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: YES

23 June 2026

DATE [redacted] SIGNATURE

Case Number: 2021-44260

In the matter between:

THE FLAMWOOD CONSORTIUM Applicant

And

I SCHWARTZMAN First Respondent

THE ASSOCIATION OF ARBITRATORS (SOUTHERN AFRICA) NPC Second Respondent

SENWES LIMITED Third Respondent

This Judgment is handed down electronically by circulation to the Applicant's Legal Representatives and the Respondents by email, publication on Case Lines as well as saflii. The date for the handing down is deemed to be 23 June 2026 at 10 am.

Summary-Arbitration - Award - Setting aside of – Alleged gross irregularity by arbitrator in conduct of arbitration proceedings - Arbitration Act 42 of 1965, s 33(1)*(b)* - Such ground of review envisaging gross irregularity in 'conduct', and not result or outcome, of proceedings.

JUDGMENT

MUDAU, J:

Introduction

[2] This is an application to review and set aside an arbitration award made by the first respondent, Mr I Schwartzman, a retired judge of this Division, sitting as an arbitrator in a dispute between the applicant (Flamwood Consortium) and the third respondent (Senwes). The award was published on 6 August 2021 and dismissed Flamwood Consortium's claim with costs, including the costs of senior counsel.

[3] The review is brought under section 33(1) of the Arbitration Act[1] (the Act). Flamwood Consortium contends that the arbitrator misconducted himself, committed gross irregularities in the conduct of the proceedings, exceeded his powers, and that the award was improperly obtained. Alternatively, Flamwood Consortium contends that there exists a reasonable apprehension of bias on the part of the arbitrator.

[4] The relief sought is an order setting aside the award and remitting the dispute back for determination. Senwes opposes the application and seeks its dismissal with costs on an attorney-and-client scale.

The factual background

[5] The common cause facts are set out in the joint practice note and can be summarised as follows.

[6] On 8 April 2008, Flamwood Consortium and Senwes concluded a Memorandum of Agreement (the MOA) regulating the terms and principles on which they intended to explore the feasibility of a land development project in Klerksdorp. The MOA recorded that Senwes wished to realise the value of surplus land

[1] 42 of 1965.

around its head office building, and that Flamwood Consortium had responded to a request for proposals.

[7] Clause 7 of the MOA provided for arbitration as the mechanism for resolving disputes between the parties.

[8] On 12 June 2015, Senwes advised Flamwood Consortium that it did not intend to continue executing the project. Flamwood Consortium urged Senwes to reconsider, but Senwes refused.

[9] On 16 August 2016, Flamwood Consortium gave notice to Senwes in terms of clause 9 of the MOA, requiring it to remedy its breach.

[10] On 31 March 2017, Senwes reversed its position and acknowledged that it remained bound to the MOA.

[11] On 11 August 2017, Senwes invoked clause 8.2 of the MOA to terminate the agreement. Flamwood Consortium objected but agreed to a consultation process.

[12] On 5 November 2017, Flamwood Consortium demanded that Senwes remedy its breach under clause 9 of the MOA.

[13] On 12 February 2018, Flamwood Consortium cancelled the MOA. On 27 March 2018, Senwes gave notice that Flamwood Consortium's cancellation constituted a repudiation and cancelled the MOA.

[14] A dispute arose, the second respondent appointed the first respondent as arbitrator, and the parties concluded an arbitration agreement on 8 November 2018. A pre-trial conference was held on 27 February 2020.

[15] The arbitration hearing was conducted virtually via Microsoft Teams from 4 to 7 May 2021. Witnesses gave evidence. Written heads of argument were exchanged, and oral arguments were presented on 22 June 2021.

[16] The arbitrator published his award on 6 August 2021, finding in favour of Senwes.

The arbitration award

[17] The arbitrator's award, annexed as "FC1" to the founding affidavit, runs to some 9 pages (excluding the introductory portions). For present purposes, the following findings are of central importance.

[18] The arbitrator identified three breaches that Flamwood Consortium alleged Senwes had committed, which Flamwood Consortium claimed entitled it to cancel the MOA.

[19] First, the arbitrator dealt with Senwes' oral cancellation on 12 June 2015. The arbitrator found that this breach was purged by Senwes' letter of 31 March 2017, in which Senwes reversed its position and affirmed that it remained bound to the MOA. The arbitrator relied on the principle in *Culverwell v Brown*,[2] holding that Flamwood Consortium had not accepted the repudiation and had elected to keep the contract alive, with the consequence that the repudiation remained "a thing writ in water".

[20] Second, the arbitrator considered Senwes' letter of 11 August 2017, which invoked clause 8.2 of the MOA to terminate the agreement on grounds of feasibility. The arbitrator found that the letter was intended to be a notice of termination that complied with the MOA, and that the author had in all probability overlooked the word "not" in clause 8.2. The arbitrator concluded that this probable misreading could not be construed as a material breach of the MOA and did not give Flamwood Consortium a right to cancel.

[21] Third, the arbitrator considered the so-called "solar panels" and "conference centre" breaches. The arbitrator found that Senwes had undertaken to remove the carports (and thus the solar panels affixed to them) at its cost, and that the construction of the conference facility on abutting land did not breach the MOA. The arbitrator concluded that Senwes was, at the relevant time, able to avail the land for development as contemplated in the MOA.

[22] Having found that Flamwood Consortium did not have a right to cancel the MOA, the arbitrator held that Flamwood Consortium's purported cancellation and claim

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[2] [1989] ZASCA 100; 1990 (1) SA 7 (A) (*Culverwell*).

for damages constituted a repudiation, entitling Senwes to cancel the MOA. The arbitrator dismissed Flamwood Consortium's claim with costs.

The review application

[23] Flamwood Consortium launched this review application on 15 September 2021. The founding affidavit is deposed to by Mr Henfred John Loubser, the managing director of one of the entities comprising the Flamwood Consortium and the representative of Flamwood Consortium in the arbitration.

[24] The grounds for review are set out in paragraphs 8 to 12 of the founding affidavit and elaborated upon in the supplementary founding affidavit filed in terms of Rule 53(4). In summary, Flamwood Consortium contends that:

a) The arbitrator misconducted himself by failing to apply his mind to the evidence, disregarding Flamwood Consortium's pleaded case, making findings based on speculation rather than evidence, and displaying a predetermined mindset;

b) The arbitrator committed gross irregularities by exceeding his powers, making findings outside the pleadings, failing to furnish reasons for certain factual findings, and failing to provide a record of the arbitration proceedings;

c) The award was improperly obtained (this ground was abandoned in the heads of argument); and

d) There exists a reasonable apprehension of bias.

[25] Senwes opposes the application. Its answering affidavit is deposed to by Mr Martinus Hermanus Christie, the senior legal advisor of Senwes and the author of the 11 August 2017 letter.

[26] The parties filed comprehensive heads of argument, and the matter was argued before me on 25 May 2026.

The legal framework for review of arbitral awards

[27] It is necessary at the outset to restate the fundamental principles governing judicial review of arbitral awards under South African law. These principles are well-established and have been consistently applied by our courts.

[28] Section 33(1) of the Arbitration Act provides:

> "(1) Where—
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> (a) any member of an arbitration tribunal has misconducted himself in relation to his duties as arbitrator or umpire; or
>
> (b) an arbitration tribunal has committed any gross irregularity in the conduct of the arbitration proceedings or has exceeded its powers; or
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> (c) an award has been improperly obtained,
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> 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."

[29] As the Supreme Court of Appeal observed in *Telcordia Technologies Inc v Telkom SA Ltd*[3] that:

> "...[B]y agreeing to arbitration the parties limit interference by courts to the ground of procedural irregularities set out in section 33(1) of the Act. By necessary implication they waive the right to rely on any further ground of review, 'common law' or otherwise..."[4]

[30] The basis on which an award will be set aside is a narrow one. The test is stringent, and misconduct will not be readily inferred.[5]

[31] In *Dickenson & Brown*, Innes CJ stated that:

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[3] 2007 (3) SA 266 (SCA) (*Telcordia*).
[4] *Id* at para 51.
[5] In this regard, See *Dickenson & Brown v Fisher's Executors* 1915 AD 166 at 174-175; *Donner v Ehrlich* 1926 AD 346 at 352 in which case the court found that even a gross mistake, unless it establishes mala fides or partiality, would be insufficient to warrant interference *(Donner); Johan Louw Konstruksie (Edms) Bpk v Mitchell NO & Another* 2002 (3) SA 171 (C) at para 43 *(Johan Louw Konstruksie).*

"Now I do not propose to attempt to give any definition of the word 'misconduct', for it is a word which explains itself. And, if it is used in its ordinary sense, I fail to see how there can be any misconduct unless there has been some wrongful or improper conduct on the part of the person whose behaviour is in question."[6]

[32] In *Donner*, the Court held at 352 that the misconduct referred to in the section "must amount to dishonesty". While subsequent authorities have somewhat softened this requirement, it remains the case that something more than a mere error of law or fact is required. A bona fide mistake, whether of law or fact, does not constitute misconduct. As was said in *Johan Louw Konstruksie* that:

"... [A finding or decision that] is not supported by evidence, should be regarded, and dealt with, as a mistake of fact. It will hence be construed as misconduct only if the mistake is so gross or manifest a nature that it demonstrates moral turpitude in the sense of dishonesty, partiality or bad faith."[7]

[33] The concept of "gross irregularity" under section 33(1)(b) of the Act was discussed in *Goldfields Investment Ltd v City Council of Johannesburg,*[8] Schneider J stated that:

"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."[9]

[34] In *Bester v Easigas (Pty) Ltd,*[10] Brand AJ with King J concurring, summarised the position as follows: every irregularity in the proceedings will not constitute a ground for review; "the irregularity must have been of such a serious nature that it resulted in the aggrieved party not having his case fully and freely determined."[11] .

[35] Importantly, as the Constitutional Court observed in *Sidumo v Rustenburg Platinum Mines Ltd*[12] that the behaviour which is perfectly well-intentioned and

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[6] *Dickenson & Brown v Fisher's Executors* at 175-176.
[7] *Johan Louw Konstruksie* at para 46.
[8] 1938 TPD 551.
[9] *Id* at 560.
[10] 1993 (1) SA 30 (C).
[11] *Id* at 43. See also *S v Moodie* 1961 (4) SA 752 (A).
[12] 2008 (2) SA 24 (CC)

bona fide, though mistaken, may constitute a gross irregularity if it prevented a fair trial of the issues. The crucial question is whether it prevented a fair trial.[13]

[36] Where an arbitrator for some reason misconceives the nature of the enquiry in the arbitration proceedings, with the result that a party is denied a fair hearing or a fair trial of the issues, that constitutes a gross irregularity. However, 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. If parties choose arbitration, courts endeavour to uphold their choice and do not lightly disturb it.[14]. Accordingly, it follows that the attack on the award must be measured against these standards.

[37] The distinction between a review and an appeal is fundamental. A party may not launch an appeal against an arbitral award in the guise of a review as was stated in *Telcordia*.[15] If courts are too quick to find fault with the way an arbitration has been conducted, and too willing to conclude that the faulty procedure is unfair or constitutes a gross irregularity within the meaning of s 33(1), the goals of private arbitration may well be defeated.

The nature of this application

[38] With these principles firmly in mind, I turn to consider the true nature of the application before me. Senwes contends that this is not a genuine review but a thinly veiled appeal against the arbitrator's findings. I consider that there is considerable force in this submission.

[39] Flamwood Consortium's founding affidavit runs to some 37 pages, but a careful reading reveals that the overwhelming majority of the complaints are directed at the correctness of the arbitrator's factual findings and legal conclusions.

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[13] *Id* at para 263.

[14] In this regard, see *Palabora Copper (Pty) Ltd v Motlokwa Transport and Construction (Pty) Ltd* [2018] ZASCA 23; 2018 (5) SA 462 (SCA) at para 8 citing *Telcordia*.

[15] The court in *Telcordia* at para 109 held that: "The high court found (contrary to the finding of the arbitrator) that one had to look to the Project Plan and the SOCs to determine the specific functionalities and features of the software to be delivered. For this finding the court relied – impermissibly – on parts of the contract that the parties by agreement did not place before the arbitrator. This is another indication of the fact that the court misconceived its function: it even dealt with the review as an appeal in the broad sense taking into account facts that were not before the lower tribunal."

Flamwood Consortium disagrees with the arbitrator's assessment of the evidence, with his interpretation of the MOA, and with his application of legal principles to the facts as he found them.

[40] In its heads of argument, Flamwood Consortium repeatedly refers to what the arbitrator "disregarded", "failed to appreciate", "misconceived", and "erred in". These are the hallmarks of an appeal, not a review. The fact that Flamwood Consortium has framed its challenge as a review under section 33 does not alter the essential character of the attack.

[41] That is not to say that a review can never succeed based on an arbitrator's errors. As the authorities make clear, an error may be so gross or manifest that it demonstrates misconduct or gives rise to a gross irregularity. But the threshold is high, and the applicant bears the onus of establishing that the threshold has been crossed.

Evaluation of the grounds for review

(a) The First Breach (June 2015)

[42] Flamwood Consortium contends that the arbitrator erred in finding that Senwes' repudiation in June 2015 was purged by its 31 March 2017 letter. Flamwood Consortium submits that it had elected to reject the repudiation and keep the contract alive, and that its rights had become vested.

[43] The arbitrator dealt with this issue in paragraphs 30 to 34 of the award. He relied on the principle in *Culverwell*[16], which holds that where an aggrieved party elects not to accept a repudiation but to keep the contract alive, the repudiation remains "a thing writ in water" and may be withdrawn by the defaulting party before the aggrieved party has acted upon it to its detriment.[17]

[44] Flamwood Consortium's complaint is essentially that the arbitrator applied the wrong legal principle or misapplied the correct one. But that is a complaint about

[16] *Culverwell* above fn 2.
[17] *Culverwell* id at 28B-F; see also *Mahabeer v Sharma NO and Another* 1985 (3) SA 729 (A) at 736E-H.

an error of law. As the authorities make clear, an error of law, without more, does not constitute misconduct or a gross irregularity.[18]

[45] Moreover, the arbitrator's finding was supportable on the evidence. It was common cause that Flamwood Consortium did not accept the repudiation in June 2015. Instead, it urged Senwes to reconsider and later gave notice in terms of clause 9. In these circumstances, the arbitrator's conclusion that the repudiation was purged cannot be said to be so manifestly wrong as to demonstrate misconduct.

(b) The Second Breach (August 2017)

[46] Flamwood Consortium's complaint about the second breach centres on the arbitrator's finding in paragraph 36 of the award that the author of the 11 August 2017 letter "in all probability overlooked the word 'not' in line 1 of Clause 8.2".

[47] Flamwood Consortium submits that this finding was based on speculation, that there was no evidence to support it, and that the arbitrator exceeded his powers by going beyond the pleadings. Flamwood Consortium also complains that it was not given an opportunity to address the arbitrator on this issue.

[48] I have considered these submissions carefully. In my view, they do not establish a reviewable irregularity.

[49] First, the finding was not essential to the arbitrator's conclusion. The arbitrator held that even if the letter constituted a breach, it was not a material breach that entitled Flamwood Consortium to cancel the MOA. The observation about the author overlooking the word "not" was, at most, an ancillary comment.

[50] Second, the finding was not made without any basis. The letter itself invoked clause 8.2 while purporting to terminate on grounds of feasibility. Clause 8.2 applies to termination for reasons not related to feasibility, while clause 8.1 applies to termination for feasibility-related reasons. The natural inference is that

[18] In this regard, see *Ellis v Morgan* 1909 TS 576; *Telcordia* above fn 3.

the author intended to rely on clause 8.1 but mistakenly cited clause 8.2. The arbitrator's observation was a reasonable inference from the text of the letter.

[51] Third, the arbitrator's conclusion that this breach did not give Flamwood Consortium a right to cancel was clearly correct. Even if the letter was procedurally defective, that defect could not, without more, constitute a material breach justifying cancellation. Flamwood Consortium's real grievance was that Senwes was terminating the MOA on grounds of feasibility without having followed the proper procedures. But that grievance went to the validity of Senwes' termination, not to a breach by Senwes of its obligations. The arbitrator's conclusion on this point was, in my view, legally sound.

[52] Fourth, Flamwood Consortium's complaint that it was not given an opportunity to address the arbitrator on this issue is without substance. The issue was ventilated in the pleadings and in argument. Flamwood Consortium's counsel addressed the interpretation of clauses 8.1 and 8.2 in his submissions. The fact that the arbitrator concluded differently from what Flamwood Consortium anticipated does not mean that Flamwood Consortium was denied an opportunity to be heard.

(c) The Third Breach (Solar Panels and Conference Centre)

[53] Flamwood Consortium's most substantial complaints relate to the arbitrator's treatment of the solar panel project and the conference centre. Flamwood Consortium contends that the arbitrator misconstrued its case, disregarded evidence, made findings unsupported by the evidence, and displayed a predetermined mindset.

[54] It is necessary to examine what Flamwood Consortium's pleaded case actually was. Paragraph 4.12 of the particulars of claim (which Flamwood Consortium itself emphasises in its heads of argument) states that Senwes was "*de facto* not able to avail the land in its state, configuration, depiction, layout and totality as it was defined and set out in the MOA". Paragraph 4.13 then pleads that Senwes' actions were in breach of clauses 5.2, 5.3, 5.4, and 5.5 of the MOA.

[55] The arbitrator correctly identified the foundation of the third breach as being that, by reason of the solar panel project and the construction of the conference centre, Senwes was *de facto* unable to avail the land. This is the allegation in paragraph 4.12. The reference to clause 5 in paragraph 4.13 is consequential: the breach of clause 5 is alleged to arise from the same conduct.

[56] Flamwood Consortium submits that the arbitrator focused excessively on the availability of the land and failed to appreciate the independent significance of the clause 5 disclosure obligations. But the arbitrator's focus was entirely understandable. If Senwes was, in fact, able to avail the land for development (as the evidence showed), then the breach of clause 5, if any, would not have been material. A party cannot cancel a contract for breach of a disclosure obligation where the non-disclosed facts have no material impact on the ability to perform.

[57] Turning to the evidence: The arbitrator found that Senwes had undertaken to remove the carports at its cost. Flamwood Consortium disputes this finding, submitting that the undertaking was never approved by the Senwes board and was never finalised.

[58] However, the evidence before the arbitrator told a different story. Mr Loubser himself testified that Senwes had indicated that it could move the carports cheaper, and that he accepted that Senwes would stand in for the costs of moving the parking shelters. This is recorded in the transcript at page 144, lines 3-7, and page 182, lines 4-7. Moreover, the March 2015 report (FWC3), which Mr Loubser co-authored, stated in paragraph 7: "Senwes has opted to move the carports at its cost."

[59] In light of this evidence, the arbitrator's finding that there was an undertaking by Senwes to remove the carports was not only supportable but inevitable. The fact that the undertaking had not been formalised or approved by the board does not negate its existence as an expression of Senwes' position.

[60] As for the solar panels, Mr Loubser conceded that they could be removed, albeit with some difficulty. The arbitrator found it unnecessary to decide the degree of difficulty, and I cannot fault him for that. If Senwes was going to remove the

carports (and thus the solar panels affixed to them) at its own cost, then the precise degree of difficulty was immaterial.

[61] Regarding the conference centre, Mr Loubser conceded during cross-examination that the conference facility probably had very little impact on availing the land, and that he was not trying to add to Flamwood Consortium's pleaded case. He accepted that the conference centre was not constructed on the land earmarked for development. In these circumstances, the arbitrator's finding that the construction of the conference facility did not breach the MOA was clearly correct.

[62] Flamwood Consortium submits that the arbitrator disregarded its case based on clause 5 of the MOA and the duty of good faith. I disagree. The arbitrator was fully aware of clause 5; he quoted it in paragraph 17 of the award. He simply concluded, on the evidence, that the conduct complained of did not constitute a breach of the MOA. That was a finding of fact and law within his jurisdiction to make.

[63] There is no basis in the record for Flamwood Consortium's suggestion that the arbitrator had a "predetermined mindset" or was "oblivious" to the true facts. The arbitrator engaged with the evidence, asked questions of the witnesses, and gave reasoned findings. The fact that Flamwood Consortium disagrees with those findings does not mean that the arbitrator was biased or that the proceedings were unfair.

(d) The Record

[64] Flamwood Consortium also complains about the arbitrator's failure to provide a record of the arbitration proceedings. The arbitrator filed a notice in terms of Rule 53(1)(a) and (b) stating that he did not have a record of the proceedings and did not know whether a complete copy of the record exists.

[65] This complaint is without merit. The arbitration was conducted virtually, and it was common cause that the proceedings were recorded by Senwes. The arbitrator was informed that a typed transcript would take time to prepare. In these circumstances, the arbitrator cannot be criticised for not having a record.

Moreover, Flamwood Consortium has itself constructed and delivered a record, so the review has proceeded without impediment.

[66] There is no suggestion that the arbitrator deliberately destroyed or withheld a record. His notice under Rule 53 was entirely proper in the circumstances.

The allegation of bias

[67] Flamwood Consortium submits that, viewed holistically, the circumstances give rise to a reasonable apprehension of bias on the part of the arbitrator. This submission is founded on the same factual complaints that have already been considered.

[68] The test for bias is well-established. In *Bernert v ABSA Bank Ltd*,[19] the Constitutional Court held that the question is whether a reasonable, objective and informed person would, on the correct facts, reasonably apprehend that the judicial officer has not or will not bring an impartial mind to bear on the adjudication of the case.[20]

[69] Flamwood Consortium points to the arbitrator's remarks during the opening address about the carports and solar panels, his findings based on speculation, his alleged disregard of evidence, and his failure to keep an open mind.

[70] In assessing this submission, I must have regard to the totality of the arbitrator's conduct, including the parts of the award that favoured Flamwood Consortium. In an earlier award dated 5 May 2020, the arbitrator dismissed a point in limine raised by Senwes with costs. In the award under review, the arbitrator found in Flamwood Consortium's favour on the issue of the cession of rights from DEEWHY Investments CC to Freimac (Pty) Ltd, contrary to Senwes' submissions. These findings militate strongly against any suggestion of bias.

[71] The arbitrator's remarks during the opening address were innocuous. He asked questions to understand the issues. He expressed a provisional view about the carports, but that view was based on the pleadings and the annexures. A judicial

[19] 2011 (3) SA 92 (CC)
[20] *Id* at para 29.

officer is entitled to form tentative views during the course of proceedings and to test those views against the evidence. There is no requirement for a completely blank slate.

[72] A reasonable, objective, and informed person, knowing all the relevant facts, would not have apprehended that the arbitrator was biased against Flamwood Consortium. The arbitrator conducted the proceedings fairly, gave both parties a full opportunity to present their cases, and made reasoned findings. The fact that those findings were adverse to Flamwood Consortium does not create an apprehension of bias.

The abandoned ground

[73] In its heads of argument, Flamwood Consortium advised that it no longer persists with its argument that the award was improperly obtained. This was a wise concession, as there was no evidence to support such a serious allegation.

Disposition

[74] Flamwood Consortium has failed to establish any of the grounds for review under section 33(1) of the Arbitration Act. The arbitrator did not misconduct himself. He did not commit any gross irregularity, nor did he exceed his powers. There is no basis for finding that the award was improperly obtained, and there is no reasonable apprehension of bias.

[75] What Flamwood Consortium seeks is an appeal against the arbitrator's findings of fact and law. That is not permissible under the arbitration agreement (which excluded the right to appeal) and is not countenanced by the Act. The arbitrator was the parties' chosen private judge, and his findings are final and binding, absent a reviewable irregularity. None has been shown.

[76] The application must therefore be dismissed.

Costs

[77] Senwes seeks costs on an attorney-and-client scale. It submits that Flamwood Consortium made serious allegations of misconduct and bias that were

unsustainable, and that the court should express its displeasure by awarding punitive costs.

[78] There is force in this submission. Flamwood Consortium alleged that the arbitrator, a retired judge of this Division, had misconducted himself, committed gross irregularities, and was biased. These are grave allegations. Having regard to the record, they had no reasonable foundation. Flamwood Consortium also alleged that the award was improperly obtained, a ground that was ultimately abandoned.

[79] In these circumstances, I am satisfied that a punitive costs order is warranted. The allegations were not merely unsuccessful; they were, with respect, unfounded and should not have been made.

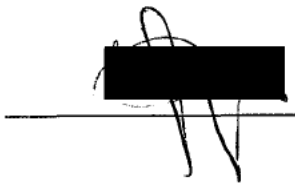
[80] In the exercise of my discretion, I order that Flamwood Consortium pay Senwes' costs on the scale as between attorney and client.

Order

[81] The following order is made:

1. The application is dismissed.

2. The applicant shall pay the third respondent's costs, such costs to be taxed on the scale as between attorney and client including costs occasioned by the employment of senior counsel on scale C.



MUDAU J

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, JOHANNESBURG

APPEARANCES

For the Applicants: Adv HR Fourie SC
Instructed by: Van Staden Nysschem Attorneys

For the 3rd Respondent: Adv JP Vorster SC

Instructed by: Tim du Toit Attorneys

Date of Hearing: 25 May 2026

Date of Judgment: 23 June 2026