REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

29/05/2026
DATE SIGNATURE [redacted]

In the Enforcement application between:

Case Number: 2025-093688

HL MATLALA PROPERTIES CC
T/A GOROGANG PLANT HIRE Applicant

And

RAND WATER SOC LTD First Respondent

MINISTER OF WATER AND SANITATION Second Respondent

And in the Review application between:

Case Number: 2025-233956

RAND WATER SOC LTD Applicant

And

HL MATLALA PROPERTIES CC
T/A GOROGANG PLANT HIRE First Respondent

MR ANDRE GAUTSCHI SC N.O. Second Respondent

JUDGMENT

MVUBU, AJ

Introduction

[1] Two opposed applications served before me, (1) an application for the enforcement of an Adjudicator's award under case number 093688/2025 and (2) a review application seeking to "*review and set aside alternatively to declare void and of no legal effect the adjudicator's award dated 7 May 2025*" under case number 233956/2025.

[2] When I received my allocations, as I was perusing the file, I happened on two pertinent pieces of correspondence. The first was from the Applicant's attorneys of record in the enforcement application (one HL Matlala Properties CC t/a Gorogang Plant Hire)[1] and the other from the Office of the Acting Deputy Judge President.

[3] In its letter, the Contractor sought leave that the two applications be heard together. The Office of the Deputy Judge President acceded the request as follows:

> *"1. Your letter of 16 April February (sic) 2026 refers.*

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[1] For ease of reference, I shall call this party the Contractor. It will be easy and convenient.

2. The request that the two matters under case numbers 2025-233965 (sic) and 2025-093688 be heard together on 25 May 2026 is authorised on condition that the review application is indeed ripe for hearing as at 23 April 2026.

3. Due to the short lead time to the hearing of 25 May 2025, no indulgences will be entertained to accommodate any non-compliance with this directive.

4. Please approach the registrar as set out in the Practice Directives to set these matters down to be heard together."

[4] I invited the parties to a case management meeting on 12 May 2026 and at that meeting, it was agreed that the two matters would be consolidated under case number 093688-2025 and I made an order consolidating the two applications. At the time of the case management meeting, I had already allocated matters their hearing date and time. This matter was allocated to be heard on Thursday 28 May 2026 and at 09h30.

[5] On 28 May 2026 and at commencement of the proceedings, I directed that the review portion of the consolidated application would be heard first and thereafter, if it became necessary, I would move to hear the enforcement application. Indeed, that is how things unfolded and I heard the review application.

[6] After hearing arguments from both parties, I dismissed the review application for reasons that follow below. The matter was then briefly stood down and due to resume, after the tea adjournment, with arguments in relation to the enforcement application.

[7] At resumption, Mr Kgomo (appearing for the First Respondent in the enforcement and Applicant in the review[2]) indicated that the Employer had similar and/or the same arguments to those already dismissed in the review application. In these circumstances, it became clear that the same or similar argument would not succeed in the enforcement application and in such circumstances, in order not to unduly burden the Court I directed the parties to prepare a draft order. It was so drawn. I proceeded to make an order, as reflected below, with minor adjustments after further consideration. Materially nothing changed but to ensure that the order is capable of enforcement.

[8] Both parties had a fair opportunity to influence the decision I ultimately arrived at. The proceedings commenced at 09h33, we had agreed to commenced proceedings at 09h30. After preliminary discussions, the Employer advanced its argument (without any interruptions) from about 09h50 until 10h35. Thereafter, I had a discussion with Mr Kgomo, I shall record the contents of this discussion below.

[9] That said, I deal with the review application and the reasons I dismissed the application. The reasons are provided follow a request for reasons by the Employer. I decided to simply write this judgment, for expedience sake.

Employer's review application

[10] The proverbial Black Pimpernel is a description best befitting the review application. Its character is a mystery, its nature nebulous and its content destined to go undiscovered. I search, valiantly, and this is the best I could find – in the Founding Affidavit:

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[2] I shall call Rand Water SOC Ltd the Employer, for convenience.

> *"[8.] This is an application under Rule 53 of the Uniform Rules of Court to review and set aside the adjudicator's award dated 7 May 2025.*
> *[36.3.] The transcription in this regard will be provided once the full record is obtained by the adjudicator, including the transcription of the proceedings.*
> *[42] … The Rule 53 record will confirm the absence of any contemporaneous communication capable of shifting the crystallisation date beyond September 2024."*

[11] In the Replying Affidavit, one finds paragraph 23 and it reads:

> *"[23.] The Applicant deals with the Answering Affidavit ad seriatim below and, where necessary, refers to Rule 53 record, the Contract and the Award to demonstrate the factual and legal errors in the adjudicator's reasoning."*

[12] Lastly, in the Heads of Argument, paragraph 3 defined the review application as follows:

> *"[3.] This is an application in terms of Rule 53 of the Uniform Rules of Court to review and set aside the adjudication award."*

[13] One is left to wonder whether the review is brought under and in terms of the Promotion of Administrative Justice Act, 2000 as amended (**PAJA**) or the principle of legality or even the common law.

[14] I asked Mr Kgomo and he submitted that the review application was brought in terms of the principle of legality. As I understand, a legality review deals with administrators and other public acts, demanding that they act lawfully.[3] An administrator is a person who manages, organises and oversees the

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[3] See Cora Hoexter and Glenn Penfold *Administrative Justice in South Africa* (3rd Ed) (2021) at 157

operations of a business, institution, or system. I cannot imagine that an advocate in private practice (such as the Adjudicator in this matter) qualifies this definition. One could not, then, challenge the decision using legality review.

[15] In any event, the entire adjudication regime is of contractual import – defined and limited by a contract. The same contract provides a clear pathway to be followed by an aggrieved party – the contract permits referral of the matter to arbitration, and I imagine that arbitration proceedings would then be subject to the Arbitration Act, 1965 as amended. Review would then be available after arbitration – as regulated by section 33 of the Arbitration Act.

[16] Otherwise, the parties are governed by their contract and a contract freely entered into must be enforced in the absence of a clear challenge why the contract ought not be enforced. A specific case has to be made out why a contractual term should not be enforced in a particular case. No such challenge was mounted by the Employer. *Pacta sunt servanda*.

[17] In fact, there is a referral to arbitration. As was submitted by Mr Kgomo, the Employer has referred the matter to arbitration and that is exactly what I observed when I read the papers and invited the parties to a case management meeting on 12 May 2026. It was for this very reason I asked the parties to address me on whether or not this application constituted "forum shopping". Forum shopping is not permitted.

[18] The Constitutional Court in the matter of *Gcaba v Minister for Safety and Security and Others*[4] had this to say about forum shopping:

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[4] [2009] ZACC 26; 2010 (1) SA 238 (CC).

> *"[56] The legislator is sometimes specifically mandated to create detailed legislation for a particular area, like equality, just administrative action (PAJA) and labour relations (LRA). Once a set of carefully crafted rules and structures has been created for the effective and speedy resolution of disputes and protection of rights in a particular area of law, it is preferable to use that particular system. This was emphasised in Chirwa by both Skweyiya J and Ngcobo J. If litigants are at liberty to relegate the finely tuned dispute – resolution structures created by the LRA, a dual system of law could fester in cases of dismissal of employees.*
>
> *[57] Following from the previous points,* ***forum shopping by litigants is not desirable****. Once a litigant has chosen a particular cause of action and system of remedies (for example, the structures provided for by the LRA) she or he should not be allowed to abandon that cause as soon as a negative decision or event is encountered."*

[19] The Employer referred the dispute to arbitration in June 2025, in terms of the contract, and the Employer should pursue that course. That is what the parties' contract says.

[20] There is thus no legal nor factual basis for review.

[21] I am minded mentioning that despite the Employer suggesting a review as quoted above, the Notice of Motion betrays any notion that the review was brought in terms of Rule 53. There is wide-ranging non-compliance with Rule 53.

21.1. The Notice of Motion does not call those affected to "*show cause why such decision or proceedings should not be reviewed and corrected or set aside*". Nor does it invite or call for the record to be filed, among other shortcomings. This is non-compliance with Rule 53(1).

21.2. No clearly discernible grounds for review can be found in the Founding Affidavit. This is no surprise considering that the review application was neither brought in terms of the PAJA nor the principle of legality or the common law. This is non-compliance with Rule 53(2).

21.3. No record was filed and this is despite the clear foreshadowing that a record was to be filed. The Founding Affidavit makes the promise that a record is coming. This is non-compliance with Rule 53(3).

21.4. There is non-compliance with Rule 53(4) as no notice to stand by the founding papers, or amendments and/or supplementing of the Founding Affidavit is filed of record. Of course this would not have been possible, there being no record filed.

[22] It could be any review but certainly not one brought in terms of Rule 53, despite the Employer's papers seeking to draw allegiance thereto. It is a mystery that the Contractor did not raise these issues in their opposing papers. The degree of non-compliance was beyond the capacity to turn a blind eye.

[23] Nevertheless, I allowed the Employer to make full submissions and I summarise those submissions as follows:

23.1. The dispute resolution process is adjudicated in terms of clause 20.1 and 20.4. Both prescribe that a referral ought to be made within 28 days and where a referral is brought on the 29th day, it would be disqualified. That

is, it would be time barred and the Contractor would be deemed to have waived its rights.

23.2. Mr Kgomo went further and submitted that to demonstrate that the adjudicator (the Second Respondent in the review application) appreciated and understood his limitations, he on two occasions sought permission from the parties to extend the time periods. Those instances were:

23.2.1. When the Employer sought permission to file its submissions in anticipation that it would not be able to comply with the 28 day prescribed time period. The Second Respondent sought consent from the Contractor. I am not able to agree with this submission – paragraph 14 of the Second Respondent's adjudication says:

> *"The impasse was averted by the Employer's attorneys advising during the afternoon of 13 March 2025 that they intended to file its submission that day and therefor an oral hearing regarding the extension of time was unnecessary. The Employer's response submissions ("the response") were sent shortly thereafter but, owing apparently to a technical glitch, was not received by me, or it seems, the Contractor, until the next day. The Contractor and I however both accepted the response to have been timeously received."*

23.2.2. It is clear, the Second Respondent was not called upon to deal with the issue. While it was before him for determination, the need for determination was avoided. He may well have found that there was no "time bar" and would have received the response, even if filed outside the 28-day time period. We need not speculate.

23.2.3. I cannot accept the mere fact that he grappled with whether he is permitted to receive a response received outside of the contractual time periods means he knew or apprehended that there is a "time bar", the nature of which divests him of jurisdiction. That logic does not follow.

23.2.4. The second example, Mr Kgomo mentioned, was in relation to the Second Respondent seeking permission to extend the 84-day period imposed upon him to render a decision. Suppose he failed – the Second Respondent – to render a decision within 84 days, what then? There was never a referral? Would that failure denude him of his powers (jurisdiction)? I think not.

23.3. The above examples can hardly be seen in the light proposed by the Employer. It does not follow they evidence a lack of jurisdiction and a resultant acquiesce by the Second Respondent therewith. Such legal gymnastics are risky and in the extreme. I cannot then agree with the Employer.

23.4. It was submitted further that the adjudicator exceeded his powers in that the referral to the adjudicator was time barred. It was argued that there are 4 (four) trigger events and on all 4 (four) trigger events, the Contractor had failed to launch the referral timeously.

23.5. The said trigger events were:

23.5.1. First: the Employer terminated the contract on 19 April 2024, in its letter dated 19 April 2024. I disagree. There is no letter sent to the Contractor on 19 April 2024. Yes, there is a letter sent to the

Contractor dated 19 April 2024 but it was sent only on 03 July 2024. There is no 19 April 2024 event. That event does not exist.

23.5.2. Second: 03 July 2024 the Contractor repudiated the contract (as argued by the Employer). I disagree. The Contractor's letter of 03 July 2024 was a response to the Employer's letter dated 19 April 2024 but only received by the Contractor on 03 July 2024. In that letter, the Contractor states that it deems the Employer's letter dated 19 April 2024 as repudiation and affords the Employer a period within which to purge the repudiation. It can hardly be read to be an event for purposes of the parties' contract.

23.5.3. Third: 27 August 2024 the Contractor rendered its account, and the rendering of the account means that a dispute existed and which ought to be referred to adjudication within 28 days from 27 August 2024. This reasoning is so far-fetched as to be untenable. It is common cause that the account must lie for a 28-day inspection period and a dispute may only arise after inspection, where a dispute does indeed arise. Merely rendering an account does not entitle one to payment – as defined in the contract. In fact, there was a response received by the Contractor, albeit it was later withdrawn, on 07 October 2024. Pursuant to the withdrawn response, the Contractor was told the Employer would revert and never did so revert. The Contractor waited until it could wait no longer and rendered a revised account in December 2024 – as informed by some of the indicated queries foreshadowed in the withdrawn 07 October 2024 letter.

23.5.4. Fourth: 19 December 2024 when the Contractor rendered its revised account. It was submitted by Mr Kgomo that the Contractor had no basis to revise its account as there is no contractual clause entitling it to do so. That submission misses the point. While it may well be so, that the contract does not permit the parties (especially the Contractor) to render a revised account unsolicited, there was an objection raised on 07 October 2024 (albeit later withdrawn). The Second Respondent considered this and found that the Contractor was within its rights to revise the account because of the 07 October 2024 letter (albeit it was withdrawn).

23.6. In the result, these alleged four trigger events are in fact one event. The event is on 19 December 2024 – when the Contractor rendered a revised account. An account (even a revised account) must lie for inspection for a period of 28 days – that is what the contract says and expects. That 28-day window period for inspection ended on 16 January 2025. There could be no dispute brought before 16 January 2025, because the Contractor had to wait the 28 days and thereafter, if no response was received, deem a dispute with the result that it refers same.

[24] That said, it was clear to me that the dispute arose after the 28-day period for inspection expired and with the referral referred on 17 January 2025 – a day after the dispute arose – there can hardly be a talk of time bar, whether under clause 20.1 or 20.4. I express no views whether the matter was subject to clause 20.1 or 20.4 – the Second Respondent said it was subject to clause 20.4. That is his decision. I am not at liberty to temper therewith – whether I

agree or disagree with him. If he is wrong, the arbitration process will resolve that, not this Court.

[25] I merely find that there is no clear evidence that the dispute was referred out of time with the result that the adjudication was patently wrong, for want of jurisdiction. This puts paid to the argument that the Second Respondent had no jurisdiction for present purposes. This jurisdictional question will be fully ventilated at arbitration, where it belongs. For my purposes, it does not hold water and cannot be used to stave-off enforcement of the award/ruling.

[26] I must be clear, I am not at liberty to adjudicate the merits of the parties' dispute, as that dispute is at arbitration and I limit myself considering whether the Second Respondent exceeded his jurisdiction by entertaining a dispute that was time barred. The referral was not time barred having being brought a day after the dispute arose.

[27] I thus cannot agree with Mr Kgomo that the referral was out of time and with the result that the Second Respondent exercised jurisdiction when he had none.

[28] The inescapable follows, the review application had to be dismissed on its merits. This even though it lacked procedural and substantive compliance. I have mentioned above that there was non-compliance with Rule 53 and also, the review was neither brought in terms of PAJA nor the principle of legality or the common law. There was simply no basis for the review and it was bad in law. Those difficulties notwithstanding, I heard the merits and dismissed it on the merits.

[29] Even if I am wrong, the decision of the adjudicator "conferring, upon himself, jurisdiction" is a decision he made. That was his interpretation of the contract. He is entitled to be wrong and hence the parties agreed that in the event that he was so wrong, his decision would be referred to arbitration. The decision has indeed been referred to arbitration. I would have had to defer to the arbitration clause in this regard. *Pacta sunt servanda*, I repeat.

[30] The Notice of Motion stated the relief sought as follows:

> *"[1] To review and set aside alternatively, to declare void and of no legal effect the adjudicator's award dated 7 May 2025 (**"the adjudicator's award"**)"*

[31] There was, thus, the question of the alternative prayer/relief – declaratory order. I asked what I was to do with the declaratory relief sought when there was no case made out for declaratory relief in the Founding Affidavit or the Replying Affidavit. I referred Mr Kgomo to the decision of this Court in ***Minister of Finance v Oakbay Investments***[5] which, at paragraph 59, sets out the requites for declaratory relief. Mr Kgomo conceded that no case was made for declaratory relief. He further conceded, correctly, that the alternative prayer could not be granted.

[32] Prayer 2 read:

> *"That the enforcement of the adjudicator's award be stayed pending the outcome of the outcome of the arbitration proceedings instituted in terms of Contract in issue."*

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[5] ***Minister of Finance v Oakbay Investments (Pty) Ltd and Others; Oakbay Investments (Pty) Ltd and Others v Director of the Financial Intelligence Centre*** (80978/2016) [2017] ZAGPPHC 576; [2017] 4 All SA 150 (GP); 2018 (3) SA 515 (GP) (18 August 2017).

[33] While no submissions were made, in open court, regarding the stay I had regard to the Employer's written submissions. I also read the judgment the Employer relies upon for the proposition that the enforcement be stayed pending arbitration – the judgment of ***Cebekhulu v City of Ekurhuleni Metropolitan Municipality and Others*** (2025/085510) [2025] ZALCJHB 282 (30 June 2025). While I differ with that judgment, I need not go into details. I am prepared to say that the facts are fundamentally different. In that case, there may have been a need to preserve state resources given the circumstances therein specific and which differ materially to the present case.

[34] In any event, the Supreme Court of Appeal in ***Ethekwini Municipality v Cooperativa Muratori and Cementisti - CMC di Ravenna Societa Cooperativa*** (181/2022) [2023] ZASCA 95; 2023 (6) SA 384 (SCA) (12 June 2023) enforced the contract. I do exactly that and the parties may have their dispute resolved through arbitration.

[35] It followed, then, that the review application stood to be dismissed and I did dismiss it. I was not inclined to suspend enforcement, and the enforcement application would have been adjudicated on its merits.

[36] It was at this point that the Employer indicated the position posited above. The foregoing are my reasons how we arrived at that position.

Costs

[37] In the review application, the costs order sought by the Employer was formulated as follows:

> *"[3.] That the First Respondent be ordered to pay costs of this application including the costs of counsel of (sic) Scale C;"*

[38] The ordinary principle is that costs follow the result and the Employer costs on scale C where they were successful. Mr Hodge for the Contractor submitted that they, too, seek costs on Scale C, even attorney client scale. In his reply, Mr Kgomo submitted that no party had given notice for attorney and client scale and that, at most costs should be on Scale C.

[39] There was no submission that there should not be a costs order. I am inclined, therefore to enforce the age-old principle – costs follow the result. I do so on Scale C.

Order

[40] In the result, I make the following Order:

1. The review application is dismissed.

2. The adjudication award issued by the Adjudicator, Andre Gautschi SC, in the adjudication proceedings between the parties, dated 7 May 2025 is to be immediately complied with by Rand Water and no later than 10 days from the date of this order.

3. Rand Water is ordered to make payment to HL Matlala Properties CC t/a Gorogang Plant Hire in the amount of **R 10 656 252.47**, inclusive of VAT, plus interests thereon calculated at the annual rate of the South African Reserve Bank from 17 January 2025 to date of final payment.

4. Rand Water is to pay the costs of the applications under case numbers 2025-093688, as consolidated, on Scale C.

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ACTING JUDGE OF THE HIGH COURT

JOHANNESBURG

This Judgment was handed down electronically by circulation to the parties/their legal representatives by email and by uploading to the electronic file on CourtOnline/CaseLines. The date for hand-down is deemed to be 29 May 2026.

Date of Hearing: 28 May 2026

Date of Judgement: 29 May 2026

For the Applicant: Adv. DS Hodge

Instructed by : Tiefenthaler Attorneys Inc.

For the Defendant: Adv. T. Kgomo

Instructed by : CDV Attorneys