

IN THE HIGH COURT OF SOUTH AFRICAGAUTENG DIVISION, JOHANNESBURGCASE NO: 099928/2024DATE: 26.08.2026

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES :NO

(3) REVISED



SIGNATURE

DATE: 26 August 2026

In the matter between

10 PAUL'S HOMEMADE (PTY) LTD

Applicant

and

LET'S DO ICE CREAM AND OTHERS

Respondents

J U D G M E N T E X T E M P O R E

WILSON J: In this matter, the applicant approaches me to make an award issued by Mr Aucamp, sitting as an arbitrator, made an order of this court. That award was for the payment of approximately R62 000, being the respondent's share of arbitration fees due in terms of an arbitration initiated by the applicant under a franchise agreement between the parties.

When the applicant first referred the dispute to arbitration, the respondent sought to object to the arbitrator's jurisdiction on the basis that the arbitrator had no power to determine certain matters of importance to the

respondents and arguments the respondents wished to make arising under the Consumer Protection Act 68 of 2008.

The respondents took a fairly uncompromising view, in that they declined even to pay the share of the fees that they would have been required to pay under the arbitration agreement. In order to address that stance, the applicant applied to the arbitrator for a ruling on 30 September 2022. The arbitrator purported, in response to that application, to apply Clause 5.2 of the AFSA Domestic Rules for Expedited
10 Arbitration, which entitles the arbitrator to exclude from arbitration any party that has not paid their share of the arbitration fees. Having so ordered, the arbitrator then, on 19 October 2022, granted the applicant an order for the payment of the respondents' share of the arbitrator's fee. That award is now sought to be made an order of court.

The respondents opposed the application to make the award an order of court on the basis that the power the arbitrator purported to exercise on 30 September 2022 was in fact no power at all. The respondents say that the
20 arbitration agreement and the referral to arbitration bound the parties on to AFSA's Domestic Arbitration Commercial Rules – not to the Expedited Rules. This is also recorded in Paragraph 2 of the arbitrator's 19 October 2022 award.

There is no serious dispute that the 19 October 2022 award was granted in the respondents' absence, the

respondents having been excluded from participation in that leg of the arbitration in terms of the arbitrator's 30 September 2022 ruling. The respondents complain that the power to exclude them from that leg of the arbitration arises, if it arises at all, under Clause 5.2 of the Expedited Rules, not the Commercial Rules, and that is was the Commercial Rules rather than the Expedited Rules that were incorporated into the arbitration agreement.

In the absence of clause 5.2 of the Expedited Rules, 10 the respondents say, the arbitrator had no jurisdiction to exclude them from the leg of the arbitration leading up to his 19 October 2022 award. The arbitrator having no jurisdiction, the respondents say, his award should be treated as void.

The applicable Supreme Court of Appeal authority in this case draws a distinction between void and voidable awards (see *Vidavsky v Body Corporate of Sunninghill Villas* 2013 (6) SA 345 (SCA), paragraph 15). An award made in the absence of any jurisdiction to make it, whether in terms 20 of the Arbitration Act, the arbitration agreement or the rules the parties agreed to, would, in my view, be an award that is void from the outset and not merely voidable on application. I think it also follows that, since the Expedited Rules were of no application to the referral made in this case, the power to exclude one of the parties or any of the

parties from the arbitration for non-payment of the arbitrator's fees does not form part of the suite of powers that the arbitrator was entitled to exercise.

The 19 October 2022 award was made directly as a result of the 30 September award, which the arbitrator had no jurisdiction to make. I think it follows logically that if the arbitrator has no jurisdiction to exclude one of the parties from the proceedings before him but nonetheless does so and then makes a second award in their absence, that
10 second award is also beyond the arbitrator's jurisdiction. In those circumstances, I am required to treat the second award as void. If the award is treated as void, it cannot be made an order of this court.

For the reasons I have given, I conclude that the 19 October 2022 award is void and may not be made an order of court.

Accordingly, I will make the following order.

1. The application is dismissed.
2. The applicant will pay the costs of the application,
20 including the costs of counsel, which may be taxed on Scale B.


WILSON, J
JUDGE OF THE HIGH COURT
26 August 2026

