



**IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPE TOWN**

Not Reportable

Case no: 2025-026543

In the matter between:

LUYANDA JOXO

APPLICANT

and

**ARGON ASSET MANAGEMENT
(PTY) LTD**

FIRST RESPONDENT

**THE TRUSTEES FOR THE TIME
BEING OF THE ARGON ASSET
MANAGEMENT STAFF TRUST**

SECOND RESPONDENT

MAJAKWANE MANAS BAPELA

THIRD RESPONDENT

SELLO ISHMAEL SETAI

FOURTH RESPONDENT

FRANS MALAN N.O.

FIFTH RESPONDENT

SANDILE NGCOBO N.O.

SIXTH RESPONDENT

ROBERT NUGENT N.O.

SEVENTH RESPONDENT

Neutral citation: *Luyanda Joxo v Argon Asset Management (Pty) Ltd and Others* (Case No 2025-026543) [2026] ZAWCHC (27 May 2026)

Coram: COOKE AJ

Heard: 11 May 2026

Delivered: 27 May 2026

Summary: Setting aside of appeal tribunal's award – failure to challenge award of arbitrator - misconduct – exceeding of powers – punitive costs

ORDER

[1] The application is dismissed.

[2] The applicant shall pay the costs of the first to fourth respondents, with counsel's fees to be taxed on scale C.

JUDGMENT

Cooke AJ:

Introduction

[1] Parties may have several goals in mind when they choose to refer their disputes to arbitration. For some, the privacy that attaches to the proceedings is important. They do not want their personal or corporate dealings to be ventilated in public. Others may be attracted to the procedural flexibility offered by arbitration proceedings. The parties may agree to bespoke procedures that suit their specific needs. Still, others consider that arbitration will afford a swift and cost-effective resolution to their dispute.¹

[2] Courts must respect the choice of parties to refer a dispute to arbitration.² After all, the referral carries with it a deliberate choice not to subject the dispute to judicial determination. Under our law, by agreeing to arbitration, the parties limit interference by courts to certain specific irregularities. These are set out in section 33(1) of the Arbitration Act 42 of 1965 (the Arbitration Act).³ The Constitutional Court has warned that courts should be careful not to undermine the achievement of the goals of arbitration by enlarging their powers of scrutiny imprudently. To this end, courts are required to construe the grounds of interference reasonably strictly.⁴ As noted by Fritz Brand, writing in an academic

¹ *Lufuno Mphaphuli & Associates (Pty) Ltd v Andrews and Another* 2009 (4) SA 529 (CC) para 197.

² *Ibid* para 219.

³ *Telcordia Technologies Inc v Telkom SA Ltd* 2007 (3) SA 266 (SCA) para 51.

⁴ *Lufuno Mphaphuli* supra fn 1 para 235.

capacity: ‘[I]f arbitration becomes a mere prelude to judicial review, its essential virtue is lost.’⁵

[3] In this application, the applicant, Mr Joxo, applies to have an appeal arbitration award set aside and substituted with a judgment in his favour. In the alternative, Mr Joxo asks that the matter be remitted to the Arbitration Foundation of Southern Africa (AFSA) for a new arbitration.

[4] The arbitration proceedings relate to a dispute between Mr Joxo and the first to fourth respondents regarding the validity of a transfer of shares in the first respondent (the company). The second respondent (the Trust) is an employee share scheme as contemplated by section 97 of the Companies Act of 2008 (the Companies Act), and a registered shareholder in the company. The third respondent, Dr Bapela, was the company’s Chief Executive Officer, a registered shareholder, and a director of the company. The fourth respondent, Mr Setai, was employed as the company’s Chief Operating Officer and was also a registered shareholder.⁶ The second to fourth respondents shall be referred to as ‘the respondents’.

[5] The dispute was determined, in the first instance, by a single arbitrator, Adv Rose-Innes SC (the arbitrator), against Mr Joxo. Thereafter, an appeal tribunal consisting of the fifth to the seventh respondents (the tribunal), confirmed the arbitrator’s award. Mr Joxo now seeks to set aside the award of the tribunal in terms of section 33(1) of the Arbitration Act on the basis that the tribunal misconducted itself, or alternatively,

⁵ FDJ Brand ‘Judicial review of arbitration awards’ (2014) 25(2) *Stellenbosch LR* 247 at 249, quoted with approval in *Rabinowitz v Levy and Others* (1276/2022) [2024] ZASCA 8 (26 January 2024), 2024 JDR 0220 (SCA) para 1.

⁶ Arbitrator’s Award para 6.

exceeded its powers in making the award. Before turning to consider the legal issues that arise in this matter, it is convenient to set out the background to this application.

Background

[6] The company is an asset management company based in Cape Town. It is a small private company, with a few shareholders. It has some 36-40 employees, including senior investment personnel. At the relevant time, the company managed close to R26 billion in assets spread over equities, fixed interest and multi-asset classes. Among the company's clients are publicly funded institutions such as the Public Investment Corporation and Eskom.⁷

[7] Mr Joxo was a shareholder and director of the company. Until he was dismissed on 25 May 2021, he was employed as the company's Head of Institutional Business and as Deputy Chief Executive Officer. Mr Joxo challenged his dismissal claiming that it was unfair. On 13 September 2022, the Commission for Conciliation, Mediation and Arbitration (CCMA) made an award reinstating him. That award was taken on review, and, on 19 November 2024, the Labour Court set aside the decision of the CCMA and substituted it with a finding that Mr Joxo's dismissal was substantively and procedurally fair.⁸ At the hearing before me, Mr Joxo advised that an appeal to the Labour Appeal Court was pending.

⁷ Arbitrator's Award para 4, read with the company's answering affidavit.

⁸ *Argon Asset Management (Pty) Ltd v Commission for Conciliation, Mediation and Arbitration and Others* (C477/2022) [2024] ZALCCT 63.

[8] The dispute, and the reference to arbitration, arose from an extraordinary meeting of the company's shareholders held two months after Mr Joxo's dismissal on 23 July 2021. The meeting was called for the purpose of considering the removal of Mr Joxo as a director of the company. At the meeting, Mr Joxo contested his removal.⁹ In the arbitration proceedings, Mr Joxo asserted that certain share transactions were invalid and, therefore, there was no valid transfer of shares to the Trust and Dr Bapela. As a result, so the argument continued, the Trust and Dr Bapela were not entitled to exercise voting rights in the company, including in relation to any proposed resolution seeking to remove Mr Joxo as a director.

[9] For the purposes of this application, the 2016 transaction is most relevant. This transaction involved the transfer of 140 ordinary shares (being a 14% shareholding in the company) from Mr Mathobi Seseli (a former director and shareholder of the company) to the Trust. The key issue before the tribunal was whether the 2016 transaction was for consideration. On Mr Joxo's version, the transfer was for consideration to be paid to Mr Seseli either by the Trust itself in due course, or by a third-party funding mechanism, but at no cost to the employee beneficiaries of the Trust. Mr Joxo argued further that Mr Seseli thus had an interest in the 2016 transaction, which interest was not disclosed to the board. According to Mr Joxo, this triggered the application of several provisions of the Companies Act, and in so far as those provisions were not complied with, the transfer was invalid. In response to Mr Joxo's claim, the company and the respondents filed a conditional counterclaim in which they asked that if it were found that the disclosure requirements

⁹ Arbitration award para 11.

of section 75(5) of the Companies Act had not been met,¹⁰ that the transfer nonetheless be declared valid in terms of section 75(8) of the Companies Act.¹¹

[10] The arbitration was heard by the arbitrator over several days. On 30 April 2024, he granted an award in terms of which Mr Joxo's claims were dismissed and the counterclaim for a declaration of validity in terms of section 75(8) was upheld to the extent that the disclosure requirements of section 75(5) were not satisfied. Mr Joxo appealed on numerous grounds. The appeal was heard by the tribunal on 13 December 2024. By that time, the issues in dispute had narrowed and Mr Joxo approached the appeal on the basis that it turned on the validity of the 2016 transaction. The tribunal handed down its award on 15 January 2025, refusing the appeal and upholding the award of the arbitrator.

[11] On 26 February 2025, Mr Joxo launched the present application. Answering affidavits were delivered by the company and the respondents on 29 April 2025 and 12 May 2025 respectively. Mr Joxo did not, however, deliver a replying affidavit. On 13 August 2025, a notice of set down was issued providing for a hearing date on 11 May 2026. Although Mr Joxo did not deliver heads of argument in accordance with this court's practice directives, the company and the respondents went ahead and delivered their heads of argument on 22 April 2026 and 24 April 2026 respectively.

¹⁰ This section concerns the personal financial interests of directors.

¹¹ 'A court, on application by any interested person, may declare valid a transaction or agreement that had been approved by the board, or shareholders, as the case may be, despite the failure of the director to satisfy the disclosure requirements of this section.'

[12] On 6 May 2026, some three court days before the hearing, Mr Joxo's attorneys delivered a notice of withdrawal as attorneys of record. Mr Joxo then indicated that he would be seeking a postponement. The attorneys representing the company and the respondents noted that they held instructions to oppose such an application. A postponement application was argued on the morning of 11 May 2026 and, for the reasons given in court on that day, was dismissed. I thereafter heard argument on the merits of the application. Mr Joxo was present for argument and, although he did make submissions relating to the postponement, he elected not to make submissions on the merits of his application.

[13] Against that backdrop, I now turn to consider the issues that arise in the application. I commence with an analysis of the relief sought by Mr Joxo.

The Relief

[14] As set out above, Mr Joxo seeks an order (a) setting aside the award of the tribunal dated 15 January 2025 and (b) substituting that award with a judgment in his favour. Alternatively, Mr Joxo asks (c) that the matter be remitted to AFSA for a new arbitration. Notably, Mr Joxo does not ask that the tribunal's award be remitted back to the tribunal, or that a freshly constituted appeal tribunal be appointed.

[15] Mr Joxo does not seek to set aside the award of the arbitrator dated 30 April 2024. He did not even attach the arbitrator's award to his founding affidavit. It follows that if the award of the tribunal is set aside, the award of the arbitrator will still stand as a valid and binding decision. In my view, this is fatal to each element of the relief sought:

- a. The setting aside of the tribunal's award, absent the setting aside of the arbitrator's award, and without a remittal to an appeal tribunal, serves no practical purpose – Mr Joxo's claims will remain dismissed pursuant to the arbitrator's award. Furthermore, I do not consider that the interests of justice demand the determination of this issue, notwithstanding it being academic.
- b. If the award of the arbitrator is extant, there would logically be no scope for a substituted judgment in favour of Mr Joxo. In any event, the Arbitration Act does not empower a court to grant substitutionary relief.¹² For both these reasons, the substitutionary relief is misconceived.
- c. As to the alternative relief, absent the setting aside of the arbitrator's award, there is no basis for a new arbitration.

In the circumstances, the relief sought by Mr Joxo is, in part, of academic interest only, and in part, legally untenable.

[16] The position may be compared to the situation that often occurs in an administrative law context, where a decision-maker acting under delegated powers makes a decision that is subjected to an internal appeal, and the appeal is then dismissed. Ordinarily, it would be necessary for the aggrieved party to challenge both decisions.¹³ In this instance, Mr

¹² *Hos+Med Medical Aid Scheme v Thebe Ya Bophelo Healthcare Marketing & Consulting (Pty) Ltd and Others* 2008 (2) SA 608 (SCA) para 43.

¹³ See *Wings Park Port Elizabeth (Pty) Ltd v MEC, Environmental Affairs, Eastern Cape and Others* 2019 (2) SA 606 (ECG) paras 34 and 46-47. See also *Esau and Others v Minister of Co-Operative Governance and Traditional Affairs and Others* 2021 (3) SA 593 (SCA) paras 51-52.

Joxo's failure to challenge both decisions is, to my mind, dispositive of his challenge to the tribunal's award.

[17] It follows that, in the absence of a challenge to the arbitrator's award, Mr Joxo's application is still-born. This application may be determined on this narrow basis. Nonetheless, it is appropriate that I also address the substantive challenges to the tribunal's award.¹⁴ I do so under two headings: misconduct; and exceeding of powers.

Misconduct

[18] Section 33(1) of the Arbitration Act provides, in relevant parts, that where any member of an arbitration tribunal has misconducted him or herself in relation to his or her duties as arbitrator, a court may, on application of any party to the reference, and after due notice to the other party or parties, make an order setting the award aside.

[19] The basis upon which an arbitration award will be set aside on the grounds of misconduct is a very narrow one. Even a gross or manifest mistake is not, by itself, misconduct. At best, it provides evidence of misconduct which, taken alone or in conjunction with other considerations, will ultimately have to be sufficiently compelling to justify an inference (as the most likely inference) of what has variously been described as "wrongful and improper conduct", "dishonesty", "mala fides or partiality", and "moral turpitude".¹⁵ It is only where a mistake is so gross or manifest that it would be evidence of misconduct or partiality

¹⁴ Regarding the court's duty of proper consideration – see *Vodacom (Pty) Ltd v Makate and Another* 2025 (6) SA 352 (CC) para 45.

¹⁵ *Total Support Management (Pty) Ltd and Another v Diversified Health Systems (SA) (Pty) Ltd and Another* 2002 (4) SA 661 (SCA) para 21.

such that a court might be moved to set aside an award. It has been held that even a gross mistake, unless it establishes bad faith or partiality, would be insufficient to warrant interference.¹⁶ The onus rests upon Mr Joxo to show that there was misconduct of this nature on the part of the tribunal.

[20] Mr Joxo asserts that the tribunal acted in a way that was arbitrary, capricious, and biased. According to Mr Joxo, this is reviewable misconduct. Mr Joxo does not explain precisely what he means by the labels ‘arbitrary’ and ‘capricious’. Ordinarily, these terms are used to indicate that a decision-maker acted without any apparent reason.¹⁷ A reading of the tribunal’s award, which runs to some 54 pages, reveals that the decision was judiciously reasoned. In particular, the evidence regarding the validity of the 2016 transaction was evaluated thoroughly. Indeed, the sixth respondent authored a separate portion of the award in which he specifically considered whether the 14% shares were transferred to the Trust for consideration. It is apparent from this portion of the award that Mr Joxo’s arguments and evidence were assessed. It was concluded that the 14% shares were transferred to the Trust for no consideration. Reasons were given. Mr Joxo may not agree with the reasoning, but that does not render the award arbitrary or capricious. At best for Mr Joxo, the tribunal made bona fide errors of law or fact, for

¹⁶ *ACTWUSA v Veldspun (Pty) Ltd* 1994 (1) SA 162 (A) at 169D. See also *Dickenson & Brown v Fisher’s Executors* 1915 AD 166 at 174-181, *Donner v Ehrlich* 1928 WLD 159 at 161, and *Kolber and Another v Sourcecom Solutions (Pty) Ltd and Others; Sourcecom Technology Solutions (Pty) Ltd v Kolber and Another* 2001 (2) SA 1097 (C) paras 38-44.

¹⁷ *Crawitz v Durban Licensing Board* (1914) 35 NPD 395 at 400. Regarding the test for arbitrariness, see *Minister of Justice and Another v South African Restructuring and Insolvency Practitioners Association and Others* 2018 (5) SA 349 (CC) para 49.

which I make no findings.¹⁸ However, that is not enough to satisfy the rigorous test under section 33(1)(a) of the Arbitration Act.

[21] The allegation of bias means that Mr Joxo also considers that the members of the tribunal were not impartial and based their decision on illegitimate motives and considerations. The Constitutional Court has warned against wanton and gratuitous allegations of bias, pointing out that such allegations, which are the antithesis of fairness, are serious and if made with a sufficient degree of regularity, have the potential to be deleterious to the confidence reposed by the public in administrators.¹⁹ Although the tribunal is not a public official, the members of the tribunal are senior retired judges and, to my mind, the warning issued by the Constitutional Court applies in equal measure.

[22] This Court has held that the presumption of judicial impartiality applies equally to arbitrations.²⁰ More so, in my view, where all three members of the tribunal are retired judges. It is notable that Mr Joxo does not allege any possible interest which the members of the tribunal might have in ruling against him. There is no suggestion, for instance, that any of the members of the tribunal have a financial or personal interest in the matter, nor that they have a bias in relation to the subject matter of the dispute, nor that there is any official or institutional bias.²¹ Mr Joxo simply relies upon inferences to be drawn from the award itself. To my mind, even if the tribunal had made numerous mistakes of law and fact in

¹⁸ I refrain from entering into the merits of the dispute. See *Transpeninsula Investments (Pty) Ltd v City of Cape Town and Another* (Appeal) (A516/25) [2026] ZAWCHC 253 (25 May 2026) para 34.

¹⁹ *Turnbull-Jackson v Hibiscus Coast Municipality and Others* 2014 (6) SA 592 (CC) paras 34-35.

²⁰ *Pristine Seafoods (Pty) Ltd v Collective Dream Studios (Pty) Ltd and Another* (3834/2024) [2024] ZAWCHC 294 (9 October 2024) para 36. I was the arbitrator and second respondent in this application, although I abided the decision of the court and played no active role in the litigation.

²¹ See in this regard, the discussion in Cora Hoexter and Glenn Penfold *Administrative Law in South Africa* 3rd ed (2023) at 616-625.

the award (in respect of which I make no finding), and even if the mistakes all benefit one party and disadvantage the other, this would still not, on its own, constitute bias.²²

[23] Even on the facts referred to by Mr Joxo himself, there was some evidence in favour of the conclusion that the 2016 transaction was not for consideration. For instance, he refers to Mr Seseli relenting from his demands for payment and Mr Setai's evidence as to the nature of the 2016 transaction (which he accepts was destructive of his evidence). Reference is also made to his email of 24 January 2018, in which he stated that 'no one pays nor a liability arises out of the shares that are transferred at no consideration to the beneficiaries, and therefore those shares were transferred as a donation to the staff share trust'.²³ This was not a case where there was no evidence whatsoever to substantiate the conclusion reached by the tribunal. Whether or not the conclusion was correct is irrelevant for the purposes of these proceedings. Mr Joxo may disagree with the tribunal's assessment of the evidence, but the tribunal had "the right to be wrong".²⁴

[24] The founding affidavit sets out the alleged misconduct under four headings. First: 'In respect of whether the 2016 trust transfer was agreed to be for consideration or agreed to be a donation, or whether no agreement was reached at all.' This argument rests predominantly upon allegations of contradictory findings, and a failure to evaluate the evidence properly. This does not suffice to prove misconduct. Mr Joxo

²² Compare *Pristine Seafoods* supra fn 20 paras 33-46.

²³ Mr Joxo alleged that the statement 'no one pays' must obviously be read in the context of Mr Seseli having just requested payment from the shareholders – none of whom agreed to pay Mr Seseli.

²⁴ *Telcordia Technologies* supra fn 3 para 85.

also alleges that the tribunal did not approach the matter with an open mind and decided that the transfer was not for consideration before assessing the evidence. I am not satisfied that the evidence put up in the founding affidavit shows that the tribunal approached the matter in the manner suggested by Mr Joxo.

[25] Second: ‘In respect of the documentary evidence and whether it contradicted my version.’ Here, it is alleged that the tribunal failed to properly apply the principles set out in the *Stellenbosch Farmers’ Winery* case in relation to the mutually destructive versions of Mr Setai and Mr Joxo.²⁵ As noted above, it is inherent in this submission that there was a version before the tribunal that was destructive of Mr Joxo’s version. In any event, this argument concerns the tribunal’s assessment of the evidence. In my view, it does not show any misconduct. Mr Joxo places much weight on the assertion that, on his version, the consideration was to be paid by the Trust in due course or a third-party funder. It seems to me that this version was adequately addressed by the tribunal. The tribunal expressly referred to cross-examination on the topic of the Trust, not the beneficiaries, paying for the shares. The tribunal quoted Mr Setai’s evidence in this regard, including his statement that the Trust ‘... was never going to have money... so how would it pay...’.²⁶ In other words, the Trust could not pay for the shares in due course. As to a third-party funder, the tribunal did consider the attempts to obtain funding from Standard Bank, being one of several options explored by the board.²⁷ On Mr Joxo’s own version, the tribunal found that the proposal

²⁵ *Stellenbosch Farmers’ Winery Group Ltd and Another v Martell et Cie and Others* 2003 (1) SA 11 (SCA).

²⁶ Tribunal Award para 110.

²⁷ Tribunal Award paras 30 and 100ff.

for funding through a third-party mechanism died a natural death. On the evidence before me, I am therefore not persuaded that the tribunal fundamentally misconstrued the nature of the inquiry, as suggested by Mr Joxo.

[26] Third: 'Further examples of the tribunal's contradictory and inconsistent approach to evidence to the respondents' benefit and to my prejudice.' As the heading to this complaint reveals, the criticism relates to perceived illogicality in the tribunal's reasoning. To my mind, this does not constitute misconduct.

[27] Fourth: 'In respect of speculation by the tribunal not supported by any evidence.' Under this heading, Mr Joxo criticises the tribunal for drawing an inference as to his state of mind, for which, according to Mr Joxo, there was no evidence. Mr Joxo concludes that the tribunal must have been biased. Courts and arbitrators sometimes wrongly draw inferences of this nature. Such errors are typically not born of misconduct or bias. They are usually sincere mistakes. In my view, even if the inference was unjustified, in respect of which I make no finding, it does not amount to misconduct nor does it show bias.

[28] Having had regard to the various allegations made by Mr Joxo, it seems to me that his complaints bear the hallmarks of an appeal, not a review. If one strips away the pejorative labels liberally deployed in the founding affidavit, one is left with objections principally regarding how the tribunal assessed, interpreted, and applied the evidence; the inferences it drew from the evidence; and the way it reasoned. This is a far cry from demonstrating that there was reviewable misconduct on the part of the

tribunal. It is not sufficient to show that the tribunal made bona fide mistakes as to fact or law. It is also not sufficient to show inconsistent reasoning and contradictions. There must be more to justify the setting aside of an arbitration award. The affidavits before me do not show any wrongful or improper conduct on the part of the tribunal; nor any dishonesty, bad faith, partiality, or moral turpitude. Mr Joxo has not come close to disturbing the presumption of impartiality. In my view, the high bar reflected in the case-law has not been cleared. The evidence adduced by Mr Joxo is clearly not sufficiently compelling to justify an inference of misconduct. It follows that Mr Joxo has not established misconduct on the part of the members of the tribunal.

Acting in Excess of Powers

[29] As noted above, the arbitrator determined that, to the extent that there was a failure to satisfy the disclosure requirements of section 75(5) of the Companies Act, the transactions in question were valid in terms of section 75(8) thereof. Mr Joxo points out that section 75(8) of the Companies Act provides for a court, on application, to make a declaration of validity. He argues that the arbitrator thus exceeded his powers as an arbitrator in exercising a power that only a court may exercise. Mr Joxo contends further that the conditionality in the award illustrates not only an exceeding of powers, but also misconduct. Finally, Mr Joxo submits that the power in section 75(8) can only be exercised where there has been a failure to comply with the disclosure requirements in section 75(5); and thus, it was necessary for the arbitrator to first find that those disclosure requirements had not been complied with before exercising the power. Mr Joxo relates these alleged

difficulties to the tribunal by asserting that the tribunal possessed no power to uphold an *ultra vires* award and that it too exceeded its powers. It follows, so the argument runs, that the tribunal's award is reviewable under section 33(1)(b) of the Arbitration Act. In my view, these arguments are misplaced for the following reasons.

[30] First, the arbitrator addressed the contention regarding his power to act in terms of section 75(8) in an interlocutory award. In that award, having regard to, amongst other things, section 166 of the Companies Act read with the terms of the arbitration agreement, he found that he has the power to determine the relief sought in the conditional counterclaims. This interlocutory decision was not challenged on appeal, nor has Mr Joxo sought to set it aside in these proceedings. Indeed, Mr Joxo's founding affidavit does not mention the interlocutory award, and thus, does not engage at all with the reasoning in that award.

[31] Second, the arbitrator's findings in relation to section 75(8) are of no moment. Having found that the disclosure requirements of section 75(5) had been satisfied, there was no need to make any provision in the award for the alternative relief sought under section 75(8). It may be that the arbitrator did so on the basis that a litigant is entitled to a decision on all the issues raised, and on the understanding that the matter may be taken on appeal, in which case the appeal tribunal may benefit from his finding.²⁸ It would, perhaps, have been better if the arbitrator had dealt with this aspect only in his reasons, and not also in the order itself.

²⁸ *Spilhaus Property Holdings (Pty) Ltd and Others v Mobile Telephone Networks (Pty) Ltd and Another* 2019 (4) SA 406 (CC) para 44.

However, this is a quibble of no consequence and certainly does not constitute a ground to set aside the decision of the tribunal.

[32] Third, the tribunal itself did not make any findings in relation to section 75(8) of the Companies Act. In upholding the arbitrator's decision, which contained a finding in relation to section 75(8), I do not consider that the tribunal exceeded its powers.

[33] In these premises, there is no merit to the challenge under section 33(1)(b) of the Arbitration Act.

Conclusion and Costs

[34] Although the Arbitration Act does empower courts to set aside an arbitration award, the courts are required to construe the grounds of interference reasonably strictly. Having regard to the absence of a challenge to the arbitrator's award and also to the evidence placed before me, I do not consider that interference is justified. The application therefore falls to be dismissed.

[35] Costs should follow the result. The company, but not the respondents, sought a costs order on a punitive scale. In written argument, it was submitted that Mr Joxo must have realised that his case lacks merit. I am not convinced that this is the case. In oral argument, counsel contended that the application was, in effect, vexatious. Reliance was placed upon the judgment of this Court in *Alluvial Creek Ltd*.²⁹ In that case, the court found that although there are people who enter into litigation with the most upright purpose and firm belief in the justice of the cause, those

²⁹ In re: *Alluvial Creek Ltd* 1929 CPD 532.

proceedings may nonetheless be regarded as vexatious when they put the other side to unnecessary trouble and expense, which the other side ought not to bear.³⁰

[36] I have had regard to the fact that applications such as this, if unsuccessful, frustrate the goals of arbitration - the dispute is dragged before the public eye, final resolution is substantially prolonged, and costs escalate. I have also had regard to similar cases where applications to set aside arbitration awards were dismissed. In *Telcordia*,³¹ *Lufuno Mphaphuli*,³² *Roux*,³³ and *Rabinowitz*,³⁴ the courts granted costs on the ordinary scale, although it does not appear that punitive costs orders were requested. By contrast, this Court granted an attorney client costs award in *Pristine Seafoods*.³⁵ Furthermore, in *Total Support Management*, the Supreme Court of Appeal granted an attorney and client costs order in respect of the hearing, in circumstances where the appellants persisted with allegations of impropriety.³⁶

[37] Vexatious litigation has been said to be “frivolous, improper, instituted without sufficient ground, to serve solely as an annoyance to the defendant”.³⁷ Notwithstanding the several flaws in the application, I am not persuaded it is so unmeritorious as to meet this standard. On balance, I do not think the matter warrants a punitive costs order.

[38] In my view, it is appropriate that counsel’s fees be taxed on scale C.

³⁰ *Ibid* at 535.

³¹ *Telcordia Technologies Inc* supra fn 3 paras 157-158.

³² *Lufuno Mphaphuli* supra fn 1 paras 279-280.

³³ *Roux v University of Stellenbosch and others* 2023 JDR 1263 (WCC) paras 93-94.

³⁴ *Rabinowitz* supra fn 5 paras 10 and 45.

³⁵ *Pristine Seafoods* supra fn 20 para 54.

³⁶ *Total Support Management* supra fn 15 para 49.

³⁷ *Lawyers for Human Rights v Minister in the Presidency and Others* 2017 (1) SA 645 (CC) para 19.

[39] For these reasons, I grant the order set out above.

DJ COOKE
ACTING JUDGE OF THE HIGH COURT

Appearances

For applicant: In person

For first respondent: John Butler SC

Instructed by: Cliffe Dekker Hofmeyr Inc.

For second, third and fourth respondents: Kate Reynolds

Instructed by: Werksmans Attorneys