



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

CASE NO: 2025-034097

In the matter between:

JOHN EDWARD MAGILL

Applicant

and

MA IPSER

First Respondent

WIDEVISION TRAVEL

Second Respondent

Coram: Justice Nziweni *et* Acting Justice Gxashe

Heard: 26 January 2026

Delivered electronically: 29 January 2026

Summary: Bias - Impartiality is a component of the right to fair hearing. Without an objective showing of bias, the presumption of impartiality remains intact, and the right to a fair hearing is deemed satisfied. -Review of Small Claims Court findings - Reviewing a Small Claims Court finding is highly restricted - The Small Claims Court prioritises substantive justice over strict legal or technical considerations.

ORDER

The application is dismissed.

JUDGMENT DELIVERED ELECTRONICALLY

GXASHE, AJ

Introduction

[1] This is an opposed review application in terms of section 46 of the Small Claims Court Act, Act 61 of 1984 ("the Act"). The review is directed at the judgment of the Small Claims Court ("SCC"). This review is brought by the Applicant who was a Plaintiff during the SCC proceedings, amongst others on the grounds of bias and gross irregularity.

[2] The Applicant further seeks condonation for the late filing of his supplementary affidavit. The application is opposed by the Second Respondent, being the party who obtained a favourable ruling from the Commissioner. The First Respondent [the Commissioner of the SCC] filed a notice to abide by the results of this review. The Second Respondent in its notice of opposition raised a defence of res judicata.

Background facts

[3] The parties concluded a contract whereby the Applicant agreed to be a hiking guide for the Second Respondent's clients at a fee. The general terms of the agreement are that the Applicant shall be paid a sum of R500.00 each for the first two clients with a minimum number of two people per hike, and R250.00 each for the rest of those making up the party. On the date set for hiking the Second Respondent's two clients cancelled due to food poisoning and the Second Respondent offered to pay 50% of the amount

owed, due to the late cancellation. The Applicant initially rejected the Second Respondent's offer; however, following an exchange of messages, the Applicant ultimately accepted the proposal and confirmed the continuation of services.

[4] A dispute arose when the Second Respondent became aware that the Applicant was still at his premises at the time he was supposed to be at the mountain to meet up with his clients and start hiking and due to his failure to be at the appointed place on time, he [the Applicant] repudiated the contract and cancelled the event.

[5] Despite the cancellation, the Applicant issued invoices totaling R2 050.00. In response, the Second Respondent made a partial payment of R800.00, withholding the balance of R1250.00 for the damages he suffered arising from the Applicant's tardiness. Due to the Second Respondent's failure to pay the invoice in full, the Applicant served another invoice demanding a sum of R1750.00 which included the fee of the two people who cancelled due to food poisoning.

[6] Following the Second Respondent's failure or refusal to settle the outstanding balance, the Applicant instituted proceedings in the SCC to recover the amount claimed. On the other hand, the Second Respondent filed a counterclaim for the damages he suffered in the sum of R2 970.00. The matter was heard by the SCC and it transpired during the proceedings that the Second Respondent filed with the Clerk of the Court a counterclaim which was never served on the Applicant as required by the Act. Despite this failure, the Commissioner proceeded to hear the merits of the case and subsequently reserved the delivery of the judgment.

[7] It is common cause that during the judgment phase, the Commissioner reconvened the parties for a second hearing to facilitate the service of the counterclaim upon the Applicant. During the hearing, before this Court, the Applicant admitted that the Commissioner did afford him an opportunity to go through the Second Respondent's counter claim. And after having done so, he elected not to lead further evidence.

[8] Subsequently, on 12 December 2025, the Commissioner dismissed the Applicant's claim and ruled in favour of the Second Respondent. Aggrieved by this outcome, the Applicant has initiated these review proceedings in this Court pursuant to Section 46 of the Act.

Application for condonation

[9] The Court has a wide discretion to grant condonation if it would be in the interests of justice to do so after considering the following relevant factors: the degree of lateness, the explanation for the lateness and the applicant's prospects of success in the main dispute.¹ In this matter the Applicant submitted that the delay to file a supplementary was caused by the failure on the part of the First and Second Respondents to file the judgement and answering affidavits respectively.

[10] It emerged during oral argument [in these proceedings] that the Applicant, acting without legal counsel, mistakenly believed a replying affidavit was required. Such a filing was, in fact, unnecessary as the Second Respondent had limited their answering affidavit to a defence of res judicata, leaving the factual allegations in the founding affidavit unanswered. Moreover, the Second Respondent did not oppose the application. After taking into account the lack of legal expertise of both parties, absence of prejudice on the part of the Respondent and the interests of the justice, the court condoned the late filing of the Applicant's affidavit.

The law

[11] The SCC is not a court of record² and a presiding officer is only required to record or cause to be recorded the verdict, judgment or order of the court and sign it. A

¹ Melane v Santam Insurance Co Ltd 1962 (4) SA 531 (A)

² Section 3 (1) of the Small Claims Act 61 of 1984

judgment of the SCC is also final and no appeal lies from it.³ A judgment may however be taken on review by an aggrieved party on the following grounds:

- (a) absence of jurisdiction on the part of the Court;
- (b) interest in the cause, bias, malice, or the commission of an offence: and
- (c) gross irregularity with regard to the proceedings.⁴

[12] It must be borne in mind that section 46 limits the grounds for review. In this matter, the Applicant cited bias and gross procedural irregularity as the basis for the application, while the Second Respondent invoked the principle of *res judicata* as a defence.

Discussion

[13] The principal contentions made by the Applicant as ground for this review application are as follows:

- (1) Bias;
- (2) Gross irregularity;
- (3) Irrationality; and
- (4) Promotion of Administrative Justice Act, Act 3 of 2000 (PAJA)

[14] The SCC prioritises substantive justice over strict legal or technical niceties, partly because litigants appear unrepresented. This necessitates ensuring a fair and impartial hearing for all parties involved. Put differently, in the SCC a key consideration is fairness rather than strict rules because people represent themselves. Hence, the Commissioners in the SCC play an active role in uncovering the truth, but this must still be done fairly. The Commissioners in SCC are mandated to observe the fundamental tenets of fair and equitable hearing. It is, of course, true that it is a cornerstone of our legal system that no individual should be penalised or have their rights diminished without being afforded a fair opportunity to present a defense. This sacrosanct principle,

³ Section 45 of the Small Claims Court Act

⁴ Section 46 of the Small Claims Act

as correctly pointed out by Mr Magill [the Applicant] during his oral submission is known as audi alteram partem. While SCC procedures are informal, they must be conducted in a manner that ensures substantial justice for all litigants and must strictly adhere to the constitutional requirements of a fair hearing.

Bias

[15] Impartiality is a component of the right to fair hearing. Without an objective showing of bias, the presumption of impartiality remains intact, and the right to a fair hearing is deemed satisfied. In her provided account, the Commissioner made it clear that at the critical time she was unacquainted with the parties and had no motive for preferential treatment.

[16] Section 165 (2) of the Constitution requires courts to apply the law impartially and without fear, favour or prejudice. There exists a presumption that a presiding officer is unbiased. This presumption exists due to the oath that the presiding officers take upon being appointed. A party alleging that a presiding officer has not acted impartially is required to provide substantive evidence supporting the reasonableness of their claim..⁵ In *Mulaudzi v Old Mutual Life Assurance Company (South Africa) Limited and Others*⁶ the Supreme Court of Appeal confirmed that apprehension of bias may arise from the conduct or utterances of a judicial officer prior or during the proceedings and said the following:

“It is settled law that not only actual bias but also the appearance of bias disqualifies a judicial officer from presiding over judicial proceedings. The disqualification is so complete that continuing to preside after recusal should have occurred renders the further proceedings nullity. The general principles are well established. They are enshrined in section 165 (2) of the Constitution, which provides that “the courts are

⁵ President of the Republic of South Africa and Others v South African Rugby Football Union and others 2000 (1) SA 1

⁶ 2017 (6) SA 90 SCA

independent and subject only to the Constitution and the law, which they must apply impartially and without fear, favour or prejudice.”

[17] The fact that the Applicant was not served during the first hearing with the Second Respondent’s counterclaim papers is common cause. The Commissioner herself conceded this point in her explanation. According to the Commissioner’s account, she was also unaware of non-service. The issue was only raised after evidence was presented.

[18] Although the Commissioner initially proceeded with the hearing, she subsequently rectified the procedural defect. Upon reflection, and before judgment, she directed the Clerk of the Court to effect service on the Applicant and provided both parties a further opportunity to ventilate the issue.

[19] In the present matter, the Commissioner realised a "technicality" occurred [the counterclaim not being served], she took steps to cure it [by recalling the parties] rather than just ignoring it or dismissing the case without fixing it. By giving the Applicant sight of the documents, she was trying to move from a "technical" error back toward substantive justice.

[20] This finding is supported by the common cause and undisputed facts of this case. In the circumstances of this case, there is nothing on record to indicate bias. As far as it appears, the Commissioner afforded the Applicant the rights of an impartial hearing.

Gross irregularity

[21] As previously mentioned, in this matter, the Applicant contends that the Commissioner allowed evidence of the Second Respondent’s counterclaim to be presented even though he was not properly served with the said document. The Applicant further contends that the Commissioner proceeded with the hearing and neglected his right to be properly informed of the case he had to meet and was biased

against him. In essence, the Applicant contends that the way the Commissioner, conducted the proceedings did not afford him a fair hearing, as such the entire proceedings should be set aside.

[22] While the Applicant confirms he was given a chance to consider and examine the counterclaim at the subsequent appearance, he contends this opportunity was insufficient. He argues this, notwithstanding his indication during the subsequent hearing to the Commissioner that he was ready to continue with the matter.

[23] The Applicant contends that the Commissioner did not provide him with the opportunity to make submissions prior to her decision. It is worth noting that in the course of the Applicant's submissions in response to the question posed to him by this Court, the Applicant conceded that he had a chance to look at the papers, during the subsequent hearing. The Applicant also asserted that the Commissioner told him that he did not have to repeat what he stated in the first hearing.

[24] The Applicant was asked by this Court why he expressed readiness to proceed if he felt the time to review the counterclaim was inadequate. He submitted that his intention was to exhibit courtesy and avoid wasting court time. The Applicant asserts further that at the time he did not know that the Commissioner was going to consider the terms and conditions which were not presented to him before the conclusion of their contract. As a result, he was taken aback when he received the judgment and noted that the Commissioner considered the terms and conditions, hence, he concluded that the proceedings were irregular.

[25] It is significant to note that the Commissioner's reasoning, as set out in paragraph 10 of the judgment, states as follows: "I will not deal with these terms and conditions in detail as Defendant cannot prove that Plaintiff was aware of them- he admits that the aforesaid terms and conditions were not provided to Plaintiff and his attention was not specifically drawn to them. Nor were these terms and conditions referenced in the fee

structure document provided to Plaintiff. Mr Noyes Smith assumed that Plaintiff was aware of them.”

[26] This excerpt from the judgment demonstrates that the Commissioner explicitly excluded that portion of the Respondent’s evidence, confining her consideration strictly to the evidence already before the court. Moreover, during the subsequent hearing, the Applicant was afforded an opportunity to supplement his case.

[27] The Applicant elected not to provide any further information, despite being given the chance by the Commissioner. This much was admitted by the Applicant. The Applicant’s actions create the reasonable impression that he was content with the regularity of the proceedings, effectively waiving any immediate objection. He thus acquiesced [agreed] to the procedure. If he felt prejudiced, it was expected of him to speak up then, not wait for an unfavourable judgment. Thus, he cannot raise an issue that he failed to raise at the hearing on review. Whereas he made it clear during the proceedings that he had insight into the contents of the Second Respondent’s counterclaim and had nothing to add. Clearly what he is raising now is an afterthought.

[28] The foregoing is clearly sufficient to support that Applicant was not denied a fair hearing before the SCC. It follows, therefore, that the Applicant was not deprived or denied the right from making assertions or refute insofar as the counterclaim because it was brought to his attention and he was at liberty to make further submissions if he elected to do so. Accordingly, the claim by the Applicant comes down as a highly technical claim. The remaining grounds for review raised by the Applicant are similarly devoid of merit and lack a substantive legal basis.

[29] The contents of the Act make it clear on what circumstances the courts can interfere with the decision of the Commissioner. Obviously, the courts can interfere with the decision of a SCC only on limited circumstances. Section 26 of the Act provides as follows: “subject to the provisions of this chapter, the rules of the law of evidence shall not apply in respect of the proceedings in a Court, and a Court may ascertain any

relevant fact in such a manner as it may deem fit. Evidence to prove or disprove any fact may be submitted in writing or orally. A party shall not question or cross-examine any other party to the proceedings in question or a witness called by the latter party, but the presiding commissioner shall proceed inquisitorially to ascertain the relevant facts and to that end he may question any party or witness at any stage of the proceedings: provided that the commissioner may in his discretion permit any party to put a question to any other party or any witness.”

[30] This section clearly indicates that the rules of evidence are not applicable in the SCC and evidence may be submitted orally or in writing. However, section 29 (3) of the Act requires service to be effected upon the Applicant if the Respondent filed with the clerk written statement setting forth the nature of his defence.

[31] It is clear from the papers filed that service of the Second Respondent’s counterclaim was served upon the Applicant after hearing of the evidence but the fact that the parties were granted another opportunity to ventilate on the issues before judgment excluded any ground of irregularity. As previously mentioned, in this matter, the Commissioner cured the defect. Given the fact that the proceedings are inquisitorial in nature, and the Act further gives the Commissioner the discretion to ascertain any relevant fact in such a manner as she deems fit.

[32] The Applicant also seems to be of the view that the small claims Court is of the same status as the commissions of enquiries and that its decision is subject to review in terms of Promotion of Administrative Justice Act 2000 (“PAJA”). The purpose of PAJA is to give effect to administrative action that is lawful, reasonable and procedurally fair and to the right to written reasons for administrative action and to provide for matters incidental thereto. The Applicant’s argument is misplaced and cannot stand because section 1 of the Act defines court as a court established under section 2. A SCC is a Court as defined by the Act and the functions of a Commissioner are not administrative in nature so their decisions cannot be subjected to review in terms of PAJA. The Act

limits the grounds of review to those specified in section 46, extending the same will be against the intent and purport of the Act.

[33] Although the Applicant did not prevail in these proceedings, I will still address the Second Respondent's defence.

Res Judicata

[34] In these proceedings, the Second Respondent raised res judicata as a defence. Res judicata literally means that a matter already judged, the doctrine is that the matter cannot be judged again. This is a presumption founded on public policy requiring litigation not to be endless, to be in good faith and to prevent the same claim being demanded more than once. In order for the defence of res judicata to apply, the dispute must be referred involving the same parties and the same issues of law or fact of which have already been adjudicated or arbitrated upon.⁷ It however transpired during the arguments that he was not aware of the provisions of section 46 of the Act and in the end he acknowledged that res judicata is not applicable in this matter.

Conclusion

[35] In light of the above, I am of the view that the Applicant failed to show bias against the Commissioner and any irregularity or irrationality in respect of the proceedings.

[36] There is no ground to justify why a cost order should be made. Consequently, no order as to costs.

[37] In the result, I propose the following order:

⁷ MEC Department of Education, KwaZulu Natal v Khumalo and Another (2010) 31 ILJ 2657 (LC)

Order

The application to review the Commissioner's judgment in the circumstances is dismissed.

N GXASHE
Acting Judge of the High Court

I agree, and it is so ordered.

CN NZIWENI
Judge of the High Court

Appearances

Applicant	:	In Person
Second Respondent	:	In Person (duly represented by its Director, Mr Kyle Noyse – Smith)