirements of law and fairness.
- [81] In my view, the interests of justice will best be served by making no order as to costs.
- [82] In the result, the following order is made:

Order

¹⁶ *Johnson v Commission for Conciliation, Mediation and Arbitration and others* (2005) 26 ILJ 1332 (LC) at para 13.

1. The review application is dismissed.
2. There is no order as to costs.

ZM Navsa

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant:

Advocate Seshni Cooper

Instructed by:

Diale Mogashoa Attorneys.

For the Third Respondent:

Self-represented

LABOUR COURT