



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 038938/2024

(1)	REPORTABLE: YES /NO
(2)	OF INTEREST TO OTHER JUDGES: YES /NO
(3)	REVISED.
	
21 JULY 2025	
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SIGNATURE	DATE

In the matter between:

MINISTER OF EMPLOYMENT AND LABOUR

Applicant

and

ARBITRATOR OF AFSA: ADV NETSIANDA RUDZANI

First Respondent

ARBITRATION FOUNDATION OF SOUTH AFRICA

Second Respondent

SPARKS & ELLIS (PTY) LTD

Third Respondent

JUDGMENT

LABUSCHAGNE J

ORDER:

1. The condonation application is dismissed with costs.
2. The review application is enrolled for purposes of its dismissal.
3. The review application is dismissed with costs.
4. Costs on Scale C

JUDGMENT

- [1] The applicant and the third respondent, Sparks & Ellis (Pty) Ltd participated in arbitration proceedings which served before the first respondent as Arbitrator under the auspices of AFSA, the third respondent. The first respondent handed down an award in favour of the third respondent on 10 February 2023. The applicant has brought a review application in terms of section 33 of the Arbitration Act to set aside the arbitration award, and to remit the arbitration to be decided before a different Arbitrator.
- [2] The facts that gave rise to the arbitration proceedings and the award itself are not relevant to these proceedings as the issue is to be determined on a procedural issue.
- [3] After the Arbitrator made his award the third respondent approached the court for an order in terms of section 31, making the arbitration award an order of court. Such an order was made by the High Court on 7 November 2023. The applicant only launched its review application on 17 April 2024 and brought a condonation application for the late bringing of the review application at the same time.

- [4] The question arises whether the applicant's review proceedings are competent in light of the court order of 7 November 2023. As will be shown, the court order stands as an insurmountable hurdle to the relief being sought.
- [5] The Minister as an organ of State is obliged to comply with the order as part of its duty of support to the Courts- unless the order is challenged (Sec 165(4) of the Constitution).The court order is binding on the parties in terms of sec 165(5) of the Constitution. It will stand until set aside. However, there are no proceedings pending to have the court order set aside.
- [6] It is trite that review proceedings, including review proceedings in terms of PAJA, are not competent in respect of court orders. (See: Section 1(ee) of the Promotion of Administrative Justice Act, 3 of 2000).
- [7] The arbitration award was made an order of court in terms of section 31 of the Arbitration Act. Once it was made an order of court, such award may be enforced in the same manner as any judgment or order to the same effect (Section 31(3) of the Arbitration Act).
- [8] Once an award has been made ,but has not yet been made an order of court, the Arbitration Act provides for two processes to interfere with such award. The first is an application for remittal of the award in terms of section 32. The second is an application to set aside the award in terms of section 33.
- [9] The applicant in this matter purports to exercise its rights under section 33, which reads as follows:

“(1) *Where –*

(a) any member of an arbitration tribunal has misconducted himself in relation to his duties as arbitrator or umpire; or

(b) an arbitration tribunal has committed any gross irregularity in the conduct of the arbitration proceedings or has exceeded its powers; or

(c) an award has been improperly obtained,

the court may, on application of any party to the reference after due notice to the other party or parties, make an order setting the award aside.”

[10] Such application, however, has to be brought within 6 (six) weeks after publication of the award (section 33(2)).

[11] A section 33 application for a review of an award by its nature needs to be brought before the award is made an order of court. Once it has been made an order of court, it can only be challenged as an order of court.

[12] The relief sought by the applicant in the notice of motion is the following:

“1. Reviewing and setting aside the arbitration award published by the AFSA arbitration, Adv Netsianda Rudzani C, an AFSA arbitrator, case number AFSA PTA02032022 on 10 February 2023.

2. *The first respondent's arbitration award granted by an AFSA arbitrator, Adv Netsianda Rudzani C, case number AFSA PTA02032022 on 10 February 2023 is remitted to the second respondent for it to be heard under another arbitrator other than the first respondent.*
3. *The costs of this application are to be paid jointly and severally by the respondents opposing this relief."*

[13] The notice of motion clearly takes no cognisance of the fact that the award which it seeks to challenge has already been made an order of court.

[14] In *Air Namibia (Pty) Ltd v Sheelongo* (LCA 13-2014) [2015] NALCMD 14 (17 June 2015), a court in Namibia (when the Arbitration Act of South Africa was still applicable) held at paragraph [19] as follows:

"... I am of the view that from the moment that an arbitration award is made an order of court and, so long as the order of this Court making such award an order of this Court stands, that order remains such an order. The consequences of that transformation are that it would not be competent for this Court to hear an appeal or review against its own order."

[15] The aforesaid quotation, insofar as it refers to an appeal, cannot be endorsed. However, insofar as it refers to a review, it is sound law.

[16] In *Potch Speed Den v Rajah* [1999] JOL 4979 (LC) Zondo J (as he then was) said in paragraph [5]:

“The difficulty which confronts the applicant in this matter is that it seeks to review the award of the CCMA in circumstances where this award has been made an order of court. In my view, once an award has been made an order of court, a change takes place in its legal status of the award. The award becomes an order of that court like any other order of this court.”

[17] Zondo J consequently held that, once an award is made an order of court, the right to take that award on review ceases, and it is not competent for a court of law to review such an award. It is no longer an award, but has become an order of court (see also *Dartprops (Pty) Ltd v CCMA and Others* [1999] 2 BLLR 132 (LC) at paragraphs [8] to [11]; *Greater Taung Local Municipality v South African Local Government Bargaining Council and Others* (2023) 44 ILJ 761 (LAC) at paragraph [11]).

[18] In light of the aforesaid, not only is the application for review not competent, but to entertain the condonation application pertaining to it is not in the interests of justice. As the review is not competent, the condonation application is equally not competent. As the review is bound to fail, the review, a matter of the administration of justice, cannot be permitted to clog the roll and to remain open for judicial scrutiny.

[19] In the premises the order set out above was made in open court.

[REDACTED]

JUDGE OF THE HIGH COURT

APPEARANCES

ATTORNEYS FOR APPLICANT: STATE ATTORNEY
ATTORNEY LETAGENG

COUNSEL FOR APPLICANT : ADV BG MASHABANE

ATTORNEYS FOR RESPONDENT: MAC ROBERTS ATTORNEYS

COUNSEL FOR RESPONDENT : ADV VAN WESTHUIZEN, GIDEON