



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No: JR811/15

In the matter between:

TABAKO EPHRAIM MPHAHLELE

Applicant

and

**COMMISSION FOR CONCILIATION, MEDIATION
AND ARBITRATION**

First Respondent

BELLA GOLDMAN N. O.

Second Respondent

SOUTH AFRICAN AIRWAYS (SOC) LTD

Third Respondent

Heard: 29 May 2025

Delivered: 25 May 2025

Reasons: 24 June 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 24 June 2025.)

REASONS FOR ORDER

PHEHANE, JIntroduction

[1] This is an application by the applicant to ostensibly, to remit his dispute to the first respondent, the Commission for Conciliation, Mediation and Arbitration (CCMA) to be heard *de novo* by a commisisoner other than the second respondent on the basis that the CCMA and the second respondent have failed to file the record of the arbitration proceedings (remittal application). The third respondent opposes this application.

[2] On 29 May 2025, this Court dismissed the remittal application with costs. The reasons for the order follow.

Background facts

[3] The applicant is self representing. He informed this Court that he is a trade union official. The applicant launched a review application in terms of section 145 of the Labour Relations Act¹ (LRA) on 12 May 2015 to review and set aside the arbitration award dated 31 April 2015 by the second respondent.

[4] On 15 September 2015, the CCMA delivered a notice in terms of Rule 7A(3) of the former Rules of this Court.² The applicant avers that after transcribing the record, he discovered that the incorrect electronic disc had been filed by the CCMA. Although not pleaded, the applicant submitted in oral argument from the Bar, that he sent written correspondence to the CCMA dated 10 July 2015,³ requesting that the correct electronic record be filed and he waited in the hope that the CCMA would

¹ Act 66 of 1995, as amended.

² GN 1665 in GG 17495 of 14 October 1996 (repealed on 17 July 2024). This notice appears at p 13 of the pleadings bundle.

³ A copy of this letter is simply attached to the founding affidavit without being referred to in the founding affidavit. It is therefore, disregarded. See: *Swissbourough Diamond Mines (Pty) Ltd and Others v Government of the Republic of South Africa and Others* 1992 (2) SA 279 (T).

comply; it did not. The applicant avers that the CCMA did not respond “*to the letters*” to file the correct records.⁴

[5] Approximately one year later, on 15 February 2016, the applicant dispatched correspondence to the Judge President seeking a directive as the CCMA had filed the incorrect electronic record. The applicant states that his correspondence went unanswered.

[6] About nine months later, on 30 November 2017, the applicant launched this remittal application.

Remittal application

[7] Although not prayed for in his notice of motion, the alternative relief sought by the applicant is an order compelling the CCMA to file the correct electronic record.⁵

[8] The applicant submits that to the date of the preparation and filing of this application, the CCMA had still not filed the correct electronic record.⁶ That is, two years after the *review* application was filed.

Opposition

[9] The third respondent contends that the relief sought by the applicant is incompetent, as a dispute may be remitted to an arbitrating body after the award or ruling, as the case may be, has been reviewed and set aside for reasons such as the inability to obtain the electronic record of the arbitration proceedings. The third respondent submits that the applicant failed to take all reasonable steps to secure the electronic record from the CCMA. The first step the applicant ought to have taken, was to bring an application within a reasonable time, to compel the CCMA to file the correct record. A further step was to seek a reconstruction of the record. Only if reconstruction were impossible, then, to seek the consent of the third respondent

⁴ Founding affidavit at para 6.7 on p 9.

⁵ Founding affidavit at para 5.2 on p 7.

⁶ *Ibid* at para 6.8

to review and set aside the award and to remit the dispute to the CCMA for a hearing *de novo*.

[10] The third respondent relies, in this regard, on the case is *South African Social Security Agency v Hartley and Others*,⁷ (SASSA) where Prinsloo J sets out in detail, citing the relevant authorities, the steps that an applicant is to take in terms of the provisions of the former Rule 7A and item 11.2.4 of the former Practice Directive of this Court,⁸ to secure the record of the arbitration proceedings and to ensure that the record that is necessary for the determination of the review application is before the Court. In SASSA, this Court remarked that foregoing the initial steps and jumping ahead to write to the Judge President for directives is an abuse, as is seeking advice of the Judge President when it is obvious that an applicant should bring an application to compel the relevant body to file the record when it has failed to do so.

[11] The respondent submits therefore, that in instances where the CCMA has not stated that the record is lost, the relief sought by the applicant is incompetent.

Lapsing of the review application

[12] I raised with Mr Mphahele the obvious difficulty that faces him, and that is, in the absence of a Rule 7A(6) notice and the filing of a mechanical and non-mechanical record, that his review application is deemed withdrawn for failure to comply with item 11.2.2 read with item 11.2.3, as well as item 11.2.7 of the former Practice Manual. These provisions provided that a review application is deemed withdrawn if the record is not filed within 60 days of the Registrar informing the applicant that the record has been filed by the arbitrating body, and that a review application will lapse if all the necessary papers are not filed within 12 months of the launch of the application, including requesting the Registrar to allocate a hearing date. Further, that in terms of the provisions of item 16 of the former Practice Manual, a review application lapses where an applicant fails to take further steps six months after the last process filed. Therefore, the review lapsed on 15 January 2016, before he sent a letter to the Judge President for directives.

⁷ (2023) 44 ILJ 1334 (LC) at paras 43 to 64.

⁸ Practice Manual of the Labour Court of South Africa, 2013 (repealed on 17 July 2024).

[13] The applicant denied that the review application lapsed. This is surprising for a union official, who ought to be familiar with the Rules and Practice Manual of the Court that were operative at the time and binding. The applicant further, rather surprisingly submits that he complied with the rules and filed the record, *albeit* an incomplete record. The fact of the matter is, no record of the arbitration proceedings sought to be reviewed was ever filed and placed before this Court, thus rendering the review application defective.

[14] The applicant proceeded to mislead the Court in stating that the review was enrolled for a hearing and an order was made by a Judge. He could not explain what order was made, on which date and by which Judge. It is a serious matter for a party to mislead the Court.

[15] I also raised with the applicant, given his view that the review application had not lapsed, which view I disagreed with, in light of the principle of the speedy resolution of employment law disputes as espoused by the LRA, on what basis this Court could issue an order compelling the CCMA to file a record, now, ten years later, in circumstances where on his own version before this Court, he did not follow up with the CCMA since 2015, after informing the CCMA that it filed an incorrect record. The applicant insisted that he did *something* - and that was to write to the Judge President. I have already discussed above, that this Court has remarked that such an approach as an initial step is an abuse.

[16] In my view, the review application has lapsed. There is accordingly no live review application before this Court. Therefore, the remittal application fails. If I am wrong, which I do not think I am, the review application is fatally defective and for that reason too, the remittal application fails.

[17] The applicant is *au fair* with the Rules and Practice Manual of this Court that was operative at the time. This application is ill-conceived and was doomed from inception. The applicant has wasted this Court's time pursuing an application that lacks merit. He failed to comply with the Rules and Practice Manual and he is the architect of his own misfortune in that regard. As the dominant litigant, he did nothing

to prosecute his review application – he did not approach the third respondent in terms of item 11.2.3 of the former Practice Manual for consent for an extension to file the record, failing such consent, an application to the Judge President for such extension.

[18] The applicant's conduct of misleading the Court with untruthful submissions that his review application was heard when asked to make submissions on the archiving of the review application, is frowned upon.

[19] It is for these reasons that this Court ordered the applicant to pay the costs of this application in order to deter such conduct of misleading the Court and pursuing applications that are hopeless, seeking incompetent relief.

[20] It is for the above-mentioned reasons, the said order was made.

M. T. M. Phehane
Judge of the Labour Court of South Africa