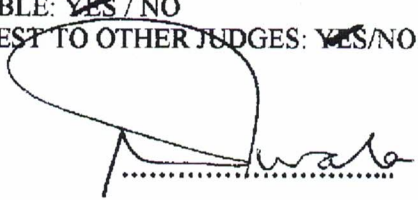


REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO: 14655/2020

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES /NO
(3)	REVISED.
<u>18/3/21</u>	
Date	ML TWALA

In the matter between:

WK CONSTRUCTION SA (PTY) LTD

APPLICANT

And

TRANSNET SOC LTD

RESPONDENT

JUDGMENT

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date and time for hand-down is deemed to be 10h00 on the 18th of March 2021.

TWALA J

[1] Before this Court is an application wherein the applicant seeks an order in terms of section 31 (1) of the Arbitration Act, 42 of 1965 ("the Act"), in the following terms:

1.1 That the interim arbitration award made on the 1 May 2017 by Mr D J Joubert to the effect that the respondent (Defendant) is as a minimum bound by the assessment of the Compensation Event by the Project Manager is hereby made an order of this Honourable Court;

1.2 That the arbitration award made on the 14 February 2020 by Mr D J Joubert and subsequently corrected in an award made on the 9 March 2020 in an arbitration between the applicant and the respondent, is hereby made an order of this Honourable Court and, consequent upon the foregoing:

1.2.1 the respondent is ordered to pay the applicant:

- (a) the sum of R17 595 724.38 inclusive of VAT;
- (b) interest thereon at the prime overdraft rate of 7.25% per

annum, compounded annually from 1 May 2020 to date of payment;

1.3 The respondent is directed to pay the costs of this application.

- [2] The application is opposed by the respondent who filed its answering affidavit and the heads of argument. At the hearing of the matter and on its heads of argument, the respondent abandoned its opposition to prayers 1 and 2 of the notice of motion and insisted with its opposition to the last portion of prayer 2 including prayer 2.1 which seeks payment of the sum of R17 595 724.38 and the interest at the prime overdraft rate of 7.25% per annum, compounded annually from the 1st of May 2020 to date of final payment. However, the respondent abandoned its special plea of *lis alibi pendens* with regard to the payment relief and persisted on its opposition that the arbitration award has been given full effect to.
- [3] It is common cause that the applicant was awarded a tender and concluded a contract with the respondent on the 22nd of April 2015 to complete the construction of two large tank containers of fuel. The contract between the applicant and the respondent was for the completion of the construction which had been undertaken by the previous contractor up to a point of 95 percent before it went into liquidation. However, for reasons which I do not find necessary to restate in this judgment, the contract between the parties was terminated on the 14th of June 2016. There has been several arbitration awards that have been published or made between the parties since the termination of the contract and the applicant seeks to make two of those an order of court.

- [4] It is trite law that an arbitration award is final and can only be interfered with by the Court in very limited circumstances. The essential purpose of arbitration is to speedily resolve legal disputes arising from commercial relationships instead of going through the courts. Furthermore, it is trite that an arbitration award may be made an order of court unless its validity is challenged on substantive grounds.
- [5] I find it necessary for the purposes of this judgment to mention the provisions of the relevant sections of the Act as follows:

“Section 29: Interest on amount awarded

Where an award orders the payment of a sum of money, such sum shall, unless the award provides otherwise, carry interest as from the date of the award and at the same rate as a judgment debt.

Section 31 Award may be made an order of court

(1) An award may, on the application to a court of competent jurisdiction by any party to the reference after due notice to the other party or parties, be made an order of court.”

(2)

- [6] In *Prime Fund Managers (Pty) Ltd v Rowan Agel (Pty) Ltd and Another*; case number 27283/2012 GNP (28 January 2014) this Court stated the following:

“Paragraph 30: The respondent’s submissions are without merit. Before a court can refuse to make an arbitration award an order of court there must be substantive grounds of invalidity justifying the refusal. That the relief granted by the second arbitrator was of a

declaratory nature, and the fact that consequential quantification relief is pending arbitration, are not defects in the form or substance of the award making it incapable of enforcement. In terms of clause 11 of the contract services agreement “any dispute” regarding the respective rights and obligations of the parties may be referred to arbitration and the arbitrator may make an order which is just and equitable, which would include a declaratory order. The respondent did not complain at the arbitration that the dispute was outside the ambit of the arbitration agreement. Likewise, the referral to arbitration of the quantification of the applicant’s claim is in accordance with the terms of the agreement between the parties and does not constitute any bar to making the award an order of court. There is no reason in law why the award cannot be made an order of court and the quantification of the applicant’s claim be duly dealt with in the pending arbitration.”


- [7] The Court continued on paragraph 32 and stated the following to emphasize the point that issues arising from the award which are subject to a pending arbitration between the parties cannot be a bar to making the award an order of court:

“Paragraph 32: Furthermore, the award brought finality to the issues raised by the respondent in the second arbitration. It has been determined that the respondent is indebted to the applicant for a percentage of contributions paid by a distinctly identified category of members for a clearly defined period. The remaining issues pertaining to whether the applicant is entitled to quantify its claim, the manner and method of such quantification and whether such quantification is correct are all issues that will be dealt with in the pending arbitration. As will become evident presently, the most obvious advantage to the

applicant of the court making the award an order of court is that the indebtedness arising from the award by virtue of it becoming a judgment debt will prescribe only after 30 years from the date of the court order.”

- [8] I find myself in disagreement with counsel for the respondent, Advocate Van Zyl, that the applicant is not entitled to the relief it sought in last part of paragraph 2 and 2.1 of the notice of motion for the award has been given full effect to. The applicant is not asking the Court for a separate order from the award that was published or made by the arbitrator. The applicant, in the order sought repeats or restates the award as published by the arbitrator on the final award corrections dated the 9th of March 2020. I understand the above authority to be saying that the issue whether the award has been given full effect and that it is subject to a pending arbitration between the parties is irrelevant in these proceedings and is no bar in the granting of an order making the award an order of this court.
- [9] I am in agreement with the submission of Advocate La Grange SC, counsel for the applicant, that the issue of the applicant seeking interest at 7.25% per annum is of no moment for the interest awarded by the arbitrator is based on the Standard Bank overdraft rate. I hold the respectful view therefore that the respondent has failed to establish any substantive grounds to challenge the validity of the award and therefore the applicant succeeds in its application to make the arbitration awards an order of Court.
- [10] In the circumstances, I make the following order:

1. The arbitration awards published by the arbitrator dated 1 May 2017; 14 February 2020 and corrected on the 9 March 2020 are made an order of court;
2. The respondent is liable to pay the costs of the application.



TWALA M L

**JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION**

Date of hearing: 8th March 2021

Date of Judgment: 18th March 2021

For the Applicant: Advocate W La Grange SC

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