



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 2024-011937

- 1. Reportable: No
- 2. Of interest to other judges: No
- 3. Revised



13 October 2025
WRIGHT J

In the matter between:

ANDREW AFRICA COATINGS (Pty) LTD

APPLICANT

and

CAPITAL CIVIL and BUILDING CONSTRUCTION (Pty) LTD

FIRST RESPONDENT

ERROL LAING

SECOND RESPONDENT

JUDGMENT – WRIGHT J

1. On 20 August 2023 the first respondent company, Capital appointed the applicant company, Andrew as sub-contractor to do painting at a property development.
2. A dispute arose. It went to adjudication by the second respondent, Mr Laing, who made a determination that Capital pay Andrew a sum of money. Capital won't pay, hence the present application by Andrew to enforce the determination by Mr Laing. Andrew seeks interest as awarded by Mr Laing and from the date he awarded interest, being 7 March 2023. Capital opposes the application and raises a counter-application for a declarator that the determination is invalid and unenforceable.
3. The Joint Building Contracts Committee, series 2000, edition 5.0 applied to the appointment of Andrew as per the letter of appointment of 20 August 2023.
4. Under clause 40.2.1 of the JBCC, where adjudication is the chosen route of dispute resolution, as it was in the present case, the adjudication “ *shall be conducted in terms of the edition of the JBCC Rules for Adjudication current at the time when the dispute was declared* ”.
5. Under clause 40.3.4 “ *Should either party be dissatisfied with the decision given by the adjudicator, or should no decision be given within the period set in the Rules, such party may give notice of dissatisfaction to the other party and to the adjudicator within ten (10) working days of the receipt of the decision or, should no decision be given, within ten (10) working days of expiry of the date by which*

the decision was required to be given the dissatisfied party shall refer the dispute to arbitration. “

6. The JBCC Adjudication Rules published in January 2020, Revision 1 apply.
7. Under Rule 3.6 the adjudicator “ *shall have complete discretion as to how to conduct the adjudication and shall establish procedure and timetable to the extent consistent with these rules. “*
8. Under Rule 5.5.3 the adjudicator may grant up to five working days’ extension to the parties at their written request and may grant an extension of five working days “ *in respect of the time available to him, after receipt of the initial details of the dispute, the response from the other party and the receipt of the replication, if any, to deliver his determination to the parties. “*
9. Under Rule 6.1.1 the determination of the adjudicator shall be delivered to the parties “ *not later than ten (10) working days from the date of replication...The time limit shall be extended in respect of a delay caused by suspension of work by the adjudicator in terms of rule 4.1.2, as well as where extension has been granted in terms of rule 5.5.3. “*
10. Rule 4.1.2 relates to the adjudicator suspending his work for non-payment of his fee. This is not presently relevant.
11. Under Rule 7.2.2 the appointment of the adjudicator “ *Shall be terminated should he not perform his duties within ten (10) working days of receipt of a notice from either party specifying breach of his appointment. “*
12. Clause 40.2.1 of the JBCC expressly requires that the adjudication be run according to the Rules.

13. The adjudication proper started on 13 September 2023 with a meeting held virtually between the parties and Mr Laing. Times for furnishing Mr Laing with documents were agreed. It was agreed that Andrew would be allowed to deliver its replication by 9 October 2023. It was agreed that the determination date would be 23 October 2023.
14. Later, Andrew asked Mr Laing for a five day extension to file its replication. This was granted on 20 September 2023. The replication became due on 16 October 2023, that is five working days after 9 October 2023.
15. The determination thus became due, according to Andrew, on 30 October 2023, that is ten working days after 16 October 2023.
16. Capital says that as the replication was actually delivered by Andrew to Mr Laing on 13 October 2023 the determination by Mr Laing was due on 27 October 2023. Capital alleges that Mr Laing's appointment as adjudicator terminated on 28 October 2023.
17. On 7 October 2023 Mr Laing emailed the parties reminding them that he had requested certain information but had not been provided with this information.
18. According to Capital, Andrew provided this information on 13 October 2023 when Andrew sent its replication to Mr Laing.
19. The determination was delivered by Mr Laing on 7 November 2023, that is in time, according to Andrew, and seven working days' late according to Capital.
20. On 2 November 2023, Mr Swanepoel, acting for Andrew emailed Mr Laing, copying Capital and its attorneys, and enquiring about the determination. Mr

Laing replied a few minutes later saying that he was busy with the matter and “*will issue correspondence on Monday* “ that is 6 November 2023.

21. Neither Capital nor its attorneys raised issue until 9 November 2023, that is two days after the determination had been sent to the parties, when Capital’s attorneys wrote to Mr Laing and Andrew’s attorneys alleging that the determination was not binding and noting a “*dissatisfaction* “ under JBCC clause 40.3.4.
22. In my view, Capital’s argument that the determination is invalid, because the time for adjudication had come and gone before the determination was made, is bad in law.
23. Firstly, there is no express agreement, in any document, that if the determination is late the appointment of the adjudicator automatically falls away.
24. Secondly, such a provision, had it existed, would have contradicted Rule 7.2.2 which expressly provides for what course of action is open to the parties if a determination is late. Neither side sent a letter to Mr Laing under Rule 7.2.2. giving him ten days to produce his determination.
25. Thirdly, it was argued for Capital that Rule 7.2.2 applies only until the last day by which the determination is to be handed down. This can’t be correct. If it was correct, there would be no time for it to operate as the determination is to be made within ten working days of the delivery of the replication.
26. It follows that when Mr Laing made known his determination on 7 November 2023 he was still under appointment.

27. Rule 7.2.2 does not specify by when a notice must be sent to Mr Laing giving him ten days to produce a determination. This apparent lacuna does not help Capital. The Rule must be read as it is. Either party, of the view that the adjudicator has breached, may send the ten day letter straight away.
28. It follows that the application must succeed and the counter-application must fail.
29. Regarding interest, Mr Laing determined that there had been written demand by Andrew of Capital on 7 March 2023. He awarded interest as from 7 March 2023. In the notice of motion, interest is sought on the awarded amount at the rate of 10.5% per year “ *a tempore morae until date of payment* “. This prayer is vague. When I queried Mr Bosman for Andrew about this he specified that he sought to enforce the adjudication, that is Andrew seeks interest at 10.5% on the capital sum awarded as from 7 March 2023. Mr Bosman did not seek an amendment to the notice of motion. Ms Pretorius, for Capital suggested that Capital is entitled to know the case it has to meet. In my view, no amendment is necessary. The interest as sought now is expressed clearly by Mr Laing in his adjudication and is not more than the interest sought in the vague prayer in the notice of motion. Capital and its legal team know what case to meet.
30. It occurred to me during argument that the fact that Capital included in its letter of 9 November 2023 the raising of a “*dissatisfaction*” might be incongruous with Capital’s argument in the same letter that the determination is invalid as the adjudicator’s mandate had lapsed. I put my query to counsel for both sides. The matter was not fully ventilated. It is not necessary for me to go into this question.

I shall assume in favour of Capital, but without deciding the point, that Capital's raising of its "*dissatisfaction*" does not operate against it.

ORDER

1. The first respondent is to pay to the applicant R 343 682,75.
2. The first respondent is to pay the applicant interest on this amount at 10.5% per year from 7 March 2023 to date of payment.
3. The counter-application is dismissed.
4. The first respondent is to pay the costs of the application and counter-application, including those of counsel. Scale B applies.



WRIGHT J

Judge of the High Court

Gauteng Division, Johannesburg

HEARD : 13 October 2025

DELIVERED : 13 October 2025

APPEARANCES :

APPLICANT

Adv R Bosman

Instructed by

CN Sweetnam Attorneys

nelson@cnslaw.co.za

FIRST RESPONDENT

Adv K Pretorius

Instructed by

Roelf Nel Inc

sanjee@minc.co.za