



Not reportable

**THE LABOUR COURT OF SOUTH AFRICA,
HELD AT CAPE TOWN**

Case no: C245/24

In the matter between:

**THE LANDMARK FOUNDATION
TRUST**

Applicant

and

**COMMISSION FOR CONCILATION,
MEDIATION AND ARBITRATION**

First Respondent

**COMMISSIONER FRANCOIS VAN
DER MERWE**

Second Respondent

MATTHEW SCHURCH

Third Respondent

Date of Hearing: 24 February 2026

Date of Judgment: 13 May 2026

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 4 October 2025.

JUDGMENT

V BARTHUS AJ

- [1] This is an application to compel the First Respondent ("the CCMA") to deliver the complete record of arbitration proceedings concluded on 26 March 2024. Alternatively, the Applicant is seeking an order directing the CCMA to reconstruct what it alleges to be missing parts of the record and for the matter to be referred to Chambers for judicial case management.
- [2] The Applicant's representative, Dr Boudewyn Homburg de Vries Smuts ("Smuts"), the Applicant's General Manager, was mandated by the Applicant's trustees to represent the Applicant.
- [3] The Third Respondent opposes this application, challenging its *bona fides* and seeking the dismissal of the application and the immediate prosecution of the review, alternatively the archival of the review.
- [4] While relief is sought against the CCMA and the Arbitrator, the Third Respondent has comprehensively explained in the condonation application why he was forced to engage this process in the interest of progressing the review of the award delivered in his favour on 6 April 2024.
- [5] I am satisfied that the Third Respondent has made out a proper case for condonation and that, as the successful party in the arbitration proceedings, he has a direct interest in the resolution of the review application and therefore an interest in opposing this application to compel. If the Third Respondent did not engage this application, then the review application would ultimately be left in limbo since the First and Second Respondents have filed affidavits confirming their compliance and have no further submissions to make.

- [6] The Applicant has unpersuasively contended for this application to be dealt with on an unopposed basis.
- [7] While it is the duty of the applicant in a review application to furnish the other parties and the Registrar with a copy of the record, necessary for purposes of the review, there is a distinction to be drawn between a scenario where the record is available but the applicant did nothing to have it transcribed and filed, and a scenario where the applicant made serious attempts to file the record, but cannot do so because the record either does not exist or is not made available¹.
- [8] There is a third scenario where the record is available, but the applicant asserts that it has not been furnished with the complete record, solely to delay execution of the arbitration award. The Third Respondent's opposition to this application to compel is premised on the third scenario.
- [9] The CCMA and the Second Respondent ("the Arbitrator") have confirmed that they have complied with their obligations under s 145 of the LRA. Commissioner Samuel, on behalf of the CCMA, has filed a sworn statement, accompanied by the confirmation of the review administrator and the sworn statement of the Arbitrator confirming that the entire record was made available. The Arbitrator further confirmed that *'there is no need for any reconstruction for any part of the record'*.
- [10] Confirmation was provided that the Arbitrator was properly appointed to adjudicate the dispute through arbitration- something Smuts insisted on proof of.
- [11] Smuts has asserted repeatedly that there is a conspiracy against the Applicant whereby the CCMA is colluding with the Third Respondent. There is no evidence or motive to support this assertion.
- [12] Smuts further contends that the CCMA has sanitised the record to exclude the portions of it that support the allegations of bias, which form the basis of

¹ South African Social Security Agency v Hartley and Others (2023) 44 ILJ 1334 (LC) par 67

the review application. The “sanitised” portions comprise verbal exchanges that are not part of the proceedings.

- [13] The CCMA proposed a meeting to resolve any misunderstanding concerning the record- an offer which Smuts rejected out of hand.
- [14] The Third Respondent submitted in its papers and in argument that the electronic record received from the CCMA was sent to Smuts via WeTransfer to allow him to vet the contents and satisfy himself that what he received from the CCMA accorded with what the Third Respondent had received.
- [15] Smuts has based the Applicant’s case against the CCMA entirely on collusion and conspiracy, yet when he was allowed to verify that the record received by the Third Applicant resembled what he had received, he did not check. Smuts asserted that he was doing field work at the time and that the link to the file had expired. The Third Respondent, aware of the time bar for access, sent the link a second time and again Smuts elected not to access the link.
- [16] Pursuant to the Court’s question regarding Smuts’ election not to assess the WeTransfer file, Smuts asserted that the Court had already predetermined the case against the Applicant. There was no basis for this assertion.
- [17] I have considered the record of correspondence between the CCMA and Smuts and the correspondence between Smuts and the Third Respondent’s attorney. The tone and content of these communications are concerning in relation to Smuts. The CCMA and the Third Respondent’s attorney have clearly attempted to help the Applicant in prosecuting the review. The Third Respondent has argued that *“the Applicant’s goal is not to be helped; it is to create the impression that help has been refused”*. I am inclined to agree with this conclusion based on all the correspondence on record.
- [18] The correspondence by Smuts on behalf of the Applicant is best characterised as combative and discourteous, with Smuts persistently casting aspersions on the CCMA and its officials. Smuts has made no effort to engage constructively since the initial assertion about an incomplete record. The strategy is clear: fight every procedural inch to kick the

proverbial can as far down the road as possible, avoiding prosecution of the review application while wearing down and draining the opposition's resources.

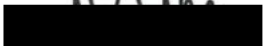
[19] This is a flagrant abuse of court process, which flies in the face of the tenets of the Labour Relations Act and cannot be enabled or entertained beyond this point.

[20] The relief the Applicant seeks is incompetent since all indications are that the Respondents have complied with their obligations to make the complete record available.

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

Order:

1. The application is dismissed.
2. The Applicant shall file the record within 14 days of this order and shall supplement its papers within 10 days, failing which the Registrar is directed to archive the court file.
3. The Applicant is ordered to pay the Third Respondent's costs.

V Barthus AJ
Acting Judge of the Labour Court of South Africa

Representatives:

For the Applicant: Dr B Smuts (The General Manager appointed by the Applicant's Trustees)

For the Respondent: S Moreland
Instructed by Guy and Associates

LABOUR COURT