

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: JR2280/24

In the matter between:

MSK CONSTRUCTION (PTY) LTD

Applicant

and

STEVEN MOTSEPE

First Respondent

IMTHIAZ SIRKHOT N.O.

Second Respondent

**BARGAINING COUNCIL FOR THE CIVIL
ENGINEERING INDUSTRY**

Third Respondent

Heard: 30 July 2025

Delivered: 09 October 2025

JUDGMENT

SASS, AJIntroduction

[1] The applicant seeks to review and set aside an arbitration award dated 17 November 2024 (the award) issued by the second respondent (the arbitrator) under the auspices of the third respondent (the Bargaining Council).

[2] In the award, the arbitrator found that the dismissal of the first respondent (Mr Motsepe) was procedurally and substantively unfair and ordered the applicant to pay compensation in the amount of R135 000 (one hundred and thirty-five thousand rand) to Mr Motsepe, minus any statutory deductions. This amount was the equivalent 3 (three) months' gross remuneration.

[3] The review application was not opposed by any of the respondents.

Service affidavits

- [4] When the matter was heard on 30 July 2025, the only service affidavit that was in the court file was the service affidavit relating to the service of the review application itself. This service affidavit, deposed to by Oupa Emmanuel Phale (Mr Phale) on 13 December 2024, confirmed that: (i) Mr Phale had served the review application by email on Mr Motsepe on 13 December 2024 at 10h30; and (ii) at 10h46 on the same date, he called Mr Motsepe to confirm if he had received the email to which the review application was attached, and Mr Motsepe confirmed that he did receive the email.
- [5] The court file did not, however, contain any service affidavits in relation to service of the applicant's notices in terms of Rule 37(13) and Rule 37(20)(b) of the Rules of this Court, although these Notices were in the court file.
- [6] I requested the applicant's legal representatives to provide this Court with the relevant service affidavit/s in relation to these notices. The applicant's legal representatives undertook to do so, and judgment was reserved.
- [7] The service affidavit in respect of the applicant's notices in terms of Rule 37(13) and Rule 37(20)(b) was only filed at this Court on or about 2 September 2025. This service affidavit was deposed to by Faith Molatudi (Ms Molatudi), a paralegal in the employ of the applicant's legal representatives, on 18 August 2025 – more than two weeks after the set down date of the unopposed review application.
- [8] The service affidavit confirmed that the applicant's notices in terms of Rule 37(13) and Rule 37(20)(b) were only served on Mr Motsepe on 18 August 2025, meaning that when the matter was enrolled for hearing on 30 July 2025, Mr Motsepe had: (i) not received service of either of the above-mentioned notices; (ii) not received service of the review record; (iii) not been informed that the applicant stands by its notice of motion and founding affidavit (served previously on 13 December 2024); and (iv) not been informed that if he

wishes to oppose the review application he must file his answering affidavit in terms of Rule 37(22) within ten days of 18 August 2025.

- [9] The applicant has only belatedly complied with the Rules of this Court in relation to service of the notices in terms of Rule 37(13) and Rule 37(20)(b) and this review application was prematurely enrolled for hearing on 30 July 2025.
- [10] In the circumstances, this review application ought to have been removed from the 30 July 2025 court roll and is accordingly postponed *sine die* in order to provide Mr Motsepe with an opportunity to oppose the review application if he elects to do so – an opportunity which he was not given on or before 30 July 2025.

Order

1. The review application is removed from the 30 July 2025 court roll and postponed *sine die*.
2. The Registrar of this Court is directed to enrol the review application for hearing on the unopposed motion court roll if Mr Motsepe has not delivered an answering affidavit opposing the review application by the date of this judgment.
3. In the alternative to paragraph 2 above, if by date of this judgment Mr Motsepe has delivered an answering affidavit opposing the review application, the Registrar of this Court is directed to issue such further directives as necessary in relation to an opposed review application and enrol the matter accordingly.
4. There is no order as to costs.

Mendel Sass

Acting Judge of the Labour Court of South Africa

Appearances:

For the applicant: Mr OE Phale (OE Phale and Associates Attorneys).

For the respondents: No appearances.

LABOUR COURT