



- (1) Reportable: NO
(2) Of interest to other Judges: Yes



Signature

14 April 2026
Date

**IN THE LABOUR COURT OF SOUTH AFRICA
HELD IN CAPE TOWN**

Case No. C416/2024

In the matter between:

JAMEEL ISMAIL

Applicant

and

**C E VAN GEUNS & ASSOCIATES
COMMISSION FOR CONCILIATION,
MEDIATION AND ARBITRATION
JOSHUA AUGUST**

First Respondent

Second Respondent

Third Respondent

Heard: 19 November 2025

Delivered: 14 April 2026

JUDGMENT

MTETO AJ

INTRODUCTION

- [1] The matter before me pertains to an application in terms of Section 145(1) of the Labour Relations Act No. 66 of 1995 as amended from time to time (hereinafter referred to as the “Act”).
- [2] It is an application in which the applicant seeks this Court to review and set aside an Advisory Award rendered by the third respondent (“the Commissioner”) under the auspices of the second respondent (“the CCMA”) dated 23 September 2024 under case number WECT14033/2024.
- [3] For ease of reference, the applicant is referred to as “Ms Ismail”.
- [4] The pertinent order that the applicant seeks to be set aside is the ruling that the applicant is not an employee of the first respondent as defined in section 213 of the Act.

FACTS OF THE CASE

- [5] The applicant contends that she is or was an employee of the first respondent for a period of about 10 years. She contends that during that period she rendered typing services to the first respondent who is an attorney. She states that amongst other duties she was performing on behalf of the first respondent were to arrange for appointments and follow up on the instructions to the Sheriff for the service of various court processes and reception services.

- [6] The commissioner when identifying issues to be determined he stated that he is “required to render an advisory award on whether the applicant is an employee as defined in section 213 and 200A of the LRA.”
- [7] It is also common cause that the third respondent provided Ms. Asmail with the tools of trade to perform her functions amongst other things. What is in dispute is whether the respondent had control over Ms. Ismail and provided direction on how she had to perform her duties.
- [8] The third respondent during the arbitration proceedings submitted that Ms. Ismail had control over her working hours to the extent that at some stage the reduction of the working hours from 8 hours to 5 hours per day was implemented at her behest.
- [9] Ms. Ismail, submitted that she was economically dependent on the third respondent and rendered her services to the third respondent only.

ANALYSIS OF THE CASE

- [10] An advisory award, as the name suggests, is merely an advice given to the parties to the advisory arbitration. The parties are at liberty to either accept the advice or to reject it. This therefore means that the advisory award is not binding on the parties.

[11] It is in the name of the process, which suggests that the parties are seeking advice, which advice has no legal consequence and is the advice given by the sitting commissioner in the said proceedings.

[12] Since the award can simply be ignored by any of the parties, a review application is pointless.

[13] The only exception to the above, is when advisory arbitration is mandatory where the LRA prescribes for advisory arbitration before a certificate of outcome is issued in disputes concerning an alleged refusal to bargain.

[14] In this matter it is not necessary for me to make a determination as to whether there were defects in the “arbitration” proceedings as required by section 145 of the Act due to the nature of the proceedings which presented before the Commissioner.

LEGAL POSITION

[15] Section 158 (1) (g) stipulates that “The Labour Court may Despite Section 145, review the performance or purported performance of any function provided for in this Act or any Act or omission of any person or body in terms of this Act on any grounds that are permissible in law.”

[16] In determining the effect of an arbitration award, section 143(1) of the Act states:

'An arbitration award issued by a commissioner is final and binding and it may be enforced as it were an order of the Labour Court, unless it is an advisory arbitration award.'

[17] It appears that in this matter, Ms. Ismail, referred the matter to the CCMA for an advisory award, which fact is common cause between the parties.

[18] It is also common cause that Ms. Ismail did not accept the findings of the Commissioner.

CONCLUSION

[19] If an arbitrator has not yet rendered a "final" decision on the specific issue, a party cannot bring a review application, as the court generally avoids intervening in incomplete processes.

[20] The advisory award is generally **not reviewable** in the Labour Court, as it does not constitute a "final" determination of rights that can be set aside under section 145 of the Act.

[21] Advisory awards cannot, self-evidently be made orders of court and by its very nature, an advisory award cannot render a particular dispute *res judicata*.¹

¹ Labour Litigation and Dispute Resolution: J Grogan at page 256.

[22] In conclusion, once the advisory award is received, the parties are at liberty to either accept or reject the advisory award. The advisory award will only be binding to the parties if they accept it.

[23] In the circumstances the following order is made;

Order

1. The review application is dismissed; and
2. No order as to costs.


MTETO AJ

Acting Judge of the Labour Court

Appearances:

For the Applicant: In Person

For the First Respondent: CE Van Geuns & Associates