

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

CASE NO: 035118/2024

DATE: 31-07-2025

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES: NO.

(3) REVISED.

DATE 31 July 2025



SIGNATURE

10 In the matter between

DEVINITY TRADING (PTY) Ltd

Applicant

and

CITY POWER (SOC) LTD

Respondent

J U D G M E N T *EX TEMPORE*
(POSTPONEMENT APPLICATION)

20 **WILSON, J:** The applicant, Devinity Trading, applies to make an arbitral award issued by LT Sebeko SC on 23 January 2024 an order of this court. The respondent, City Power, opposes the application on the basis that it seeks to review and set the award aside.

When the matter was called before me this morning, counsel who settled City Power's heads of argument did not

appear. Instead Mr Loopoo, of the Johannesburg Bar, appeared and asked for a postponement. A postponement application was not made in writing. It was motivated from the bar.

Insofar as I can discern from Mr Loopoo's helpful and lucid submissions, City Power has not paid either the attorneys or the counsel who are involved on its behalf in this matter for several months. There has been fee dispute of some sort between City Power's legal representatives and
10 City Power itself since December last year. It is not suggested and of course cannot be suggested that City Power is completely incapable of paying its lawyers' fees, and I have been given no real sense of why City Power has not paid those fees. In the correspondence uploaded to CaseLines to which I am inclined to have regard, there is mention of budgetary constraints, but no more detail than that is given. I do not think that there is any material on the record that would allow me to find that City Power lacks the resources to properly brief and pay its counsel in this application.

20 The reasons for City Power's counsels' non-appearance therefore remain a mystery – at least insofar as City Power's failure to pay them is concerned. What the failure to pay City Power's lawyers does indicate to me, however, is a lack of concern for its own interests in this application, a lack of respect for the court and an attitude of

indifference to what may happen today in its counsels' absence.

I say this with the utmost respect to Mr Loopoo and his instructing attorneys, bearing in mind their limited mandate before me. However, a litigant who in these circumstances fails to pay its legal representatives and then on the eve of the hearing decides to motivate a postponement application from the bar, displays an attitude that may fairly be described as slovenly and indifferent to what the outcome
10 of the postponement application and the main case might be.

Material to a consideration of whether or not to postpone this application is the balance of prejudice between the parties and City Power's prospects of success in the main application. Insofar as the balance of prejudice is concerned, the arbitration agreement at issue in this case was entered into on 22 December 2015 and the arbitration award that Devinity Trading seeks to enforce was made 18 months ago.

Arbitration is supposed to be a quick and inexpensive way of resolving mostly commercial disputes. I think it is fair
20 to say that Devinity Trading's reliance on arbitration in this case has neither been quick nor inexpensive. The delays that have been occasioned by the opposition to the attempt to make the arbitration award an order of court, and the delay that would be occasioned by postponing this application further, obviously redound to Devinity Trading's prejudice.

Simply put, Devinity Trading struck a bargain with City Power 10 years ago and is still waiting to be paid. Further delay is inherently prejudicial.

The prejudice to City Power is difficult to assess because I have nothing under oath that sets out what that prejudice might be. Prejudice is of course seldom presumed and is always a matter of fact. With no facts setting out City Power's prejudice I am constrained in my assessment. However it is appropriate to take into account whether a
10 failure to postpone the application would deny City Power the reasonable opportunity to present a case that bears some prospects of success. Accordingly, it seems to me that City Power's prospects of success in the main case ought to be considered at this point in the enquiry.

Having read the papers and confirmed my *prima facie* views with Mr Machaba, who appears for Devinity Trading, I am bound to conclude that City Power's prospects of success in the main application are virtually zero. Arbitral awards are not reviewed for the asking. They may only be reviewed on
20 the grounds set out in the Arbitration Act 42 of 1965.

The particular ground on which City Power relies in the main application in this case is that the arbitrator committed a gross irregularity. As far I can see, there are two aspects of the arbitrator's conduct that are said to be grossly irregular on City Power's papers. The first is that he decided

the award on a legal point not put to City Power's representatives at the arbitration and in relation to which City Power had no reasonable opportunity to make submissions. The difficulty with that proposition is that the legal point is nowhere identified on the papers. Nor is it discernible from the papers whether and to what extent the point, if it exists, was put to City Power.

Without those basic starting propositions in the papers, I cannot conclude that there is a reasonable prospect
10 in the main case that City Power will be able to demonstrate that the arbitrator decided the matter before him on a point of law not put to the parties. Mr Loopoo has not been briefed on the merits of the main application and so could not help me, through no fault of his own. Mr Machaba, who is senior counsel and a member of the Johannesburg Bar, would, consistently with his ethical obligations, tell me if I had missed something. But he cannot find the legal point on City's Power's papers either.

I now turn to City Power's second argument in the
20 main application, which is that the arbitrator attached insufficient weight to certain facts and circumstances, and too much weight to others. There is also an allegation that the arbitrator ignored a stated case or ignored material parts of a stated case placed before him and had inappropriate regard to the pleadings that underlay that stated case.

There is no basis on which any of those criticisms, even if they were well-founded, could ground a review of an arbitral award. A gross irregularity for the purposes of the Arbitration Act must be just that – “gross”. A review under the Arbitration Act is not an administrative law review, which deals with a fairly wide set of bases on which public power may be controlled. And it is certainly not an appeal in which a party tries to convince the superior tribunal that factual or legal findings were wrong.

10 Review under the Arbitration Act deals only with errors in procedure that are so gross as to have constituted a denial of justice. The way an arbitrator chooses to weigh up facts, and the facts to which he chooses to have regard, will seldom ground the allegation that a gross irregularity has been committed.

 On top of all of this, Mr Machaba urged me to have regard to the fact that the review application is itself time-barred. But he accepted that I need not consider that particular circumstance if I were to conclude that the review
20 application itself is stillborn. On the papers before me I do reach that conclusion. There are virtually no prospects of success in the review application and it follows that there can be little real prejudice to City Power in the refusal of a postponement.

 For all of those reasons the application for a

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JUDGMENT

postponement is refused, with costs, including the costs of one senior counsel, which may be taxed on scale "B".

A handwritten signature in black ink, appearing to be 'Wilson', with a horizontal black redaction bar placed over the middle of the signature.

WILSON, J
JUDGE OF THE HIGH COURT
31 July 2025