HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NO: 2024-063413

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.
DATE: 30 APRIL 2026

SIGNATURE [redacted]

In the matter between:

HBC CONSTRUCTION (PTY) LTD	Applicant
and	
CITY OF TSHWANE METROPOLITAN MUNICIPALITY	First Respondent
THE MUNICIPAL MANAGER CITY OF TSHWANE METROPOLITAN MUNICIPALITY	Second Respondent
TERRY MAHON	Third Respondent

Summary: *Arbitration – Review of awards. Whether the review of an interim award was time-barred; whether the arbitrator's conduct amounted to gross misconduct; whether the arbitrator had committed gross irregularities and whether a notice in terms of Article 14 of the applicable Rules had precluded the arbitrator from issuing an award*

applicable Rules had precluded the arbitrator from issuing an award terminating the arbitration. Found that there were no grounds justifying the relief claimed by the unsuccessful claimant in the arbitration. The review applications and the additional declarators sought were dismissed with costs. Having regard to the nature of allegations made by the claimant/applicant and its attorney against the arbitrator, punitive costs were ordered, including payment de boniis propriis in respect of the arbitrator's costs.

ORDER

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1. The application is dismissed.

2. The applicant is ordered to pay the costs of the first and second respondents, including the costs of two counsel, where employed. The costs of counsel shall be taxable on scale C of Rule 69.

3. The applicant and its attorneys are jointly and severally ordered to pay the third respondent's costs on the scale as between attorney and client, including the costs of two counsel, where employed.

4. The costs ordered in paragraphs 2 and 3 above shall include the wasted costs of the respective parties occasioned by the proceedings on the urgent court roll of 14 April 2026.

J U D G M E N T

The matter was heard in open court and the judgment was prepared and authored by the judge whose name is reflected herein and was handed down electronically by circulation to the parties' legal representatives by email and by uploading it to the electronic file of this matter on Caselines. The date of handing-down is deemed to be 30 April 2026.

DAVIS, J

Introduction

[1] For purposes of readying the Loftus Versfeld sports stadium for the 2010 Soccer World Cup, hosted in South Africa, the City of Tshwane Metropolitan Municipality (CTMM) contracted HBC Construction (Pty) Ltd (HBC).

[2] The terms of the agreements and the disputes which arose between the two contracting parties are irrelevant for purposes of this judgment. It is only necessary to state that those disputes ended up being the subject-matter of two sets of arbitration proceedings.

[3] The first arbitration was before Prof Schloss, but the proceedings before him were by agreement, reviewed and set aside. In the second arbitration, an attorney of 55 years' standing, Terry Mahon was appointed as the arbitrator.

[4] At some point during the second arbitration proceedings before the said arbitrator, he made an interim award whereby he upheld objections raised by the CTMM against HBC's statement of claim and, in the fashion of dealing with an

exception in terms of the practice in this court, furnished HBC the opportunity to amend its statement of claim. When HBC failed or refused to deliver an amended statement of claim, despite further invitations to do so, the arbitrator, at the instance of CTMM on application, issued a termination award.

[5] HBC thereafter applied to this court on an urgent basis for a review and setting aside of the two awards and for extensive declaratory relief against the arbitrator, based on allegations that he had acted grossly irregular and was guilty of misconduct. Costs were sought against him and it was claimed that he should forfeit his fees in the arbitration.

[6] The matter initially featured on the urgent motion court roll of Tolmay J on 14 April 2026, from whence it was struck, primarily because the volume of papers and the duration of argument necessitated an allocation by the Acting Deputy Judge President as a special urgent application, in terms of this court's practice directives. That is how this matter came before me a week later. Tolmay J had reserved the question of liability for wasted costs in respect of the proceedings before her.

Relief sought by the applicant

[7] The applicant principally sought to have the interim award whereby the arbitrator upheld CTMM's challenges to the statement of claim and struck out the claim (as then formulated) as well as the award whereby the arbitration proceedings were terminated, reviewed and set aside. The applicant also sought a review of the arbitrator's "*decision refusing the applicant's refusal challenge*" (in the words used in the applicant's notice of motion).

[8] In addition, the applicant sought a plethora of declaratory orders. These were formulated as follows:

"2. *Declaring that:*

2.1. *the third respondent failed to conduct the arbitration proceedings in accordance with the orders of this Honourable Court governing the arbitration.*

2.2. *the third respondent failed formally and officially to disclose, prior to his appointment, his prior professional relationship and familiarity with the legal representatives who appeared before him in the arbitration proceedings.*

2.3. *the third respondent had no jurisdiction in law to entertain and determine the so-called exception raised by the first respondent.*

2.4. *the third respondent had no jurisdiction to entertain and determine the first respondent's application for termination under Article 32 of the Association of Arbitrators of Southern Africa Rules whilst the applicant's application for his recusal remained pending.*

2.5. *the applicant's statement of claim was delivered in accordance with the applicable arbitration rules and valid.*

2.6. *the first respondent failed to comply with its obligation to deliver a statement of defence in accordance with the applicable rules and therefore in default.*

> 2.7. *an exception is not a competent procedure in arbitrations conducted under the Association of Arbitrators of Southern Africa Rules, November 2021 (8th Edition).*
>
> 2.8. *the third respondent committed gross irregularities and/or gross misconduct in the conduct of the arbitration proceedings.*
>
> 2.9. *the third respondent is not entitled to any costs of the arbitration proceedings as against the applicant*".

Procedural history

[9] As can be seen from the extent of the relief sought by the applicant, as well as the fact that the applicant claimed that its recusal objection was based on the "cumulative" conduct of the arbitrator, it is necessary to have regard to the relevant procedural history. In summarizing the more than two thousand pages presented to the court when the matter came before me last week, I shall in many instances refer to the express wording used by the parties. This is done to illustrate the points relied on by HBC and to assist in contextualizing the facts upon which this court exercised its discretion in relation to the issue of costs. The relevant point of departure is with the court order which directed the commencement of the arbitration and its initial termination date.

[10] On 8 August 2025 Collis J granted an order in the following terms, by agreement between the parties:

> "2. *The third respondent's (Professor Ronald Schloss) arbitration award dated 12 April 2024 and transmitted to the parties on 16 May 2024 ("the award") is hereby reviewed and set aside.*

3. *The dispute between the parties is referred to the chairperson of the Association for Arbitrators Southern Africa who shall within thirty (30) days of this order, appoint a person who is qualified as a lawyer, practicing as such for a period of no lesser than ten (10) years as an advocate or an attorney who shall act as an Arbitrator, provided that such person shall:*

   3.1. *convene a pre-arbitration meeting within ten (10) days of his appointment.*

   3.2. *commence with the arbitration proceedings de novo on such date agreed to between the parties or failure to reach agreement, on such date determined by him/her.*

   3.3. *ensure that the arbitration proceedings, (including the delivery/publication of the arbitration award), are concluded within four (4) months after the pre-arbitration meeting.*

   3.4. *Conduct the arbitration proceedings in accordance with the rules of the Association of Arbitrators of Southern Africa applicable at the time of his/her appointment.*

4. *That the costs, (inclusive of the scale thereof), of the review application as well as the costs of the arbitration shall be held over for determination by the arbitrator appointed in accordance with paragraph 3 above*".

[11] After the appointment of the arbitrator, a first pre-arbitration meeting was held on 19 September 2025. Thereat, the parties inter alia, agreed on the following:

"2. ***Confirmation of the appointment of the arbitrator and conditions of his appointment***

Parties agreed that the Arbitrator had been validly appointed and that the terms and conditions of his appointment were as per the attachment to the agenda.

3. ***Section 23 of the Arbitration Act***

It was agreed that the lime periods for submissions, discovery, witness statements, expert summaries, hearing, argument and the Arbitrator's award would be as detailed hereunder.

4. ***Rules applicable to the Arbitration proceedings***

It was confirmed that the rules applicable to the arbitration were the Rules for the Conduct of Arbitrations of the Association of Arbitrators (Southern Africa) NPC Editor 4.1 March 2005.

5. ***Status of Arbitration proceedings***

5.1 It was recorded that in terms of the Court Order the arbitration proceedings were to commence de nova. In regard to these proceedings the following was agreed, namely:

5.1.1 That the legal representatives at the parties would liaise with each other and would agree on a timetable for the exchange of submissions, discovery, witness statements, expert summaries and all other pre-heating procedures and would convey what had been agreed to the Arbitrator.

5.1.2 *The time period reserved for the hearing is from 1st December 2025 until noon on the 12th December 2025 (weekends excluded).*

5.1.3 *The parties will agree on dates for the exchange of heads of argument and will advise the Arbitrator as to what has been agreed in regard to such exchange.*

5.1.4 *Argument will be addressed to the Arbitrator virtually on the 13th January 2026*".

[12] On 7 October 2025 the mandate of the applicant's previous attorneys and counsel were terminated and their current attorneys were appointed. They requested a second pre-arbitration meeting, which was held on 14 October 2025. At that meeting, the following was agreed to:

"***THE TIME-TABLE***

It was agreed that:

3.1. the Claimant would deliver its statement of claim by 17th October 2025;

3.2. the arbitration hearing will take place from the 2nd March 2026 to 5th March 2026 and from 9th March 2026 to 13th March 2026;

3.3. the parties' legal representatives will agree on dates for the delivery of further submissions, discovery, factual witness statement, expert summaries and all other pre-hearing issues by no later than 24th October 2025 failing which the Arbitrator will issue an appropriate directive in order to *regulate these matters so as to ensure that the matter is ripe for hearing on the 2nd March 2026.*

3.4. *the parties, based on what has been agreed, as detailed in 3.1 to 3.3 above have waived the provisions of Section 23 of the Arbitration Act, 1965.*

4. ***THE COURT ORDER***

The Claimant will, to the extent necessary, apply to the High Court on a semi-urgent basis to extend the time period for the conclusion of the Arbitration proceedings to 30th June 2026".

[13] The timetable referred to in para 3.3 of the minute of 14 October 2025, was subsequently agreed on between the parties' legal representatives on 24 October 2025. This resulted in the arbitrator issuing a directive on 29 October 2026, incorporating the agreed timetable. The timetable read as follows:

- *"30/10/2025 - Statement of Claim*
- *30/11/2025 - Statement of Defence*
- *15/12/2025 - Claimant's Reply (if any)*
- *15/01/2026 - Claimant's Discovery and Expert Reports & Notices 29/01/2026 - Defendant's Discovery*
- *30/01/2026 - Defendant's Expert Reports & Notices*
- *12/02/2026 - Claimant's Witness Statements; Export Reports & Notices*
- *19/02/2026 - Defendant's Witness Statements: Expert Reports & Notices"*

[14] The Claimant's statement of claim was duly delivered whereafter CTMM delivered a "Notice of Exception" on an agreed to extended date of 5 December 2025. This resulted in a 3rd pre-arbitration meeting on 11 December 2025.

Thereat time periods for the exchange of heads of argument and a hearing date for the "exception" were agreed on, being 23 January 2026.

[15] In the meantime and, despite HBC having undertaken, on the 14th October 2025, "*to the extent necessary*" to apply to court on a "*semi-urgent basis*" to extend the time period for the conclusion of the arbitration proceedings to the 30th June 2026, it delayed launching such an application until 19th January 2026 (the time period contemplated in the court order of 8 August 2025 expired on 20 January 2026).

[16] The exceptions taken by CTMM were raised under the following headings:

> "*First Ground of Exception: Failure to Disclose a Cause of Action*
>
> *Second Ground of Exception: Failure to Plead JBCC Compliance*
>
> *Third Ground of Exception: Prescription and Contractual Time-Bar on Face of SOC*
>
> *Fourth Ground of Exception: Vague and Embarrassing Pleading of Quantum Claims*
>
> *Fifth Ground of Exception: Claim 8 (Alternative Final Account) is not Legally Pleaded*
>
> *Sixth Ground of Exception: Claim 9 (Damages – R164 938 666.000) is bad in law*".

[17] At the hearing on the 23rd January 2026 HBC's opposition to the exception was confined to five points *in limine*. The merits of the exception were only dealt with cursorily in oral argument in reply. The points in *limine* were advanced under the following headings (quoting from HBC's heads of argument):

> "*First point in limine – Exception incompetent procedure*

Second point in limine – Exception incompetent with Rule 23 of Uniform Rules of Court

Third point in limine – The exception is not a pleading

Fourth point in limine – Application based on Rule 24

Fifth point in limine – Exception incompetent for prescription and time-bar".

[18] In his interim award, the arbitrator noted the following:

"18. *At the pre-arbitration meeting held on the 19th September 2025 the Arbitrator was advised that the rules applicable to the arbitration were the Rules applicable for the Conduct of Arbitrations of the Association of Arbitrators (Southern Africa) NFC Edition 4.1 March 2005 and was so minuted. This was clearly erroneous as having regard to the Court Order dated 11th August 2025 it is apparent that the applicable rules are the Association of Arbitrators (Southern Africa) NPC Rules for the Conduct of Arbitrations: 8th Edition (1 November 2021) ("the Rules").*

19. *Article 18 and Article 25 of the Rules are applicable to this exception.*

21. *The Arbitrator, in Article 18[1], is given very wide powers to*

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[1] **Article 18**
1 Subject to these Rules, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at an appropriate stage of the proceedings each party is given a reasonable opportunity of presenting its case. The arbitral tribunal, in exercising its discretion, shall conduct the proceedings so as to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the parties' dispute.
2. Unless the parties agree otherwise and subject to these Rules, the arbitral tribunal shall have regard to, but is not bound to apply, the International Bar Association Rules on the Taking of Evidence in International Arbitration in the version current at the commencement of the arbitration.

conduct the arbitration provided that the parties are treated equally and are given a reasonable opportunity of presenting their case.

22. *From Article 25*[2] *it is abundantly clear that a party may apply to the Arbitrator for the early dismissal of a claim. The fact that the application is described as an exception is in the view*

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3. Within 30 days of its constitution, the arbitral tribunal shall convene a preliminary meeting with the parties and shall notify the parties of the time and venue. The arbitral tribunal may direct that the preliminary meeting be conducted in person or through a remote hearing. After inviting the parties to express their views, the arbitral tribunal shall establish the provisional timetable for the arbitration and give provisional directions as to the extent that the arbitration proceedings shall take the form of remote hearing(s).

4. If at an appropriate stage of the proceedings any party so requests, the arbitral tribunal shall hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument. In the absence of such a request, the arbitral tribunal shall decide whether to hold such hearings or whether the proceedings shall be conducted on the basis of documents and other materials. A hearing ordered by the arbitral tribunal in terms of this paragraph may be held in person or take the form of a remote hearing, as the arbitral tribunal, having considered all relevant circumstances, may direct.

5. All communications to the arbitral tribunal by one party shall be communicated by that party to all other parties. Such communications shall be made at the same time, except as otherwise permitted by the arbitral tribunal if it may do so under applicable law.

6. The arbitral tribunal may, at the request of any party, allow one or more third persons to be Joined in the arbitration as a party provided such person is a party to the arbitration agreement, unless the arbitral tribunal finds, after giving all parties, including the person or persons to be joined, the opportunity to be heard, that joinder should not be permitted because of prejudice to any of those parties. The arbitral tribunal may make a single award or several awards in respect of all parties so involved in the arbitration.

7. Any hearing or other meeting held by the arbitral tribunal with the parties under these Rules may be held in person or remotely. Particularly where an evidentiary hearing is to be held remotely, the arbitral tribunal should consult with the parties for purposes of issuing directions to ensure that the remote hearing is conducted efficiently, fairly and, to the extent possible, without unintended interruptions.

[2] **Article 25**

1 A party may apply to the arbitral tribunal for the early dismissal of a claim or defence on the basis that:

(a) A claim or defence is manifestly without-merit; or

(b) A claim or defence is manifestly outside the Jurisdiction of the arbitral tribunal

2 The application must be made as promptly as possible after the communication of the' relevant claims or defences.

3. An application for the early dismissal of a claim or defence under paragraph 1 shall state in detail the facts and legal basis supporting the application. The party applying for early dismissal shall, at the same time as it files the application with the arbitral tribunal, send a copy of the application to the other party, and shall notify the arbitral tribunal that It has done so, specifying the date and mode of service.

4. The arbitral tribunal may, in its discretion, allow the application for the early dismissal of a claim or defence under paragraph 1 to proceed. If the application is allowed to proceed, the arbitral tribunal shall, after giving the parties the opportunity to be heard and after receiving evidence and argument, decide whether to grant, in whole or in part, or dismiss the application for early dismissal under paragraph 1.

5. If the application is allowed to proceed, the arbitral tribunal shall make an order or award on the application, with concise reasons. The order or award shall be made within 60 days of the date of filing of the application, unless, in exceptional circumstances, the Association, at the request of the arbitral tribunal, extends this period by means of a written notice to the parties and the arbitral tribunal.

of the Arbitrator of no merit whatsoever and does not detract from the fact that an exception is nothing but an application under a different name. Accordingly, the Arbitrator has the authority to deal with an exception and in doing so is not acting ultra vires his authority as is submitted by HBC".

[19] After having noted the above, the arbitrator meticulously and in detailed paragraphs, dealt with each point raised by HBC at the hearing of what was, in essence, CTMM's early termination application. In fact, the record indicated that this is expressly what Adv Dewrance SC argued, once the misnomer of the application and the erroneous reference to the 6th Edition of the Rules had been squared away. The arbitrator thereafter dealt with each of the grounds relied on for the early termination, by way of the CTMM's "exception".

[20] The interim award was thereafter published on 9 February 2026 in the following terms: "*(1) the points in limine raised by HBC are dismissed with costs including the cost of two counsel: (2) the grounds of exception raised by CTMM, save in regard to Second Ground of Exception, are uphold with costs including the costs of two counsel; (3) claims 1 to 9 of the SOC are struck out. (4) the costs awarded in 73.2 above are awarded on the party and party scale with Scale C, as provided for in amended Uniform Rule of Court 69(7), being applicable to counsels' fees; (5) HBC is directed to deliver an amended statement of claim within 14 calendar days of publication of this interim award*". The expiry date of the 14 day time period to deliver an amended statement of claim was 23 February 2026 (when counted as calendar days as provided for in Article 2(5)).

[21] On the day after the interim award, HBC obtained an order from this court in the following terms:

> "3. *The time periods contemplated in paragraph 3.3 of the order*

granted by this Honourable Court on 8 August 2025 under case number 063413/2024, are hereby varied and extended so as to extend the period within which the arbitration proceedings (including the delivery and/or publication of the arbitration award) to 30 June 2026.

4. *The agreement reached between the parties on or about 19 October 2025, in terms of which the period for the conclusion of the arbitration was extended to 30 June 2026, is valid and binding, and directing such agreement be made an order of court.*

5. *The arbitration proceedings currently pending before the Third respondent are valid and lawful.*

6. *Third respondent is hereby authorized to proceed with and finalise the arbitration in accordance with the court order dated 8 August 2025, save to the extent amended by paragraph 3 and/or 4 above*".

[22] The HBC's response to the interim award was to send an email to the arbitrator on 11 February 2026. This was two days after the publication of the interim award. In the letter from HBC's attorneys, they repeatedly stated that the award will be taken on review and that the arbitrator had no power to have made such an award. The attorneys also called upon the arbitrator to recuse himself.

[23] On 16 February 2026 the arbitrator responded to the abovementioned letter, stating that it would be inappropriate for him to respond thereto until such time as a "formal recusal application" and a review application were launched.

[24] On 23 February 2026, HBC delivered a formal notice in terms of Articles

13[3] and 14[4], calling upon the arbitrator to withdraw from the arbitration. The grounds relied on were extensive. They included a formal challenge based on a perceived lack of impartiality. The findings made against HBC in the interim a "and subsequent correspondence" were raised as grounds. In addition, the arbitrator was accused of having committed multiple acts of misconduct by the following: the adoption of a programme that would not conclude within 4 months as ordered by the court; by communicating rules contradictory to court orders and terms of appointment; by refusing to confirm availability to conclude proceedings by the agreed date; by expressing or recording that parties waived their rights during meetings, which the applicant denied; by allegedly ignoring procedural rights, including the right to challenge jurisdiction and by having allowed the exception to proceed as an application in terms of Article 25(1)[5]. In addition, the arbitrator was criticised for having determined issues concerning prescription and time-bar at the exception stage without evidence. All these acts were alleged to have "collectively" undermined the fairness and impartiality of the arbitration

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[3] **Article 13**

1. Any arbitrator may be challenged If circumstances exist that give rise to Justifiable doubts as to the arbitrator's Impartiality or Independence.
2. A party may challenge the arbitrator appointed by It only for reasons of which It becomes aware after the appointment has been made.
3. In the event that an arbitrator falls to act or in the event of the *de Jure or de facto* impossibility of his or her performing his or her functions, the procedure in respect of the challenge of an arbitrator as provided in article 14 shall apply.

[4] **Article 14**

1. A party that intends to challenge an arbitrator shall send notice of Its challenge within 15 days after It has been notified of the appointment of the challenged arbitrator, or within 15 days after the circumstances mentioned in articles 11, 12 and 13 became known to that party.
2. The notice of challenge shall be communicated to all other parties, to the arbitrator who is challenged and to the other arbitrators. The notice of challenge shall state the reasons for the challenge.
3. When an arbitrator has been challenged by a party, all parties may agree to the challenge, in which case the arbitrator shall withdraw from his or her office. The arbitrator may also, after the challenge, withdraw from his or her office. In neither case does this Imply acceptance of" the validity of the grounds for the challenge.
4. If, within 15 days from the date of the notice of challenge, all parties do not agree to the challenge or the challenged arbitrator does not withdraw, the party making the challenge may elect to pursue it. In that case, within 30 days from the date of the notice of challenge, it shall seek a decision on the challenge by the Association.

[5] **Article 25(1)**

1 A party may apply to the arbitral tribunal for the early dismissal of a claim or defence on the basis that:

(a) A claim or defence is manifestly without-merit; or

(b) A claim or defence is manifestly outside the Jurisdiction of the arbitral tribunal.

process.

[25] CTMM delivered an extensive opposition to the request for withdrawal/recusal on 2 March 2026, arguing that the arbitrator had not, in its opinion, committed any gross irregularity and that there were no grounds upon which any person could reasonably form the opinion that the arbitrator had been biased. CTMM was of the opinion that the challenge was "... *founded upon dissatisfaction with adverse procedural rulings and represents an impermissible attempt to re-litigate the Interim Award under the guise of recusal*".

[26] The arbitrator had elected not to withdraw from the arbitration and on 10 March, delivered an extensive written "decision", documenting his reasons for not doing so.

[27] In the meantime, and upon HBC's failure to deliver an amended statement of claim, the CTMM delivered a notice in terms of Article 32[6] on 3 March 2026.

[28] Pursuant hereto, the arbitrator on 5 March 2026 called upon HBC to deliver an answer to the Article 32 application by 11 March 2026. This date was extended by yet another subsequent invitation by the arbitrator on 12 March 2026, to no avail. This second invitation read as follows: "*I note that, despite my request in*

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[6] **Article 32**

1. If, within the period of time fixed by these Rules or the arbitral tribunal, without showing sufficient cause:
   (a) The claimant has failed to communicate its statement of claim, the arbitral tribunal shall issue an order for the termination of the arbitral proceedings, unless there are remaining matters that may need to be decided and the arbitral tribunal considers it appropriate to do so;
   (b) The respondent has failed to communicate its response to the notice of arbitration or its statement of defence, the arbitral tribunal shall order that the proceedings continue, without treating such failure in Itself as an admission of the claimant's allegations; the provisions of this subparagraph also apply to a claimant's failure to submit a defence to a counterclaim or to a claim for the purpose of a set-off.
2. If a party, duly notified under these Rules, falls to attend a hearing or other meeting, without showing sufficient cause for such failure, the arbitral tribunal may proceed with the arbitration or meeting.
3. If a party, duly invited by the arbitral tribunal to produce documents, exhibits or other evidence, fails to do so within the established period of time, without showing sufficient cause for such failure, the arbitral tribunal may make the award on the evidence before it.

my email dated 5th March 2026, the Claimant has not delivered an answering affidavit. Under the circumstances am I to assume that the Claimant does not intend filing an answering affidavit? Your response is awaited by no later than close of business tomorrow".

[29] In the end, on 17 March 2026 the arbitrator terminated the arbitration by way of an award whereby the CTMM's Article 32 application was upheld.

[30] This prompted the launching of the current application on 30 March 2026 for the relief set out earlier. As a basis for the urgent hearing of the matter, the applicant relied on the extended date for finalisation of the arbitration on 30 June 2026. I accepted that, when the matter came before me last week, that the parties needed an urgent resolution of the review application, hence the speedy delivery of this judgment.

The grounds of review

[31] In an extensive founding affidavit to the review application, the applicant's attorney, Mr Dyushu, listed sixteen grounds of review (from par 317 of the affidavit onwards). HBC's director had filed a confirmatory affidavit thereto. The 16 grounds of review were stated as follows:

1. Failure to conduct the arbitration in accordance with court orders, terms of appointment and section 23 of the Arbitration Act;

2. Failure to disclose prior professional familiarity with counsel and breach of the applicable disclosure duties;

3. Material mischaracterisation of the record Concerning waiver of section 23 and the court ordered time limit;

4. Adoption of the wrong procedural regime and failure properly to acquaint himself with the applicable rules;

5. Unfair conduct and alignment with the first respondent during the 14 October 2025 pre-arbitration meeting;

6. Entertaining an incompetent exception instead of requiring compliance with Rule 22;

7. Refusal to permit the applicant a substantive response and jurisdictional challenge to the exception;

8. Proceeding with the exception process despite unresolved uncertainty about the applicant rules;

9. Requiring the applicant to begin argument on the first respondent's application;

10. Re-characterising the exception as an Article 25 application under the 8^{th} edition rules;

11. Determining prescription and contractual time-bar on the pleadings where evidence was required;

12. Permitting and adopting a procedural ambush;

13. The recusal ruling, intemperate language, and the cumulative apprehension of bias;

14. Lack of jurisdiction to proceed with and determine the Rule 32 termination application while the recusal challenge remained

pending;

15. Costs orders made pursuant to irregular processes and without proper procedural foundation;

16. The decision to terminate the arbitration was always fait accompli since the second pre-arb meeting on 14 October 2025.

The law regarding the review of arbitration awards

[32] Section 33(1) of the Arbitration Act[7] (the Act) allows an aggrieved party to approach this court for relief. To the extent relevant for present purposes, s 33(1), which is headed 'setting aside of awards", provides as follows: "*(1) Where – (a) any member of an arbitration tribunal has misconducted himself in relation to his duties as arbitrator . . .; or (b) an arbitration tribunal has committed any gross irregularity in the conduct of the arbitration proceedings or has exceeded his powers; or (c) . . .; the court may, on the application of any party to the reference after due notice to the other party or parties, make an order setting the award aside.*"

[33] In *OCA Testing and Certification South Africa (Pty) Ltd*[8] the Supreme Court of Appeal restated the current state of the law relating to the circumstances in which a court will come to the aid of a party relying on s 33(1) of the Act. The grounds of review which must be established are either misconduct by the arbitrator or the comittal of gross irregularities in the matter in which the arbitration had been conducted. In this regard, Harms JA (as he then was) conducted an analysis of a series of judgments in *Telcordia Technologies Inc v Telkom SA Ltd*[9] (*Telcordia*). Harms JA[10] cited a passage from the judgment of

[7] 42 of 1965.
[8] (1226/2021) [2023] ZASCA 13 (17 February 2023).
[9] 2007 (3) SA 266 (SCA).
[10] At para 72.

Mason J in *Ellis v Morgan; Ellis v Desai*[11] (*Ellis*) in which the position was succinctly stated as follows: "*But an irregularity in proceedings does not mean an incorrect judgment; it refers not to the result, but to the methods of a trial, such as, for example, some high-handed or mistaken action which has prevented the aggrieved party from having his case fully and fairly determined*".

[34] Reference was also made in *Telcordia*[12] to *Goldfields Investment Ltd v City Council of Johannesburg*[13] (*Goldfields*), by stating that an arbitrator misconceives the nature of the inquiry in instances where he or she fails to perform his or her mandate. And "*[b]y misconceiving the nature of the inquiry, a hearing cannot in principle be fair because the body fails to perform its mandate*".

[35] In *Goldfields* Schreiner J was forthright when he, with reference to *Ellis* said: "*... it is not merely high-handed or arbitrary conduct which is described as a gross irregularity; behaviour which is perfectly well-intentioned and bona fide, though mistaken, may come under that description. The crucial question is whether it prevented a fair trial of the issues. If it did prevent a fair trial of the issues then it will amount to a gross irregularity*".

[36] *Palabora Copper (Pty) Ltd v Motlokwa Transport and Construction (Pty) Ltd*[14] the Supreme Court of Appeal reiterated that where "*an arbitrator engages in the correct enquiry, but errs either on the facts or the law, that is not an irregularity and is not a basis for setting aside an award*"[15]. This is in keeping with the abiding principle that whenever parties elect to resolve their disputes through arbitration, courts must defer to the parties' choice and not lightly

[11] 1909 TS 576 at 581.
[12] At para 73.
[13] 1938 TPD 551 at 560-561.
[14] [2018] 2 All SA 660 (SCA).
[15] Ibid para 8.

intervene.[16]

Was the review of the interim award time-barred?

[37] In heads of argument delivered in this court on behalf of the arbitrator, the point was taken that the review of the interim award was time-barred. This point was grounded in section 33(2) of the Act which prescribes that a review application must be made within six weeks of the publication of the award.

[38] The interim award was published on 9 February and the six weeks period expired on 23 March 2026. Despite having threatened repeatedly to do so, HBC only launched the review application out of time on 30 March 2026. This caused the interim award, in the words of Adv Maritz SC, who appeared with Adv Manning for the arbitrator, to have become "cast in stone".

[39] Adv Ntuli, who appeared for HBC, countered that, as the interim award was only interim in nature and not of final effect, it could not be reviewed until the arbitration had been terminated.

[40] As a general proposition, Adv Ntuli's contention might be correct, but in my view, he lost sight of two important considerations, raised by HBC itself. The first is the contention that the arbitrator had acted *ultra vires* and without any jurisdiction in entertaining the "exception" and secondly that the decision he made in respect of prescription had the effect of finally disposing of at least a part of HBC's claims.

[41] CTMM also relied, by way of its Article 32 application, on the portion of the interim award which required HBC to amend its statement of claim, should it wish to keep its cause of action (and the arbitration) alive. This made the interim

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[16] *Lufhuno Mphahluli and Associates (Pty) Ltd v Andrews and Another* 2009 (4) SA 529 (CC) at para 219

award enforceable and therefore final in nature.[17] Adv Ntuli's counter can therefore not be sustained.

[42] I therefore find that the review of the interim award was time-barred and must fail on this basis alone. This has serious consequences for the review of the termination award as the *fulcrum* on which the termination award hinged was the failure (or more correctly, the refusal) of HBC to deliver an amended statement of claim. Once the requirement (or leave) to amend has been time-barred from being reviewed, then the principal basis for review of the termination award falls away.

[43] If I were to be wrong on the issue of time-barring and, having regard to the somewhat conflated grounds on which HBC still maintained the awards should be reviewed and set aside, I am of the view that the application should still fail. The reason for this is that, in my view, none of the grounds of review advanced by HBC holds any water. I shall demonstrate this below by dealing with all of the sixteen grounds advanced, commencing with those directed at the time period for the conclusion of the arbitration, whereafter I shall deal with those directed specifically at the interim award and thereafter consider those related to the termination award. In the final instance, I shall deal with the grounds of alleged misconduct by the arbitrator

Analysis of the time-period grounds

[44] The first and third grounds relied on by HBC's attorney in his affidavit relate to this topic.

[45] The first ground was formulated as follows: *Failure to conduct the arbitration in accordance with court orders, terms of appointment and section 23*

[17] See in this regard *Krohne (Pty) Ltd v Strategic Fuel Fund Association* (Case no 476/2023) [2024] ZASCA 99 (14 June 2024).

of the Arbitration Act. The point which HBC sought to make was that an order of court restricted the arbitrator to the conclusion of the arbitration within four months and that he, in breach thereof "*... from the outset adopted and enforced a programme inconsistent with the court-ordered timetable, treated compliance with that timetable as optional or impractical...*" (to quote from para 319 of HBC's attorney's affidavit).

[46] This accusation is not only without a factual basis, but loses sight of a number of fundamental aspects. The first is that the court order did not provide a "timetable", it only provided for commencement and conclusion dates. The second is that the court order was made by agreement between the parties. Although the agreement was sanctioned by a court, its origin was, similarly as arbitration proceedings itself, an agreement between disputing parties.

[47] A next important factor to consider, is that the timetables contained in the minutes of the first and second pre-arbitration meetings (and the consequential directive of 29 October 2025) reflect agreements between the parties themselves. They were not compiled by nor directed or imposed by the arbitrator.

[48] One should also bear in mind that the request for a second pre-arbitration meeting in order to fix new timetables came from HBC, as a result of it unilaterally terminating the mandate of its erstwhile attorneys and senior counsel.

[49] In HBC's application for extension of the initial conclusion date of the arbitration from 20 January 2026 to 30 June 2026, HBC's attorney, on oath stated that he really did not believe that a request for extension was necessary, because there was an agreement between the parties and agreements should be honoured. This much is clear from the following express statements made in the affidavit in support of the application for extension:

"36. *At that meeting, and pursuant to the discussions between the parties, an agreement was reached regarding a revised procedural timetable for the arbitration. In particular, the parties agreed that the arbitration would proceed in accordance with a revised programme, with the period for the conclusion of the arbitration being extended to 30 June 2026.*

38. *At all material times following the pre-arbitration meeting of 19 October 2025, the arbitration proceeded on the shared understanding that the parties were bound by the revised timetable and that the arbitration would be brought to finality in accordance therewith.*

58. *Arbitration, by its very nature, is a consensual dispute-resolution mechanism. Party autonomy lies at its core, and procedural agreements concluded within the arbitral process are accorded particular significance, as they regulate not only the rights of the parties, but the orderly administration of justice within the arbitration itself.*

76. *The arbitration continued thereafter under the management of the Third Respondent and pursuant to the agreed procedural framework. A further pre- arbitration meeting was convened on 11 December 2025, at which the parties again engaged on the conduct of the arbitration and confirmed the operative procedural arrangements. The minutes of that meeting are annexed hereto marked "FA 4".*

89. *But for the First Respondent's conduct and refusal to cooperate in giving effect to the agreed procedural*

framework, the present application - and the attendant costs and urgency - would have been entirely unnecessary.

101. The urgency of this application is intensified by the fact that the arbitration was already actively underway pursuant to an agreed and operative procedural framework, with hearing dates allocated for March 2026, and with the parties having expressly agreed that the arbitration would be finalised by 30 June 2026".

[50] The accusations levelled against the arbitrator are therefore not only without foundation, but scurrilous. I shall return to this aspect at the time of exercising this court's discretion in relation to a proper award for costs.

[51] The third ground of review also falls under the rubric of time periods for conclusion of the arbitration. It was formulated as follows: *Material mischaracterisation of the record concerning waiver of section 23 and the court ordered time limit.* Section 23(a) of the Act contemplates the delivery of a final award within four months of an arbitrator becoming seized with an arbitration[18]. The section itself, however, also contemplates that the parties may in writing extend this period.[19]

[52] HBC seeks to rely on a statement made by its erstwhile senior counsel at the first pre-arbitration meeting, when asked about the waiver of HBC's rights in terms of section 23, to the effect that he has no instructions to do so. Despite this

[18] Section 23 The arbitration tribunal shall, unless the arbitration agreement otherwise provides, make its award — (a) in the case of an award by an arbitrator or arbitrators, within four months after the date on which such arbitrator or arbitrators entered on the reference or the date on which such arbitrator was or such arbitrators were called on to act by notice in writing from any party to the reference, whichever date be the earlier date ...

[19] ... or before any later date to which the parties by any writing signed by them may from time to time extend the time for making the award: Provided that the court may, on good cause shown, from time to time extend the time for making any award, whether that time has expired or not.

statement, the record further shows that the parties have thereafter indeed agreed on time periods which would in all likelihood go beyond four months. Not only does this indicate a clearly implied waiver of the section 23 rights, but the minutes referred to earlier in the judgment, clearly constituted permissible agreements between the parties, as contemplated in section 23.

[53] The allegation by HBC's attorney in this regard, made in para 321 of his founding affidavit cannot be sustained. Therein, the attorney stated: *The [arbitrator] repeatedly proceeded on the footing that the parties had waived their rights under section 23 and, by implication, their entitlement to insist on compliance with the court-directed timetable. The [HBC's] case, however, is that the record shows the opposite, namely that the applicant insisted on compliance with the court order and did not waive those protections. This mischaracterisation of the record lies at the hear of the review"*. Adv Ntuli had difficulty in reconciling these statements by the attorney with those made in the application for extension of the original order. As I understood him, his argument was that the affidavits were meant to serve different objectives, the one being a review and the other an extension of time. I shall revisit this aspect when dealing with the issue of costs, but suffice to say that I cannot find that the arbitrator had committed any gross irregularity when he accepted the timetable agreed to between the parties.

Analysis of the grounds of review relating to the hearing of CTMM's "exception"

[54] Of the sixteen grounds of review relied on by CTMM, grounds 6 to 12 relate to this topic.

[55] The sixth ground of review has been formulated as follows: *Entertaining an incompetent exception instead of requiring compliance with Rule 22*. HBC's attorney expanded on this ground as follows: "*The [arbitrator] exceeded his*

powers and committed a gross irregularity by entertaining a purported exception in circumstances where the applicable rules and his own procedural directions required [CTMM] to file a statement of defence". This objection, leaving aside for a moment the fact that CTMM had styled its objections to the statement of claim as an exception, implies that CTMM had no rights to apply for an early termination of the arbitration in circumstances where the statement of claim discloses no valid cause of action. Not only would such a contention be untenable, but to hinge it on an agreed timetable for delivery of a statement as defence as the basis for such an exclusion, is simply elevating form or technicality to a new and unsustainable level.

[56] The seventh ground of review was the following: *Refusal to permit the applicant a substantive response and jurisdictional challenge to the exception.* HBC's attorney, in his affidavit, alleged that the arbitrator had "... *committed a gross irregularity and procedural unfairness by refusing [HBC] the opportunity to file a substantive written response and a jurisdictional challenge to the purported exception...".*

[57] It is not entirely clear what the basis of this ground is. While it is correct that the stance of HBC, expressed in a letter from its attorneys on 8 December 2025 and at the outset of the subsequent third pre-arbitration meeting of 11 December 2025, was that it wished to bring a counter-application to the exception, raising the issue of jurisdiction, it ultimately agreed not to do so. This, the attorney expressly confirmed in his affidavit as follows (at par 207 thereof); *"[HBC] agreed that it would not bring a separate application on the arbitrator's jurisdiction to grant the relief sought and would instead raise those issues in its heads of argument*" (my emphasis).

[58] Once such an agreement had been reached between the parties, it is not open for HBC to *ex post facto* (after the event and only now that the award had

gone against it) claim that it had been "refused" an opportunity to deal with its jurisdictional objections to the arbitrator entertaining the exception. Apart from the agreement on procedure, this purported ground is also factually without foundation as HBC had indeed been given the opportunity to raise its objections and to present them in heads of argument, which were fully ventilated and argued. I agree with the arbitrator that issues such as those which were raised in the exception, were issues of law and not fact. Those issues are customarily dealt with by way of argument, in similar fashion as had been done in this instance. A counter-application was therefore not a requirement for the issue to be dealt with.

[59] The eighth ground of review was formulated as follows: "*Proceeding with the exception process despite unresolved uncertainty about the applicable rules*". This ground harkens back to the issue referred to earlier, namely that in the agreement between the parties which featured in the minute of 19 September 2025, reference was made to the 6^{th} edition of the Rules. Adv Ntuli has however, during the hearing of this matter, in open court conceded that the common intention of the parties had all along been that they intended the most recent and current edition of the Rules, namely the 8^{th} edition, to govern the arbitration process. This is what was referred to in para 3.4 of the order of Collis J and also what transpired during the hearing of the exception. In light of this concession, for HBC to attempt to elevate the reference to an incorrect edition in the parties' initial pre-arbitration meeting (and which incorrect reference was followed in the formulation of CTMM's notice of exception) to "uncertainty" which would amount to a gross irregularity, amounts to a proverbial snatching at a bargain or, equally proverbially, a clutching at straws.

[60] The ninth ground of review is equally an attempt to clutch at straws. For this ground, HBC's attorney alleged that "*requiring [HBC] to begin argument on [CTMM]'s application*" (incidentally correctly characterising the exception as an early termination application), amounted to "*... a further act of unfairness and*

irregularity". This argument clearly loses sight of the fact that HBC was the party that had raised points *in limine*. It is not only customary, but proper that a party which raises such points, be given the opportunity to do so first, before anyone else is heard. For the arbitrator to have proceeded in this customary fashion was not only to HBC's benefit, but can hardly be said to have been unfair, let alone constitute an irregularity.

[61] The tenth ground of review appears to actually be the nub of HBC's complaint. The alleged gross irregularity referred to in this ground, was committed by "*re-characterising the exception as an article 25 application under the 8th edition rules*".

[62] As indicated earlier, Article 25(1) of the said rules permits a party to an arbitration to bring an application for the early termination of the proceedings where it appears that "a *claim or defence is manifestly without merit*". It is true that CTMM's attempt to bring about this result was styled as a notice of exception and that reference was made (again erroneously) to the 6th edition of the Rules, but what was debated before the arbitrator, was that one should look beyond the form of CTMM's document, to the substance thereof. Changing the label of the document from "exception" to "Article 25 application" and correcting the reference to the Rules, was what was argued on behalf of CTMM and this is the basis upon which the substance of the document, which had not been changed one iota by such relabelling, had been argued and considered. To have insisted on a formal "relabelling" of the document, would have elevated form over substance and may have caused further delays in the proceedings.

[63] I find that the arbitrator had been perfectly within the scope of Article 18 to have dealt with the matter in the fashion that he did, by grappling with the substance of what was before him. It would have been absurd to have an arbitration proceed on what was found to be defectively pleaded causes of action,

simply because form should trump over substance, which is effectively what HBC contended for.

[64] In applying the dictum in *Goldfields* referred to in para [33] above, I find that the manner in which the arbitrator had dealt with the matter, had not prevented a fair trial on the substance of CTMM's objections to the formulation of HBC's statement of claim. It also did not prevent a fair ventilation of the points *in limine* raised by HBC. Both parties were represented by counsel and had the opportunity to present both written and oral argument. Therefore, no irregularity, gross or otherwise, has been committed which would justify a setting aside of the interim order.

[65] I am further of the view that this finding of the absence of prejudice or unfairness, is fortified by the fact that, irrespective of the fact that the exception was ultimately dealt with as an application in terms of Article 25, HBC was in the interim award granted the opportunity to remedy the defects in its statement of claim. The fact that it chose not to do so, cannot be blamed on the arbitrator.

[66] The eleventh ground of review was that the arbitrator had determined "*prescription and contractual time-bar on the pleadings where evidence was required*". Again, as already stated above, the matter was dealt with on the acceptance of the averments pleaded by HBC in its statement of claim. The finding was simply, on the acceptance of those averments, that certain of the claims had become prescribed. There is nothing unprocedural or irregular in considering this issue (in similar fashion as a special plea) on the "pleadings" alone as a conclusion in law. To put it even simpler, the conclusion amounted to the following: in the event that HBC has pleaded in its statement of claim that the facts relied on were A,B and C, then on the face of that statement and on the application of the law of extinctive prescription, the claims in question had become prescribed. No evidence was needed to make such a determination.

Insofar as HBC wishes to contend that the "history of the matter" was relevant, the finding by the arbitrator was simply that that had not been pleaded and that HBC was given the opportunity to do so by the delivery of an amended statement of claim. I find no irregularity in this.

[67] The twelfth and last ground of review of the interim award was that the arbitrator had *"permit[ed] and adopt[ed] a procedural ambush"*. Despite the accusatorial wording of this ground, it is very much similar to the form over substance argument advanced as the tenth ground. HBC's attorney argued it as follows in par 330 of his affidavit: *"The [arbitrator] permitted and ultimately adopted a procedural shift by [CTMM] from its original footing to one based on article 25 of the 8^{th} edition. [HBC]'s case is that this amounted to procedural ambush and that the [arbitrator] erred in permitting and acting upon that shift"*. Insofar as this contention might suggest gross irregularity, it is rejected in the same fashion as the tenth ground of review has been rejected above. Insofar as it, however alleges that the arbitrator has erred, that is not a ground for review and what effectively amounts to an appeal cannot be entertained as a ground of review[20]. There was also no "ambush" as the substance of the objections to the statement of claim had been fully ventilated.

The termination award

[68] As the fourteenth ground of review, HBC contended that the arbitrator *"lack[ed] jurisdiction to proceed with and determine the Rule 32 termination application while the recusal challenge remained pending"* (the reference to Rule 32 is taken as having meant to be a reference to Article 32 of the Rules).

[69] Although one may not be blamed for contemplating whether the finalising of an award was not perhaps premature whilst an objection had been made to the

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[20] *KW Plant Hire v Ahier* (2672/2008) [2009] ZAECGHC 41 (30 June 2009).

arbitrator remaining in office as it were, this ground of review was raised on the basis of an alleged lack of jurisdiction to do so.

[70] As indicated above, in the letter from HBC's attorneys dated 11 February 2026, the arbitrator was invited to recuse himself. He was informed that, should he not do so by 16 February 2026, HBC "*will bring a formal application before you for your recusal*".

[71] Pursuant hereto, the arbitrator on 16 February 2026, declined this invitation, indicating that he will await the formal application. Such a formal application was then made by HBC on 23 February 2026, by way of the delivery of a notice in terms of Articles 13 and 14. As indicated in footnote 4 above, Article 14.3 provides that, upon receipt of such a notice, an arbitrator may voluntarily "withdraw from office" or the parties may jointly agree on his withdrawal. The latter did not take place. In fact, there is no evidence that such an agreement was ever sought or explored by HBC, perhaps not unsurprisingly so, given CTMM's opposition to the withdrawal notice. In respect of the former, the arbitrator had delivered his decision not to withdraw in a formal document on 10 March 2026.

[72] Article 14.4 provides that, if no voluntary vacation of office or an agreement to that effect had occurred within 15 days of the relevant notice, the objecting party may "*elect to pursue it*". This election can be exercised by a referral of the objection to the Association of Arbitrators (the Association) within 30 days of the initial notice.

[73] It is common cause that no such referral had taken place by the time of the termination award and also common cause that the 30 day period had by then not yet expired. This is HBC's point. There is, however, no provision which suspends either the arbitration proceedings or the arbitrator's powers, pending the expiry of the 30 day period. The delivery of such a notice does not have a similar effect

to that of the delivery of an application for leave to appeal in civil proceedings in this court. On an evaluation of the legal position, there is therefore no suspension or limitation of the arbitrator's powers in this period. The review point is therefore bad in law.

[74] In addition, at no stage since the delivery on 10 March 2026 of the arbitrator's decision not to withdraw from office, has HBC indicated that it has elected to refer its objection to the Association. In addition, at no stage since CTMM had applied for a termination award as contemplated in Article 32, nor upon receipt of the arbitrator's requests to respond thereto, had HBC made such an election known to the arbitrator or HBC.

[75] Both in the termination award and in his answering affidavit, the arbitrator made the point that Article 32, by use of the word "shall", obliged an arbitrator to issue a termination award upon the failure by a claimant to deliver a statement of claim within a time period determined by the arbitrator. In the context of the present matter, this refers to the delivery of an amended statement of claim within the 14 days which had expired on 23 February 2026.

[76] I therefore find that no irregularity had been committed by the arbitrator in having determined the Article 32 application and by having issued the termination award.

The remaining grounds of review

[77] The second ground of review was formulated as follows "*Failure to disclose prior professional familiarity with counsel and breach of the applicable disclosure duties*". In support of this ground, HBC's attorney claimed in para 320 of his affidavit that the arbitrator had failed to disclose his "*...prior familiarity with counsel*". No particularity of this alleged familiarity was given, nor was it claimed that it gave rise to any real or apprehended conflict of interest.

The arbitrator dealt with this aspect in his answering affidavit and denied any familiarity with CTMM's counsel.

[78] In his replying affidavit, HBC's attorney said that HBC was "*...prepared, for present purposes, to accept that denial as his version...[but] nevertheless stand by what is objectively patent from the contemporaneous record of 19 September 2025...*". Having trawled through that record, I could not find any "patently obvious" familiarity with the counsel for CTMM. In fact, the opposite appears, namely a familiarity with the senior counsel then briefed on behalf of HBC, Adv Wasserman SC who greeted the arbitrator by saying that they haven't seen each other "for ages". While there was initially some use of first names, the senior counsel for the two parties appeared to be the ones who knew each other very well, but nothing turns on this.

[79] I find no factual support for the suggestion that there was an improperly familiar relationship between the arbitrator and the counsel for CTMM, nor the unstated but subtly suggested accusation that the arbitrator had acted in a biased fashion as a result of any suggested familiarity. In short, this point of review is devoid of both particularity and merit.

[80] As a fourth ground of review, HBC's attorney claimed the following; "*Adoption of the wrong procedural regime and failure properly to acquaint himself with the applicable rules*". In para 322 of his affidavit the attorney accused the arbitrator of having "*... proceeded on an incorrect and confused understanding of the procedural regime governing the arbitration, alternatively on no coherent understanding at all*". This issue relates to the initial common error between the parties relating to the 6th edition of the rules, while the correct edition was the 8th edition. The error and initial confusion was not of the making of the arbitrator, but of the parties themselves, who had referred to the incorrect edition in their first pre-arbitration meeting. This ground is therefore not only

without substance, but has been formulated (and repeated) in an insulting fashion. To further claim that the arbitrator had "... *failed to acquaint himself with the applicable 8th edition rules* ..." and that this amounted to a gross irregularity and misconduct, is to add insult to injury.

[81] The fifth ground of review advanced by HBC was the alleged "*Unfair conduct and alignment with the first respondent during the 14 October 2025 pre-arbitration meeting*". HBC's attorney accused the arbitrator in para 323 of his affidavit of having "... *compelled [HBC] away from the court-ordered framework*" and having "*accepted [CTMM]'s stance on compliance with the court order*". The facts about how the timetable had resulted in the period initially agreed on between the parties and which had been included in the initial court order, having to be extended, have already been dealt with earlier in this judgment. What the attorney was now trying to do, was to blame the timetable to which the parties' legal representatives have separately agreed to before returning to the arbitrator on 24 October 2026, on the arbitrator. Once the agreements on the timetables had been agreed on between the parties, the door has been shut on any allegation of misconduct on the part of the arbitrator. Moreover, once those agreements had been reached <u>between the parties</u>, the door was no longer open for HBC to reasonably form an apprehension that the arbitrator "...*was no longer approaching the matter with the required neutrality*", as alleged by the attorney (my underlining for emphasis).

[82] The thirteenth ground of review was summarised as follows: "*The recusal ruling, intemperate language, and the cumulative apprehension of bias*". Firstly, there was no "recusal ruling" and no such ruling is contemplated in Article 14. The arbitrator had merely, in a written document explained why he was not prepared to withdraw as an arbitrator. The 'intemperate language" was merely that used to describe why the arbitrator was of the view that the grounds relied on in the Article 14 notice, were without foundation.

[83] In the written document complained of, the arbitrator measured the contents of the Article 14 notice against the decisions in *President of the Republic of South Africa v South African Football Union*[21] and *Bernert v Absa*[22] and in that exercise used the words about which HBC's attorney complained in paras 289-292 and 331 of his affidavit, namely that the contentions were "reckless", "bald", "totally devoid of any substantiation" and "beggars belief". The lastmentioned term was used by the arbitrator in response to a suggestion that Adv Wasserman SC might have acted without a mandate when he agreed to the time-periods mentioned in the minute of the meeting of 19 September 2025.

[84] I could not find the other quotations ascribed to the arbitrator in the relevant document. The facts remain that there was no "recusal ruling". There was also no opposition to the Article 32 application and the subsequent upholding of that application can therefore not lead to a reasonable apprehension of bias. There is therefore no substance in this ground of review, which could in any event only have succeeded if the alleged "intemperate language" which was complained about, amounted to misconduct which have vitiated a fair hearing in the arbitration.

[85] The fifteenth ground of review advanced by HBC was to the effect that "*costs orders [were] made pursuant to irregular processes and without proper procedural foundation*". Article 43(1) provides that the award of costs orders fall in the discretion of an arbitrator. HBC's attorney alleged that the costs awarded by the arbitrator were "*... infected by the same misconduct, irregularities and excesses of power ...*" alleged in the other grounds of review. In particular, so the attorney claimed, the costs "*... aspects are said to have followed procedures that were themselves incompetent, unfair and beyond the [arbitrator's] lawful*

[21] 1999 (4) SA 147 (CC) at 175F-G.
[22] 2011 (3) SA 92 (CC) at para 35.

powers ...".

[86] No particularity is provided in respect of which specific ground HBC relied on for any suggestion that the arbitrator had not properly exercised his discretion when having made the costs orders. They all followed the success of the proceedings in which they were awarded. In this regard, the customary rule that costs follow the event, was followed and there is nothing untoward in this. It seems that HBC attacked the costs awards based on the attacks on the procedures which led to the two awards. Should the grounds of review in respect of those awards be unsuccessful, as I have demonstrated should be the case, then the attack on the costs awards will follow the same route.

[87] The sixteenth and final ground of review was formulated as follows: "*The decision to terminate the arbitration was always fait accompli since the second pre-arb meeting on 14 October 2025*". This alleged ground of review can summarily be dispensed with. It can never be argued by HBC that the termination award was always a foregone conclusion. On 14 October 2025, an application in terms of Article 32 had not even featured and neither was it even contemplated. It only came to life as a result of subsequent circumstances.

[88] Furthermore, the basis of CTMM's subsequent Article 32 application, was that HBC had failed to deliver an amended statement of claim. Had it done so, the basis of the application would have fallen away and with it, the basis upon which the arbitrator could have granted the termination award. Furthermore, HBC failed or refused to deliver any answering affidavit to the Article 32 application, resulting therein that it went ahead on an unopposed basis. On both these two grounds HBC was the architect of its own misfortune. HBC's own lack of participation in the arbitration process resulted in the termination award.

The declaratory relief

[89] During the debate of the matter, I enquired from Adv Ntuli, whether the declaratory relief sought in prayer 2 of HBC's notice of motion are not merely findings or conclusions which HBC implored the court to make or reach on the way to a successful review, but he was adamant that HBC sought these separate and express declarations against the arbitrator. This is highly uncommon and so is the relief that the arbitrator forego his fees in the arbitration.

[90] The arbitrator, in his answering affidavit, was at pains to indicate that a decisionmaker in his position should simply abide the decision of a court when faced with a review of the decisionmaker's conduct, and that is what he customarily does. However, in the present instance where declaratory relief is sought against him and where the relief not only includes the costs of the review against him personally, but also the disqualification of the arbitrator's fees to which he has already otherwise become entitled to, he was obliged to defend himself.

[91] In interpose to mention at this stage that, due to the nature of the matter, namely the review of the conduct of a decisionmaker such as an arbitrator, I had scant regard to the arbitrator's affidavit and have neither treated nor evaluated the contents of his affidavit in the customary *Plascon-Evans* fashion. I have dealt with HBC's allegations on an objective evaluation of the undisputed facts relating to the events and the procedures in the arbitration itself, including the awards sought to be reviewed.

[92] Based on an evaluation of those facts, as discussed and analysed above, I find no grounds upon which the declaratory orders sought, could be justified.

Costs

[93] I am of the view that there are no cogent grounds for not following the

customary rule that costs should follow the success achieved in the matter.

[94] Although CTMM had argued at the conclusion of its opposition that it should be entitled to costs on the scale as between attorney and client, and despite the findings that none of the grounds of review had any merit, I am of the view that CTMM's costs should be treated in the same fashion as in any other unsuccessful application. This means that the costs order awarded in favour of the respondents (including the second respondent, insofar as he may have incurred any costs) should be on the scale as between party and party. Having regard to the extent of the matter and the issues involved, I am of the view that it is justifiable that the costs of counsel be taxable on scale C as contemplated in Rules 67A and 69 of the Uniform Rules.

[95] The scale of costs to be awarded to the arbitrator is on a different footing. He has repeatedly and often in a gratuitous fashion been accused of misconduct, of having committed gross irregularities on numerous occasions and of having acted in contempt of court. All these allegations were baseless and, as a senior officer of this court, he has been aggrieved thereby. I find, in the exercise of the court's discretion, that this justifies a costs order on the scale as between attorney and client. This being the finding, there is no need to make a scale determination as required for costs orders on a party and party scale.

[96] Adv Maritz SC also strenuously argued for costs against HBC's attorneys *de boniis propriis* and fair warning of this request had been given. As I have indicated above, it was HBC's attorney who had repeatedly made the accusations against the arbitrator. They were made repeatedly, against a fellow officer of this court and in a fashion which was argumentative and based on grounds which have not emanated from, nor can be ascribed to HBC alone[23]. The attorney and his

[23] See also *Protea Assurance Co Ltd v Januszkiewicz* 1989 (4) SA 292 (WLD) as an example for the awarding of such costs.

client have clearly made common cause with each other and I therefore find it appropriate that they both, jointly and severally be liable for the arbitrator's costs.

[97] As indicated earlier, the wasted costs occasion by the matter having been struck from the urgent roll on 14 April 2026, have been reserved. In view of the conclusions already reached above, those costs should be costs in the review application and follow the same event.

Order

[98] In the premises the following order is made:

1. The application is dismissed.

2. The applicant is ordered to pay the costs of the first and second respondents, including the costs of two counsel, where employed. The costs of counsel shall be taxable on scale C of Rule 69.

3. The applicant and its attorneys are jointly and severally ordered to pay the third respondent's costs on the scale as between attorney and client, including the costs of two counsel, where employed.

4. The costs ordered in paragraphs 2 and 3 above shall include the wasted costs of the respective parties occasioned by the proceedings on the urgent court roll of 14 April 2026.

[redacted]

N DAVIS
Judge of the High Court
Gauteng Division, Pretoria

Date of Hearing: 21 and 22 April 2026

Judgment delivered: 30 April 2026

APPEARANCES:

For the Applicant:	Adv S Ntuli
Attorney for the Applicant:	Dyushu and Majebe Attorneys Inc, East London c/o Kally & Co Attorneys, Pretoria.
For the 1st and 2nd Respondents:	Adv M A Dewrance SC together with Adv C Brown
Attorney 1st and 2nd Respondents:	Diale Mogashoa Attorneys, Inc Attorneys, Pretoria
For the Third Respondent:	Adv M C Maritz SC together with Adv B Manning
Attorney for the Third Respondent:	Terry Mahon c/o Jacobson & Levy Inc, Pretoria.