



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

JUDGMENT

Reportable

Case no: 2025-111355

In the matter between:

BASELINE CIVIL CONTRACTORS (PTY) LTD

Applicant

And

THE CITY OF CAPE TOWN

First Respondent

DENNIS SINKONDE

Second Respondent

WEC CONSULT (PTY) LTD

Third Respondent

Coram: BARTHUS, AJ

Heard: 11 June 2026

Delivered: 12 August 2026

Summary: Construction law — Adjudication — Corrected decision — Rule 6.4.10 — Error in original decision — Whether adjudicator functus officio — Distinction between adjudicator and arbitrator.

Contract price adjustment (CPA) — Consequential determination flowing from corrected decision — Jurisdiction — Fairness — Remittal for reconsideration with submissions from both parties.

Materials-on-site claim — Not referred to adjudication — Not enforceable.

ORDER

- a) The corrected adjudication decision dated 22 May 2025 is declared valid and enforceable.
- b) The CPA determination dated 24 June 2025 is set aside, and the CPA issue is remitted to the adjudicator for reconsideration in accordance with the corrected decision.
- c) The City is directed to participate in the CPA process and to deliver its submissions to the adjudicator within 10 days of this order.
- d) The adjudicator shall determine the CPA amount after receiving submissions from both parties, or upon expiry of the submission period should either party fail to deliver submissions.
- e) The materials on site claim is dismissed.
- f) The City's counter application is dismissed.
- g) The First Respondent is directed to comply with the corrected decision within 10 days of this order.
- h) The First Respondent shall pay the Applicant's costs including the costs of counsel on scale B.

JUDGMENT

Barthus AJ:

Introduction

[1] This matter concerns the enforceability of a corrected adjudication decision issued on 22 May 2025 by the Second Respondent, Dennis Sinkonde ("the adjudicator"), appointed under the Adjudication Board Rules ("the Rules") incorporated into the parties' construction contract. The Applicant, Baseline Civil Contractors (Pty) Ltd ("Baseline"), seeks enforcement of the corrected decision, the subsequent Contract Price Adjustment ("CPA") determination, and payment for materials on site. The City of Cape Town ("the City") opposes the application and seeks, by way of counter-application, to have the corrected decision and CPA determination declared invalid and set aside.

[2] The main issue this court is seized with determining, is whether the adjudicator's corrected decision was a lawful exercise of the correction power in Rule 6.4.10 of the Rules, or whether it amounted to a substantive reconsideration of the merits after the adjudicator had become *functus officio*.

Salient facts

[3] The parties concluded a construction contract on 29 November 2019. A dispute arose upon termination of the contract on 30 June 2024 concerning the valuation of the works completed by Baseline.

[4] The adjudicator issued his original decision on 6 May 2025, awarding Baseline R5 148 094.32. In that decision he stated:

'The Adjudicator requested the Referring Party to comment on these submissions but offered no comment: "Baseline has not provided supporting documents for me to determine the valuation of the works." '

[5] In the accompanying email, the adjudicator wrote:

'Having issued the Decision, my task as Adjudicator ends as I am Functus Officio.'

[6] However, it is common cause that Baseline had in fact submitted detailed clarification on 8 April 2025, in response to the adjudicator's request of 3 April 2025. The adjudicator later explained that he had "*missed the email of 8 April 2025*", which led to an error in the original decision.

[7] After the notice of the error had been given within the seven-day period contemplated in Rule 6.4.10, the adjudicator issued a corrected decision on 22 May 2025. The adjudicator issued a corrected decision, awarding Baseline R11 549 644.10 and directing the parties to determine the additional CPA amount.

[8] The City paid the amount due under the original decision and filed a notice of dissatisfaction. It did not participate in the CPA process, contending that the adjudicator was *functus officio*.

[9] Baseline contends that Rule 6.4.10 permits the adjudicator to correct *any* clerical mistake, error, or ambiguity, and that the adjudicator's failure to consider Baseline's 8 April 2025 clarification constitutes an "error" within the meaning of the

Rule. Baseline argues that the notice of the error was made within the prescribed seven-day period, that the adjudicator acted within the scope of his contractual powers, and that the corrected decision is binding and enforceable. It further submits that the City's opposition amounts to an impermissible attempt to avoid compliance with a binding adjudication award.

[10] The City, on the other hand, contends that the adjudicator became *functus officio* upon issuing the original decision on 6 May 2025, and that Rule 6.4.10 permits only the correction of clerical or obvious slips, not a substantive reconsideration of the merits. The City relies on *Ket Civils CC v MEC for Public Works, Roads and Transport, Free State Province* to support its *functus officio* argument.

[11] The City argues that the corrected decision constitutes a wholesale reversal of the original determination and is therefore *ultra vires*. It maintains that the CPA determinations are similarly invalid, and that the materials-on-site claim cannot be enforced because it was never adjudicated.

Legal framework

[12] Rule 6.4.10 provides that an adjudicator may “*Correct a decision in order to remove any clerical mistake, error or ambiguity on its own initiative, or at the request of the Contractor or the Employer, provided that the initiative is taken or the request is made within 7 days of the publication of the decision.*”

[13] The Rule is disjunctive. It treats “clerical mistake”, “error”, and “ambiguity” as separate grounds for correction. The word “any” broadens the scope of the correction power. This means that an adjudicator may rectify any clerical mistake, any error, or any ambiguity subject to the requirement that the initiative be taken or the request is made within 7 days of the publication.

[14] Adjudication is a contractual, interim, binding mechanism designed to preserve cash flow. Courts intervene only in rare circumstances, such as fraud, collusion, capriciousness, manifest injustice, or lack of jurisdiction¹.

¹ *Chelsea West (Pty) Ltd v Roodebloem Instants (Pty) Ltd* 1994 (1) SA 837 (C) at 856 (C-D)

[15] In *Framatome v Eskom Holdings SOC Ltd*, the SCA² held that adjudication decisions are binding as long as they stay within the confines of the dispute and terms referred to them. If it is found that the adjudicator lacked the requisite jurisdiction, his decision is neither binding nor enforceable.

[16] The City relies on *Ket Civils CC v MEC for Public Works, Roads and Transport, Free State Province*³ (“*Ket Civils*”) to contend that “a court may, in certain circumstances, decline to enforce an adjudicator’s determination where grounds exist for doing so”.

[17] In *Ket Civils*, the contractor sought to enforce an adjudicator’s financial awards. The Department opposed enforcement and launched a counter-application seeking to interdict implementation pending a review aimed at declaring the adjudicator’s decision invalid. The Department had not filed a notice of dissatisfaction in accordance with the applicable adjudication rules.

[18] The Court, somewhat unexpectedly, refused to compel the Department to implement the adjudicator’s awards. This was so notwithstanding that the Department had not filed a notice of dissatisfaction in accordance with the prescribed procedures, and even though the adjudicator was not cited as a party to the proceedings. The enforcement application was nevertheless dismissed because the Court reasoned that there were good prospects of success in the review (which at that point had not been launched). Good prospects of success in the review is not the test for enforcement of adjudication awards.

[19] *Ket Civils* is unhelpful. The judgment conflicts with the prevailing authorities governing construction adjudication which follows a strict “pro-enforcement” stance regarding an adjudicator’s decision. By halting enforcement purely because a review was intended, the *Ket Civils* ruling deviates from SCA precedent.

[20] *Radon Projects (Pty) Ltd v NRE Motors (Pty) Ltd*⁴ is the bedrock SCA authority for South African construction adjudication. The court explicitly confirmed that the primary intent of adjudication is a fast-tracked dispute mechanism. An adjudicator’s decision is contractually binding and enforceable as a matter of right

² 2022 (2) SA 395 SCA para 25

³ (3440/2025) [2026] ZAFSHC 53 (12 February 2026)

⁴ 2013 (6) SA 345 (SCA)

and requires immediate compliance, shifting any legal fights to later arbitration or litigation. Accordingly, *Ket Civils* is an anomaly and does not assist the City.

[21] The City also relies on English authorities, including *Carillion Construction Ltd v Devonport Royal Dockyard Ltd*⁵ and related Technology and Construction Court (TCC) jurisprudence, to support its contention that an adjudicator may not revisit a determination once delivered. Those cases emphasise the importance of finality, speed, and certainty in adjudication, and caution against permitting adjudicators to reopen decisions except in narrow circumstances.

[22] While English adjudication jurisprudence is persuasive in South African courts, it must be applied with care. The English statutory adjudication regime under the Housing Grants, Construction and Regeneration Act 1996 differs materially from the contractual adjudication regime applicable here. In England, adjudicators' powers are defined by statute and the Scheme for Construction Contracts while in South Africa, adjudication is purely contractual, and the parties' agreement is the primary source of jurisdiction.

[23] Crucially, the English cases relied upon by the City were decided in the absence of a contractual correction clause equivalent to Rule 6.4.10. The TCC has consistently held that an adjudicator may correct only clerical or typographical slips unless the contract expressly provides otherwise. In this matter, the contract does provide otherwise: Rule 6.4.10 permits correction of "any clerical mistake, error or ambiguity".

[24] English courts have however recognised that even where a contract does not expressly authorise correction, and in the absence of agreement, there was an implied term within the construction contract that the adjudicator may correct an accidental error after issuing a determination⁶.

[25] The foreign law relied upon by the City is distinguishable because it arises from a statutory adjudication regime without a correction clause comparable to Rule 6.4.10. The English authorities reinforce, rather than undermine, the conclusion that

⁵ [2005] EWCA CIV 1358

⁶ In *Bloor Construction (UK) Ltd v Bowmer & Kirkland (London) Ltd* [2000] EWHC 183 (TCC) it was held that where the adjudicator has corrected a clear mistake, within a very short amount of time, the corrected decision is considered a valid decision. Similarly in this case Bloor applied to enforce the first decision but the court rejected this, enforcing the second decision.

where a contract expressly permits correction of errors, an adjudicator may lawfully exercise that power.

[26] The adjudicator requested clarification on 3 April 2025. Baseline responded on 8 April 2025. The adjudicator overlooked this response. This oversight is an error within the ordinary meaning of Rule 6.4.10.

[27] The notice of the error was given within the seven-day period. The adjudicator did not introduce a new dispute or decide a claim outside the referral. He considered the same valuation dispute in light of material that had been submitted before the original decision but overlooked.

[28] The adjudicator's email stating he was *functus officio* is not determinative. Contractual powers override subjective statements and Rule 6.4.10 expressly authorises post-decision correction.

[29] The corrected decision remained within the scope of the referral, namely *valuation of the completed works*. The adjudicator did not decide on a new dispute nor is there any allegation of fraud, collusion, capriciousness, or manifest injustice because there is none.

[30] It is necessary to restate the well-established distinction between an adjudicator and an arbitrator, as it bears directly on the City's jurisdictional arguments. The City invokes similarities between arbitrators, judges and adjudicators. Within the context of this dispute, it is the distinction rather than the similarities that matter and those distinctions undermine the foundation of the City's submissions.

[31] An adjudicator acts as an expert, not as an arbitrator. The adjudicator's mandate is contractual, interim, and inquisitorial in nature. Adjudication is "*an accelerated form of dispute resolution... binding on the parties for immediate compliance*", and the adjudicator determines the dispute as an expert, not as a tribunal exercising quasi-judicial powers⁷.

⁷ *Pro-Khaya Construction CC v City of Cape Town and Another* (9103/2023) [2025] ZAWCHC 353 (15 August 2025) para 31

[32] An arbitrator, by contrast, performs a quasi-judicial function. Arbitration is final and determinative of the dispute, subject only to limited review. Arbitrators are bound by the rules of natural justice unless expressly excluded, and their awards are subject to the Arbitration Act. Adjudicators, however, derive their powers solely from the contract, and their determinations are binding only until overturned by arbitration or litigation. They are not required to follow formal procedures, nor do they apply the law in the same manner as an arbitrator.

[33] This distinction is material. The City's reliance on *functus officio* principles applicable to arbitrators is incorrect. An adjudicator's powers are defined by the contract, and where the contract expressly preserves a limited power of correction as Rule 6.4.10 does, the adjudicator may exercise that power even after issuing a determination. The adjudicator does not become *functus officio* in the same way an arbitrator does, because adjudication is not a final determination of rights, but an interim mechanism designed to preserve cash flow and avoid delay.

[34] The adjudicator's correction of an admitted oversight falls squarely within the contractual powers conferred upon him, and the *functus officio* doctrine, developed in the context of final judicial or arbitral decisions, does not apply to adjudication with the same rigidity. The City's argument therefore demonstrably conflates two distinct dispute resolution roles.

The CPA determination

[35] The CPA issue arises from the adjudicator's corrected decision of 22 May 2025, in which he awarded Baseline an amount of R11,549,644.10 and directed that the parties determine the additional CPA amount, failing which he would do so. The CPA component was not determined in the original decision. It is therefore a separate and subsequent determination, triggered only because the corrected decision expressly required it.

[36] The City contends that the CPA determination is invalid because the adjudicator was *functus officio* after issuing the original decision, and because the CPA claim did not form part of the original referral. It further argues that having paid the amount awarded in the original decision, it was under no obligation to participate in the CPA process.

[37] The City's jurisdictional objections cannot be upheld. The adjudicator's mandate to determine CPA did not arise from the original referral; it arose directly from the corrected decision, which itself was issued pursuant to Rule 6.4.10. Once the corrected decision replaced the original decision, the CPA component became part of the adjudicator's mandate. The adjudicator was therefore empowered, indeed obliged to determine the CPA amount if the parties could not agree on it.

[38] However, the way the CPA determination unfolded gives rise to a separate difficulty. The City elected not to participate in the CPA process because it believed the adjudicator lacked jurisdiction. That belief was incorrect, but the consequence is that the CPA determination was made without the benefit of submissions from both parties. Adjudication is an expert process, but it remains a bilateral one in that both parties must be afforded an opportunity to place their material before the adjudicator.

[39] The corrected decision created a distinct obligation on the parties to engage with the CPA calculation. The City's refusal to participate does not invalidate the adjudicator's jurisdiction, but it does mean that the CPA determination was made in circumstances where one party did not advance its position. In the interests of fairness, and to ensure that the CPA amount is determined on a proper evidential foundation, I am of the view that the CPA issue should be remitted to adjudication for reconsideration.

[40] This approach is consistent with the contractual framework. The adjudicator retains jurisdiction to determine CPA because the corrected decision expressly requires it. The remittal does not reopen the merits of the valuation dispute, but it ensures that the CPA calculation is performed with full participation by both parties, as contemplated by the corrected decision.

[41] The CPA determination is therefore set aside, not for want of jurisdiction, but to allow the adjudicator to reconsider the matter with submissions from both parties. The City is directed to participate in the CPA process and to deliver its submissions within the time period stipulated in the order below.

The materials-on-site claim

[42] The materials-on-site claim requires separate consideration. In the main application Baseline seeks an order directing the City to pay for materials allegedly left on site at termination of the contract. This claim was not advanced in the adjudication proceedings, nor was it included in the referral to the adjudicator. It follows that the adjudicator did not determine it, and no amount was awarded in respect of it. It cannot be enforced through adjudication enforcement proceedings.

[43] The City correctly points out that Baseline's own invoice pursuant to the corrected decision contains no line item for materials on site, and that the corrected decision itself makes no reference to such a claim. The City further notes that Baseline's founding affidavit acknowledges that the materials-on-site claim was not adjudicated, but Baseline nevertheless seeks enforcement on the basis that "*all three claims arise from one contract between the parties*".

[44] That submission cannot be sustained. The adjudication mechanism is dispute specific, not contract wide. Only disputes referred to adjudication, and determined by the adjudicator, may be enforced through the adjudication enforcement procedure. The fact that multiple claims arise from the same contract does not entitle a party to bypass the adjudication process and seek enforcement of a claim that was never adjudicated.

[45] To this end the jurisprudence on adjudication is clear. Enforcement proceedings are confined to the adjudicator's determination. In *Framatome*, the SCA emphasised that adjudication is an interim, binding mechanism whose enforceability arises from the contract and is limited to the adjudicator's decision.

[46] The materials-on-site claim is therefore not properly before this Court in the context of adjudication enforcement. Baseline remains free to pursue the claim through the ordinary dispute resolution mechanisms provided for in the contract, whether litigation or arbitration, but it cannot be enforced as part of this application.

[47] I find that the adjudicator's failure to consider Baseline's 8 April 2025 submission constituted an "error" within the meaning of Rule 6.4.10. The adjudicator therefore acted within his contractual powers and did not exceed his jurisdiction. The authorities relied upon by the City, including *Ket Civils* and the foreign law, are

distinguishable. The materials-on-site claim, not having been referred to or determined in the adjudication, is not enforceable in these proceedings.

Conclusion

[48] Ultimately, the dispute before this Court turns on the proper interpretation and application of the contractual adjudication framework the City and Baseline themselves elected to govern their relationship. The adjudicator acted within the powers conferred upon him by Rule 6.4.10.

[49] The City's jurisdictional and *functus officio* objections, whether grounded in local or foreign authority, do not withstand scrutiny when measured against the express terms of the contract and the established principles governing adjudication.

[50] The materials-on-site claim, not having been referred to or determined in adjudication, cannot be enforced in these proceedings. It follows that the main application succeeds in part, and the counter-application must be dismissed.

Costs

[51] Baseline was in business rescue when these proceedings were instituted but was authorised to continue with the litigation by the business rescue practitioners. As a company under business rescue it remains entitled to enforce contractual rights and recover amounts due to it, and where it succeeds, it is ordinarily entitled to its costs.

[52] The applicant has succeeded on the principal issue in dispute, namely the validity and enforceability of the corrected adjudication decision. Although the applicant has not succeeded on the materials-on-site claim, that issue was peripheral and did not materially affect the course or complexity of the proceedings.

[53] Similarly, the remittal of the CPA determination does not alter the position since the need for remittal arose from the City's refusal to participate in the CPA calculation process, notwithstanding that the corrected decision obliged it to do so.

[54] In my view, there is no reason why Baseline should not be awarded costs.

[55] I make the following order:

- a) **The corrected adjudication decision dated 22 May 2025 is declared valid and enforceable.**
- b) **The CPA determination dated 24 June 2025 is set aside, and the CPA issue is remitted to the adjudicator for reconsideration in accordance with the corrected decision.**
- c) **The City is directed to participate in the CPA process and to deliver its submissions to the adjudicator within 10 days of this order.**
- d) **The adjudicator shall determine the CPA amount after receiving submissions from both parties, or upon expiry of the submission period should either party fail to deliver submissions.**
- e) **The materials on site claim is dismissed.**
- f) **The City's counter application is dismissed.**
- g) **The First Respondent is directed to comply with the corrected decision within 10 days of this order.**
- h) **The First Respondent shall pay the Applicant's costs including the costs of counsel on scale B.**

V BARTHUS
ACTING JUDGE OF THE HIGH COURT

Appearances

For Applicant: Adv Bryan Hack
Instructed by: Lucas Dysel Crouse Inc

For Respondent: Adv Renata Williams SC
 Adv Trisha Sarkas
Instructed by: Fairbridges Wertheim Becker