(1) Reportable Yes/No
(2) Of interest to other Judges: Yes/No
(3) Revised

_____ _____
Signature Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case No: JR718/23

In the matter between:

SACCAWU OBO ITS MEMBERS **First Applicant**

MS LORRAINE SEGOE **Second Applicant**

MS ELSIE MPHAHLELE **Third Applicant**

and

COMMISSION FOR CONCILIATION

MEDIATION AND ARBITRATION(CCMA) **First Respondent**

COMMISSIONER E HAMBIDGE N.O **Second Respondent**

SUN INTERNATIONAL (SOUTH AFRICA) LTD **Third Respondent**

Heard: 27 June 2026

Delivered: 04 June 2026

JUDGMENT

BALOYI, AJ

Introduction.

[1] This is an application to review and set aside the jurisdictional ruling issued by the Second Respondent (Commissioner Hambidge) acting under the auspices of the first Respondent, the Commission for Conciliation, Mediation and Arbitration (CCMA). The ruling was issued under CCMA case no: HO 12-23 on 3 April 2023.

[2] The review application is opposed by the Third Respondent, Sun International South Africa Ltd.

The facts

[3] The facts in this matter are largely common cause. The applicant and the third respondent have entered into collective agreements about wages and other conditions of employment. To be specific, the agreements governed matters such as remuneration increases, rate of night shift allowance and transport allowances.

[4] The parties entered into what they called substantive agreements for the period 2006 -2009, 2009-2011, 2011-2012 and 2022-2023.[1]

[5] On 3 February 2023, the applicant referred a dispute to the CCMA in terms of section 24 of the Labour Relations Act[2] (LRA). According to the applicant, the referral related to two disputes. The first dispute was whether 2022-2023 substantive agreement applies to the Luggage Supervisor and Most Valued Guest Supervisor. The second dispute according to the applicant concerns the payment of employees to whom the 2022-2023 Substantive Agreement is applicable, but who have not been paid the increase provided for in that agreement. The applicant submit that the employees were instead paid a lump sum in terms of the Equal Pay for Work of Equal Value Exercise (EPWEV Alignment Exercise).

[6] The first respondent at the CCMA raised two points *in limine* relating to the CCMA's jurisdiction. Firstly, the third respondent contended that the first claim has prescribed. The basis of the prescription concerned the interpretation and

[1] Index to record, page 17 to 66
[2] Act 66 of 1995, as amended.

application of the 2009-2011 and the 2011-2012 substantive agreements. It was contended by the first respondent that the payment of the benefits was more than three years old and had prescribed. Secondly, it was contended by the third respondent that there was undue delay on the part of the applicant in lodging the claim.

[7] The second respondent in her ruling first determined whether the dispute constitutes a dispute in terms of section 24 of the LRA. In undertaking this exercise, the second respondent relied on the judgment of the Labour Court in the matter of *HOSPERSA obo Tshambi v Department of Health, Kwa Zulu Natal*[3]. The Labour Appeal Court (LAC) held that:

> "logically, a dispute requires, at minimum, a difference of opinion about what a provision of the agreement means. A dispute about the interpretation of a collective agreement, requires at minimum, difference of opinion about a question A dispute about the application of a collective agreement requires at minimum, a difference of opinion about whether it can be invoked. The court further held that the phrase interpretation or application is not be read disjunctively. The enforcement of a collective agreement is a process which follows on a positive finding about application and is not a facet of application."

[8] Having relied on the *HOSPERSA* judgment and analysing the dispute between the parties, the second respondent came to the conclusion that the dispute was not a true section 24 dispute but a breach of the collective agreement and as a result the CCMA does not have jurisdiction to conciliate the matter.

Grounds for review

[9] The applicant before this Court contends that the ruling is reviewable on three grounds:

9.1 Firstly, that the applicant was called upon to show that its dispute had not prescribed and not instituted within the reasonable period. The parties were not heard on the issues giving rise to the Commissioner's

[3] [2016] 7 BLLR 649 (LAC) at para 17.

ruling; namely there was no dispute between the parties concerning the interpretation and application of a collective agreement.

9.2 The points in limine relating to prescription and unreasonable delay in asserting one's rights are disputes about the application of the collective agreement.

9.3 The Commissioner misconstrued the nature of the issues in dispute. The first respondent misinterpreted the 2022-2023 substantive agreement and its applicability

[10] It is submitted on behalf of the applicant that the Commissioner committed gross irregularity by not hearing the parties on whether the dispute constituted a section 24 dispute (interpretation and application dispute). It is submitted further that the Commissioner's decision is not the decision of reasonable decision maker and the CCMA has jurisdiction to adjudicate the disputes.

[11] The third respondent contends that the review application has been brought in terms of the incorrect section of the LRA. It should have been brought in terms of section 158 of the LRA instead of section 145. The test applicable in a review of a ruling is correctness and not reasonableness as pleaded by the applicant.

[12] The third respondent further contends that the alternative relief sought by the applicant in terms of section 77 of the Basic Conditions of Employment Act (BCEA)[4] is not competent in these review proceedings. Such an application must be brought in terms of a statement of claim as provided in Rule 6 of the Rules for the Conduct of proceedings in the Labour Court[5]. Overall, the respondent submits that the ruling by the second respondent is correct as the dispute is not covered under section 24 of the LRA.

Analysis

[4] Act 75 of 1997

[5] Now Repealed and replaced with the Rules Regulating the Conduct of the Proceedings of the Labour Court. Published 3 May 2024 (GN 50608). Effective 17 July 2024.

[13] An arbitrator is required to determine the true dispute between the parties. The arbitrator is therefore required to establish the relevant facts and construe the category of the dispute correctly.

[14] In *CASU v Tao Ying Industries and Others*[6], the Constitutional Court held that:

> 'A commissioner must, as the LRA requires, 'deal with the substantial merits of the dispute'. This can only be done by ascertaining the real dispute between the parties. In deciding what the real dispute between the parties is, a commissioner is not necessarily bound by what the legal representatives say the dispute is. The labels that parties attach to a dispute cannot change its underlying nature. A commissioner is required to take all the facts into consideration including the description of the nature of the dispute, the outcome requested by the union and the evidence presented during the arbitration. What must be borne in mind is that there is no provision for pleadings in the arbitration process which helps to define disputes in civil litigation. Indeed, the material that a commissioner will have prior to a hearing will consist of standard forms which record the nature of the dispute and the desired outcome. The informal nature of the arbitration process permits a commissioner to determine what the real dispute between the parties is on a consideration of all the facts. The dispute between the parties may only emerge once all the evidence is in.'

[15] Having considered the second respondent's ruling, the ruling is correct.[7] The second respondent considered the dispute between the parties and correctly concluded that the dispute was not about the application or interpretation of the substantive agreement but of breach of the agreement.

[16] The applicant's review application is defective as it is brought in terms of section 145 of the LRA and the ground for review is based on reasonableness which applies to review of arbitration awards.[8] In *Ekurhuleni Metropolitan Municipality v Mabusela NO and Others*[9], the LAC said the following:

---

[6] (2008) 29 ILJ 2461 (CC) at para 66.
[7] Index pleadings, page 6-9, paras 15 -18.
[8] Index to pleadings, Founding affidavit (FA), para 42.
[9] (2023) 44 ILJ 137(LAC) at para 27.see also SA Post Office v CCMA & Others [2018] 39 ILJ 1350 para 31 and Motlaase v CCMA & Others [2020] ZALCJB 186 para 63

> "It is now established that the applicable test on review of a CCMA or bargaining council arbitrator's interpretation of a legal instrument is correctness and not reasonableness. A reasonable arbitrator is not supposed to get a legal point wrong."

[17] In *Fidelity Cash Management Service v CCMA and Others*[10], the LAC said the following:

> "Nothing said in Sidumo means that the grounds of review in sec 145 of the Act are obliterated. The Constitutional Court said that they are suffused by reasonableness. Nothing said in Sidumo means that the CCMA's arbitration award can no longer be reviewed on the grounds, for example, that the CCMA had no jurisdiction in a matter or any of the other grounds specified in sec 145 of the Act. If the CCMA had no jurisdiction in a matter, the question of the reasonableness of its decision would not arise. Also, if the CCMA made a decision that exceeds its powers in the sense that it is ultra vires its powers, the reasonableness or otherwise of its decision cannot arise".
>
> (Own emphasis)

[18] The alternative claims in my view should also fail. I agree with the submissions made by the third respondent that such claim, if any, should be brought by way of statement of claim in terms of rule 6 (see rule 11 of the rules) of the Labour Court.

Conclusion

[19] In the circumstances, the impugned jurisdictional ruling is beyond reproach. As such, this application must fail.

Costs

[20] It is trite that costs do not follow the result in this Court. In the circumstances of the present case, I am disinclined to award costs.

[21] In the premises, I make the following order:

Order

[10] (2008) 29 ILJ 964 (LAC) at para 101

1. The review application is dismissed.

2. There is no order as to costs.

_____

F. Baloyi

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant : Mr A Roskam

Instructed by : Haffegee Roskam Savage Attorneys Inc

For the Respondent : Mr T Maruapula

Instructed by : Cliffe Dekker Hofmeyr Inc