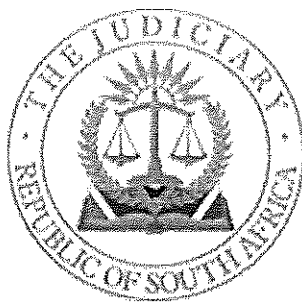




Not reportable

THE LABOUR COURT OF SOUTH AFRICA

HELD AT CAPE TOWN

Case no: C300/2023
& C111/2024

In the matter between:

**LSM DISTRIBUTORS (PTY) LTD
T/A PORSCHE CENTRE CAPE
TOWN**

**Excipient/
Applicant**

and

LUKE GEORGE

**First Respondent (Applicant
in C111/2024)**

T NDZOMBANE N.O.

Second Respondent

MIBCO DISPUTE RESOLUTION

Third Respondent

CENTRE CAPE TOWN

Date of Hearing: 11 September 2025

Date of Judgment: 22 September 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 judgment is deemed to be 10h00 on 22 September 2025.

Summary: (Application to consolidate review and counter-review applications in respect of the same arbitration award – granted – applicant's notice of exception irregular and without merit – dismissed).

JUDGMENT

LESLIE AJ

- [1] On 5 June 2023, the second respondent, acting in his capacity as an arbitrator under the auspices of the third respondent, issued an arbitration award ("the award") in which he held that the dismissal of the first respondent ("Mr George") had been substantively and procedurally unfair. Compensation equivalent to two months' salary was awarded.
- [2] Under case number C300/2023, the applicant ("Porsche Centre") seeks to review and set aside the award. This application was instituted on 28 June 2023. It is opposed by Mr George.
- [3] Under case number C111/2024, Mr George seeks to review and set aside the award, insofar as he takes issue with the relief awarded.¹ Since this "counter-review" application was filed out of time, Mr George has applied for condonation. This application is opposed by Porsche Centre.

¹ In his notice of motion, Mr George seeks to have the award substituted with one of reinstatement. However, in court Mr Van Der Schyff, who appeared for Mr George, clarified that this would no longer be pursued but an order of maximum compensation would be sought.

- [4] Mr George has applied for the consolidation of the two review applications. Porsche Centre opposes the consolidation application.
- [5] In addition, Porsche Centre has issued a "Notice of Exception".
- [6] This judgment addresses the notice of exception and the consolidation application.

The notice of exception

- [7] The "Notice of Exception" runs to 27 pages. It is highly irregular and, for the reasons set out below, it borders on an abuse of the process of this court.
- [8] At the hearing of this matter, I asked Mr Holliday, who appeared for Porsche Centre, whether he had any authority for the proposition that an exception may be raised in motion proceedings. Mr Holliday relied on two cases: *Mothulwe v Labour Court, Johannesburg* ("Mothulwe")² and *Zwane v Sasol Technology* ("Sasol").³
- [9] Neither case remotely offers support for the proposition that an exception may be raised in motion proceedings.⁴ This is unsurprising. In motion proceedings, the notice of motion and founding affidavits comprise the pleadings and the evidence. If a respondent in motion proceedings forms the view that no cause of action has been disclosed (or are vague and embarrassing) his recourse is to seek that the application be dismissed.⁵
- [10] Even if it were permissible in principle to consider an "exception" to the founding papers in C111/2024, the respondent has failed to make out any cogent case in this regard.
- [11] At the hearing of this matter, Mr Holliday submitted that his first ground of exception was that the papers in C111/2024 had never been served on the

² [2025] 8 BLLR 761 (CC).

³ [2023] ZAGPPHC 131; 91849/2015 (22 February 2023).

⁴ *Mothulwe* involved the rescission of previous orders made by the Constitutional Court. *Sasol* involved an exception raised to the plaintiff's particulars of claim in action proceedings.

⁵ On the other hand, if an exception in action proceedings is upheld, it is the pleading to which exception is taken which is destroyed. The remainder of the edifice does not crumble (*Group Five Building Ltd. v Government of the Republic of South Africa, Represented by Minister of Public Works and Land Affairs* 1993 (2) SA 593 (AD) 603.

respondent.⁶ This is clearly not a cognisable ground of exception. It also places Porsche Centre in an invidious position, as it is difficult to discern how it can succeed in "excepting" to papers which it (allegedly) has not received.

[12] On perusal of the Notice of Exception, it appears that Porsche Centre raises a host of complaints that do not fall within the permissible ambit of exceptions (namely, an objection that the pleadings either do not disclose a cause of action or are vague and embarrassing).

[13] In this regard:

13.1 Porsche Centre's first complaint pertains to the contents of Mr George's answering affidavit filed in opposition to the review in case number C300/2023 – which, in Porsche Centre's view, does not disclose a "defence". There is no basis on which to effectively strike out Mr George's answering affidavit. Mr George has an award in his favour. Porsche Centre bears the onus of proving that it should be set aside on review. The paucity of the submissions in Mr George's answering affidavit may or may not assist Porsche Centre in convincing the review court that the award falls to be set aside. The review court will in any event be required to assess whether Porsche Centre has discharged its onus on review.

13.2 As regards Porsche Centre's complaint in relation to C111/2024, it is difficult to understand how Porsche Centre can except to the contents of the founding papers while simultaneously asserting that it has not received them. Its complaint about lack of service is, again, something that can be raised before the review court. Porsche Centre's opposition to Mr George's condonation application is also a matter to be decided by the review court.

13.3 Overall, having regard to the contents of Mr George's founding affidavit in C111/2024, they are clearly not "exceptible". A cause of

⁶ This was a surprising submission, as there is a notice to oppose the review application under case number C111/2024 on file, signed by Mr Holliday in his capacity as Porsche Centre's representative. Be that as it may, service is an issue that may properly be raised before the review court.

action is disclosed and the case set out is clear – Mr George seeks the award to be set aside and replaced with different relief.⁷

[14] In the premises, the Notice of Exception is both irregular and devoid of merit. It falls to be dismissed.

[15] Turning to the consolidation application, the purpose of consolidating proceedings is to have issues which are substantially similar tried at a single hearing so as to avoid the disadvantages attendant upon a multiplicity of trials (or applications). The critical elements are convenience and the absence of substantial prejudice to one of the parties.⁸

[16] In the present matter, the parties are the same. Both parties are seeking to review aspects of the award (albeit that Porsche Centre challenges the finding of unfair dismissal while Mr George challenges the extent of the relief granted). The issues are substantially similar and interwoven to justify consolidation. These are clearly issues that should be determined “once and for all” by the same court. A weighty factor is that, if two separate cases are permitted to proceed, the spectre of conflicting judgments arises. For example, if Porsche Centre succeeds in its review, it would render the question of greater relief (raised in Mr George's review) moot. Accordingly, I propose to grant the consolidation order sought.

[17] In my view, Porsche Centre's opposition to the consolidation application was meritless. In addition, its Notice of Exception was highly irregular and ill-considered. I am of the view that an adverse costs order is warranted.

[18] Finally, since a full record of the arbitration proceedings has been filed under C300/2023, there is no reason why this process should be duplicated. Mr George will be directed to comply with Rule 37(20) within 10 days of this order.

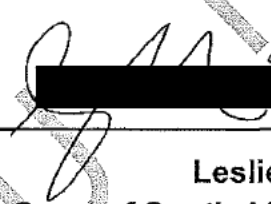
[19] In the premises, the following order is made:

⁷ Reinstatement, alternatively, maximum compensation.

⁸ *Nel v Silicon Smelters (Edms) Bpk* 1981 (4) SA 792 (A) 802B.

Order

- [1] The applicant's Notice of Exception is dismissed.
- [2] The applications under C300/2023 and C111/2024 are consolidated.
- [3] The applicant (LSM Distributors t/a Porsche Centre Cape Town) shall pay the first respondent's (Mr George's) costs of the consolidation application.
- [4] The first respondent is directed to comply with Rule 37(20), in respect of the review application under C111/2024, within 10 days of this order.



Leslie AJ
Acting Judge of the Labour Court of South Africa

Representatives –

For the applicant:

M L Holliday

For the first respondent:

**J Van Der Schyff, instructed by M S
Nacereodien Attorneys**