

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

CASE NO.: 2025-008858

|                           |                                                                                                |
|---------------------------|------------------------------------------------------------------------------------------------|
| (1)                       | REPORTABLE: <i>uo</i>                                                                          |
| (2)                       | OF INTEREST TO OTHER JUDGES: <i>uo</i>                                                         |
| (3)                       | REVISED: <i>✓</i>                                                                              |
| <i>2025/12/26</i><br>DATE | <br>SIGNATURE |

In the matter between:

**SOUTH AFRICAN POLICE SERVICE MEDICAL  
SCHEME**

**Applicant**

and

**BATSUMI MANAGEMENT SOLUTIONS (PTY) LTD**

**First Respondent**

**THE ARBITRATION FOUNDATION OF SOUTH  
AFRICA**

**Second Respondent**

**MYRNA GERICKE**

**Third Respondent**

**RETIRED JUSTICE SANDILE NGCOBO**

**Fourth Respondent**

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JUDGMENT

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VAN DER WESTHUIZEN, J

- [1] The applicant applied, under the principle of Legality, for the review and the setting aside of the second respondent's refusal to accept the applicant's notice of appeal against an award by the fourth respondent. The applicant contended that such refusal to accept the notice of appeal was a breach of the second respondent's mandate to administer the applicant's appeal.
- [2] The first respondent was the party participating in the arbitration proceedings and the third respondent was the registrar of the second respondent who allegedly made the impugned decision.
- [3] The applicant and the first respondent referred a contractual dispute, emanating from a service level agreement entered into between them, to arbitration in accordance with the commercial rules of the second respondent. Any disputes that arose from that service agreement would be subject to arbitration in accordance with the Domestic Commercial Rules of the Arbitration Foundation of South Africa.
- [4] The crux of the matter relates to whether the applicant and the first respondent concluded an agreement in writing that the award of the arbitrator appointed would be the subject of an appeal.
- [5] The provisions of Article 22(1) of the AFSA Commercial Rules provides as follows:
- "Where the parties have, whether in terms of the arbitration agreement or otherwise, in writing agreed that an interim award or the final award of an arbitrator or arbitrators shall be subject to a right of appeal the following rules shall, save to the extent otherwise agreed by them in writing, apply."*
- [6] It is important to note that clause 25.9 of the Service Level Agreement provides as follows:

*“Subject to the finalisation of any review or appeal proceedings permitted under the rules of ASA, the decision or award resulting from the arbitration shall be final and binding, and may be made an order of any court of competent jurisdiction at the instance of either Party to the Dispute. With effect from the date of the arbitral award or, in case of the settlement, neither Party shall have any further right and/or claim (including, without limitation, any right pursuant to subrogation) against the other Party in connection with or relating to the Dispute in question.”*

- [7] The applicant further relied upon the provisions of Article 22.8 which provides as follows:

*“The nature of the appeal and cross-appeal, and the powers of the appeal arbitrator or arbitrators shall, save to the extent that the written agreement between the parties or this article 22 provides otherwise, be the same as if it were a civil appeal and cross-appeal to the Appellate Division of the Supreme Court of South Africa.”*

- [8] The applicant contended that the modern dispute resolution is characterised by the principle of party autonomy. Premised upon that notion, the contention was that where the parties agreed in writing in the Service Level agreement to arbitrate any dispute thereunder, they had agreed to an appeal process which included the process provided for in Article 22 of the AFSA Rules. Accordingly, it was contended by the applicant that AFSA was bound to administer that process, and the latter's refusal to comply therewith, constituted unlawful interference with the principle of party autonomy and consequently the contractual freedom to design their own dispute resolution mechanism.
- [9] Clause 25 of the Service Level Agreement recorded the parties' consent to private arbitration. The provisions of that clause defined the scope of private arbitration. The scope so agreed upon, related to the application



of the AFSA Commercial Rules in respect of the arbitration. The parties consented to the AFSA Rules applying when an appeal against the arbitration award would be permitted.

- [10] Further in this regard, the provisions of articles 12.10 and 22.1 of the AFSA Rules find application. The provisions of article 22.1 are recorded earlier. Article 12.10 provides, in the relevant part thereof, that, unless the parties have in the arbitration agreement or otherwise agreed that the award shall be subject to an appeal, the award shall be final and not subject to an appeal.
- [11] From the foregoing it is apparent that an arbitration award would be final and bounding, unless the parties had in writing agreed to an appeal procedure in the arbitration agreement or otherwise.
- [12] It is to be noted that the first respondent in its request for arbitration to the second respondent, included a wish that the appeal procedure would be included in the arbitration agreement. The second respondent, in its acceptance of the request for arbitration, drew the first respondent's attention to the provisions of article 28 of the Arbitration Act that both parties were obliged to agree in writing to an appeal procedure to be included in the arbitration agreement. The second respondent thereafter forwarded the request for arbitration it received from the first respondent, including the correspondence between it and the first respondent, to the applicant. The latter did not respond to the communication. At the required pre-arbitration meeting held, both the applicant and the first respondent confirmed that the AFSA Rules would apply to the arbitration.
- [13] Neither the Service Level Agreement, nor the arbitration agreement, record in writing an agreement between the parties that the arbitration award would be subject to an appeal process. All that either of those documents contain is a recordal that an appeal would only lie when the parties had in writing so agreed. On the contrary, both documents record

that the arbitration award would be final, and that at the request of either party, it could be made an award of court.

- [14] When the applicant lodged its request for an appeal, the second respondent requested, through the third respondent, the documentation in which the parties agreed in writing to an appeal process following on an arbitration award from the applicant. The applicant responded by providing a copy of clause 25.9 of the Service Level Agreement which is recorded earlier. The first respondent responded by pointing out that clause 25.9 of the Service Level Agreement was no agreement in writing to have an appeal, and further that no such document existed.
- [15] The third respondent advised the parties that, in the absence of an agreement in writing to the right of an appeal, the award was final and binding.
- [16] It follows from all the foregoing, that the applicant had no right of appeal in respect of the award. The applicant's request to the second respondent for the management of an appeal, was ill founded and of no consequence.
- [17] The applicant contended that the decision by the third respondent not to register the request for the management of an appeal, constituted a decision in terms of PAJA, and thus reviewable. There is no merit in that contention for what follows.
- [18] When the applicant enquired who took the decision not to register the appeal, the third respondent advised that no formal decision was made and that she would on receipt of a formal request, direct such request to the Secretariat. No such formal request was received from the applicant.
- [19] It is important to note that, when requested to provide documentation proving the written agreement to a right of appeal, none was forthcoming. Furthermore, the relevant provisions in that regard, as

recorded earlier, clearly indicate as a pre-requisite for a right to appeal an arbitration award, was a written agreement to that effect. The absence of such written agreement required no “decision” to be taken. It followed in law that no agreement existed for a right of appeal.

- [20] Consequently, there is no decision to be reviewed in terms of the provisions of PAJA. The application fails on that basis.
- [21] On a second string to its bow, the applicant relied upon the principle of Legality. That contention is premised upon the ground that the applicant was denied a fair process, which included an appeal process as allegedly agreed upon in terms of the arbitration agreement. In that regard, the applicant misapprehends the specific wording of the arbitration agreement, as well as the AFSA Rules in that regard. Applying the canons of construction and interpretation of the agreements and the provisions of the AFSA Rules, that contention is unfounded and without merit.
- [22] The applicant further relies on the contention that AFSA performs a public function and that the impugned decision directly impacts upon the applicant's rights in terms of section 34 of the Constitution. There is no merit in this contention. AFSA performs a private function when it provides an arbitration function. Its decisions do not constitute administrative action as defined in PAJA. Consequently, no rights of the applicant in terms of section 34 of the Constitution have been affected or impacted upon to warrant an enquiry of Legality.
- [23] It is to be noted that the recordal by the third respondent that no appeal lies as no agreement to that effect was recorded in writing, is clearly a clerical function, not an administrative function.
- [24] It follows that the applicant's application for a review stands to be dismissed.



- [25] The first respondent filed a counter application for an order that the arbitration award of the fourth respondent be made an order of court. From what is recorded earlier, the parties agreed that the award of the arbitrator could be made an order of court at the instance of either party. There is no reason why the first respondent's counter application in that regard should not be granted.
- [26] There remains the issue of costs. There is no reason why the costs should not follow the event. The first respondent sought costs on a punitive scale, such costs to include the costs consequent on the employment of two counsel where so employed. This matter was of sufficient complexity to warrant the employ of two counsel. The second and third respondents sought costs on a party and party scale.

I grant the following order:

1. The application for review is dismissed;
2. The arbitrator's award dated 24 October 2024 by the fourth respondent, Honorable Justice Sandile Ngcobo is made an order of court;
3. The applicant is to pay the costs of the first respondent, which include the costs of the counter application, on the scale of attorney and client, such costs to include the costs consequent on the employment of two counsel where so employed;
4. The applicant is to pay the cost of the second and third respondents on a party and party basis, such costs to be taxed on Scale C of the Uniform Rules of Court.



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**C J VAN DER WESTHUIZEN**  
**JUDGE OF THE HIGH COURT**  
**PRETORIA**

On behalf of Applicant:  
Instructed by:

C H J Badenthorst SC  
Maluleke Inc.

On behalf of First Respondent:

P G Cilliers SC

Instructed by:

M Davids  
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On behalf of Second and Third Respondents:  
Instructed by:

M Mbikwa  
Mkhabela Huntly Attorneys

Date of hearing:

12 March 2026

Date of Judgment:

20 May 2026