REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 2020/45210
2020/39944

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

3 October 2020 .....

DATE MOKOSE SNI

In the matter between:

THE MINISTER OF INTERNATIONAL RELATIONS	
AND CO-OPERATION N.O.	1st Applicant
THE DEPARTMENT OF INTERNATIONAL RELATIONS	
AND CO-OPERATION	2nd Applicant
and	
NEO THANDO / ELLIOT MOBILITY (PTY) LTD	1st Respondent
ADV M C ERASMUS SC N.O.	2nd Respondent

JUDGMENT

MOKOSE J

Introduction

[1] The applicants (being the first and second applicants) were engaged in arbitration proceedings with the first respondent. The second respondent was appointed by the Chairperson of the Pretoria Society of Advocates to act as arbitrator in respect of arbitration proceedings which were opposed by the applicants on the basis that the arbitrator had no jurisdiction in the matter. He ruled otherwise and found on the merits in favour of the first respondent.

[2] The applicants seek to review and set aside the awards of the second respondent arising out of these arbitration proceedings. Conversely, the first respondent seeks to have the award made an order of court under Case No. 39944/2020.

[3] The relief sought in terms of the notice of motion is as follows:

(i) a declaration that the arbitrator had no jurisdiction to determine the matter;

(ii) Pursuant to that declaration,

(a) an order that the first respondent pay all amounts paid by the State Attorney to the arbitrator in respect of his fees for acting as such; and

(b) all legal costs incurred by the State Attorney on behalf of the applicants in defending themselves against the claim by the first respondent;

(c) an order declaring that the arbitrator's interim award is invalid and setting it aside;

(d) an order declaring the arbitrator's award dated 28 July 2020 invalid and setting it aside;

(iii) Alternatively, an order reviewing and setting aside the award of 28 July 2020;

(iv) Condonation for the late filing of the review application and replying affidavit.

Background per Agreed Statement of Facts

[4] On 11 August 2015 the second applicant invited tenders *"for the removal, packaging, storage (in South Africa only) and insurance of household goods and vehicles of transferred officials, to and from missions abroad."* On 3 November 2015 the second applicant communicated to the first respondent the award of the tender. Pursuant to the award and on 26 January 2016 a written Service Level Agreement ("SLA") was concluded by the parties.

[5] The predecessor to the first respondent's appointment, AGS Fraser/Gin Holdings had concluded an agreement with the second applicant in respect of the period prior to the first respondent's appointment. On 21 January 2016 the second applicant addressed a letter to AGS Fraser informing it that the first respondent would make contact with it to make transitional arrangements for the hand-over of the currently stored goods. AGS Fraser refused to hand over the stored goods as demanded by the second applicant.

[6] On 18 April 2016 the second applicant represented by the State Attorney addressed a letter to AGS Fraser in which it was recorded that the second applicant had an obligation to make the goods available to the first respondent and that the first respondent was suffering damages.

[7] The first respondent concluded a written lease agreement with Improvon Property Fund 2 (Pty) Limited on 11 November 2015. On 21 January 2016 the second applicant addressed a letter to AGS Fraser advising of the transitioning arrangements for the storage of the goods in their possession. AGS Fraser refused to hand over the goods and vehicles as had been requested. On 18 April 2016 the second applicant represented by the State Attorney address another letter to AGS

Fraser informing it that its refusal to hand over the goods to the first respondent had no substance in law and demanded compliance therewith.

[8] On 1 December 2016 the second applicant contacted the first respondent urgently to compile a plan to expedite the transfer of goods from AGS Fraser to the first respondent. A letter was then addressed by the first respondent on 29 March 2017 to the second applicant detailing the losses it was suffering as a result of AGS Fraser's refusal to hand over the stored goods. No response was received.

[9] On 12 September 2017 the respondent's attorneys of record addressed a letter to the second applicant which letter purported to be a notice in terms of Section 3(1) of the Institution of Legal Proceedings Against Certain Organs of State Act 40 of 2002 ("Legal Proceedings Act"). The letter stated, *inter alia,* the following:

(i) that it had concluded a lease with another company, Improvon Property Fund 2 (Pty) Limited for the lease of certain premises from which it could provide the second applicant with storage space as is required in the service level agreement;

(ii) in terms of the said lease agreement the respondent would be liable for the rental of such premises;

(iii) as a result of the second applicant's failure to comply with the terms of the service level agreement it had suffered damages and demanded the total value of the rental it had paid or would have to pay to Improvon for the storage space in the sum of R53 258 416,90 plus interest and costs;

(iv) it was the intention of the respondent to sue for damages for such breach and accordingly gave notice in terms of the said Act.

[10] The letter also indicated that the respondent intended to refer the matter to arbitration but noted that in terms of the agreement, it could only do so 'if the parties wish to arbitrate such difference or dispute'. It then enquired whether the second applicant was prepared to submit the claim to arbitration in accordance with the service level agreement. If they were not prepared to do so, then they suggested that the matter would proceed through the courts upon the expiry of 30 days.

[11] When the second applicant failed to respond to the letter within 30 days, the respondent referred 'a dispute' to the Chairperson of the Pretoria Bar Council. The State Attorney then wrote to the first respondent on 9 November 2017 challenging the arbitrator's jurisdiction in the matter. The second respondent was appointed as an arbitrator in the matter. His ruling was contained in a document styled *"Interim Award"* and was dated 4 November 2019. The first respondent contends that the arbitrator's jurisdictional ruling constitutes an interim award that is final in its effect. Accordingly, the first applicant had to apply to review and set aside the interim award within 6 weeks from the date of the award failing which it would be precluded from seeking the relief sought, in the absence of a condonation application. The first respondent disputes the arbitrator's jurisdictional ruling constitutes an interim award much less that it is final in effect. The arbitrator decided that that he does have jurisdiction when an objection was raised by the second applicant.

Issues

[12] There are several issues for determination by this court. The first being whether the arbitrator had jurisdiction to determine the dispute. The applicants are of the view that the arbitrator had no power to do so as at the time the matter was referred for arbitration for the reason that there was no *"dispute"* as contemplated in terms of the Arbitration Act 42 of 1965 ("the

Arbitration Act"). Furthermore, the applicants are of the view that the arbitrator had no power to determine the dispute as the terms and conditions of the agreement determine the circumstances upon which a referral to arbitration could be made and such circumstances were not present. The applicants further contend that the *"dispute"* that was referred by the first respondent for arbitration was not the *"dispute"* that ultimately served under the arbitrator.

[13] The second issue to be determined by this court is whether the arbitrator committed a gross irregularity in the conduct of the proceedings or whether he may have exceeded his powers as contemplated in section 33(1)(b) of the Arbitration Act. The applicants are of the view that he failed to consider the most important aspects of its case.

[14] Thirdly, the court is called upon to determine two applications for condonation, one being in respect of the late filing of the review application, the other being in respect of the later filing of the first respondent's replying affidavit.

Condonation

[15] For the sake of convenience I shall deal with the issue of condonation first. It is common cause that the award of the arbitrator was published on 28 July 2020. Section 32(2) of the Arbitration Act provides that an application to set aside an arbitration award must be brought within six weeks after publication of the award. That would have been 8 September 2020. An application was sought by the applicant for an extension until 11 September 2020 to deliver the application, which extension was granted. The application was eventually brought on 9 September 2020, one day after the original due date. However, the granting of an extension must nevertheless be made by the Court.

[16] The Court may grant such extension on good cause. The period of delay must also be taken into account in determining whether there was good cause and as such, the extension should be granted. The court is informed that the full impact of the award had to be considered by several people within the department including the State Law Advisor. Counsel for the applicants were Evidence Leaders in the State Capture Commission and as such, were unable to give the application immediate attention. The papers were finalized and the application brought on 9 September. There appears to be no prejudice occasioned by the respondents. Accordingly, the delay by the applicant to launch the application is condoned.

[17] The second condonation application is for the late filing of the replying affidavit which should have been delivered on 19 April 2021. It was delivered on 30 April 2021. This application for condonation is not opposed by the respondents. We are informed that the reason for the delay was circumstances beyond the applicants' control when the junior counsel temporarily lost her vision due to an infection. This delayed the preparation of the replying affidavit.

[18] The replying affidavit was filed 11 days late. This is not an excessive time period. Moreover, there is good cause which has been shown by the applicants. There is also no evidence of prejudice to the respondents which has been occasioned by the delay. Accordingly, the condonation is granted for the delay in filing the replying affidavit.

Jurisdiction of arbitrator to determine dispute

[19] The applicants seek, *inter alia,* a declarator that the arbitrator did not have the required jurisdiction in the matter.

[20] The applicants are of the view that the arbitrator was never given the power to determine his own jurisdiction. The reason being that there was no dispute as contemplated by the Arbitration Act, there was no proper referral under clause 13 of the SLA and that the dispute referred to arbitration was not the dispute before the arbitrator. The applicants are further of the view that the arbitrator's ruling pertaining to jurisdiction is there not an interim award as contemplated in the Arbitration Act and accordingly, there can be no review against such a ruling. It is for this reason that the order sought, being prayer 2 of the notice of motion, is an order to declare that the arbitrator lacked jurisdiction.

[21] The first respondent's case was based on the letter of 12 September 2017 and the failure of the applicants to respond thereto within the time stipulated therein. The letter sets out the breaches and demanded that the applicants pay it the sum of R53 258 416,90 plus interest thereon at the rate of 10.25% per annum calculated from 12 September 2017 in respect of damages sustained as a result of such breach within 30 days of 12 September 2017. The letter further recorded that in the event of the second applicant not paying the said amount within the aforesaid period, the first respondent would submit the matter to arbitration and requested the second applicant's response thereto.

[22] The State Attorney was copied into the letter but there is no evidence that it was received in time, the first response having been sent on 8 November 2017. The State Attorney wrote a letter to the first respondent's attorneys on 9 November 2017 in which it stated that it was *"unclear what the alleged dispute is which is to be referred to arbitration for determination"*. At this time, the letter to the Bar Council had already been sent requesting the appointment of an arbitrator.

[23] Counsel for the applicants, in his heads of argument, suggests that the applicants were in agreement with the first respondent pertaining to the facts of the matter and its obligations in terms of the SLA. He bases this on the correspondence sent by the State Attorney to AGS Fraser. However, on 9 November 2017 the State Attorney wrote to the first respondent's attorneys of record a letter in which it was stated that it was *"unclear what the alleged dispute is which is to be referred to arbitration".*

[24] In general, an arbitrator should rule on a plea concerning his jurisdiction as a preliminary issue. The second respondent held, in line with reference to the matter of *Radon Projects (Pty) Ltd v NV Properties (Pty) Ltd and Another*[1], that an arbitrator when confronted with a jurisdictional objection is not obliged forthwith to throw up his hands and withdraw from the matter until a court has clarified his jurisdiction. It was held further that while the arbitrator is not competent to determine his own jurisdiction that means only that he has no power to fix the scope of his jurisdiction.

[25] An arbitrator is entitled to enquire into the merits of the issue whether he has jurisdiction or not but not for the purpose of reaching any conclusion which will be binding on the parties but for the purpose of satisfying himself whether the parties ought to proceed with the arbitration or not.[2] The arbitrator considered the papers and ultimately ruled that he had the necessary jurisdiction. This was contained in a document styled *"Interim Award"* dated 4 November 2019.

[26] In response to the first argument under the issue of jurisdiction the first respondent avers that there are three requirements to ascertain the issue of jurisdiction. They are a proper

[1] 2013 (6) SA 345 (SCA) at paragraph 28
[2] Christopher Brown Ltd v Genossenschaft Oesterreichischer [1953] 2 All ER 1039 (QB)

appointment, a valid arbitration process and whether the arbitrator was empowered to determine the dispute.

[27] As stated above, an arbitrator is not precluded from enquiring into the scope of his jurisdiction and ruling upon it. This was done and the second respondent decided that he had the necessary jurisdiction. This jurisdictional ruling is decided as a preliminary issue and not an award whether interim or final.

No "Dispute" as contemplated by the Arbitration Act

[28] Before a matter is referred to arbitration a dispute must exist and the parties to the matter must agree to go to arbitration. It may be stipulated in an agreement between the parties that an existing dispute should be resolved by arbitration. The agreement may also have been drawn in such a way that it anticipates the possibility of disputes arising and thus stipulate that they be resolved by arbitration. Such agreement between the parties must be in writing. An arbitration agreement is defined in the Arbitration Act as *"a written agreement providing for the referral to arbitration of any existing dispute or any future dispute relating to a matter specified in the agreement, whether an arbitrator is named or designated therein or not"*. A dispute is not defined in the Act. However, it is more than a mere disagreement; it is one in relation to which opposing contentions are or can be advanced.[3] A failure to pay does not imply that there is a dispute as to liability.[4] Nor does a failure to pay where payment is due or even where there is a demand for payment.[5]

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[3] Parekh v Shah Jehan Cinemas (Pty) Limited and Others 1980 (1) SA 301 (d) at 304E - G

[4] PCL Consulting (Pty) Ltd t/a Phillips Consulting SA v Tresso Trading 119 (Pty) Ltd 2009 (4) SA 68 (SCA) at 73A

[5] Body Corporate of Greenacres v Greenacres Unit 17 CC and Another 2008 (3) SA 167 (SCA) at 172F – 173A

[29] A dispute is not defined in the Arbitration Act but there is ample authority for the proposition that it is more than a mere disagreement: it is *'one in relation to which opposing contentions are or can be advanced.'*[6] In determining whether a dispute exits one must have regard to the conduct of the other party to the alleged dispute. To draw such inference, one must be satisfied on a balance of probabilities, that the conduct is clear and unequivocal and capable of no other reasonable interpretation.[7] Where a demand has been made by one party, there must be a clear rejection by the other party having received the notification or there must be clear evidence that the other party having received the demand and having allowed a reasonable period of time to lapse without dealing with the demand, it can be inferred on a balance of probabilities that the other party has indeed rejected the demand. A reasonable period of time would be determined by the circumstances of each case.

[30] The applicants and the first respondent concluded a Service Level Agreement ("SLA") which contained an arbitration clause. This clause stipulates that where a party *"requires"* a difference or dispute to be submitted to arbitration, it shall give written notice to the other party. Such written notice shall identify the difference or dispute to be arbitrated upon.

[31] The second respondent pointed out that in determining the issue of whether a dispute exists and a subsequent referral to arbitration, one is entitled to have regard to the conduct of the other party to the alleged dispute. However, one must be satisfied on a balance of probabilities that the conduct is clear and unequivocal and capable of no other reasonable interpretation.[8]

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[6] Telecall (Pty) Ltd v Logan 2000 (2) SA 782 (SCA) at 786B – 787A

[7] Buffalo City Metropolitan Municipality v Nurcha Development Finance (Pty) Ltd and Others 2019 (3) SA 379 (SCA)

[8] Buffalo City Metropolitan Municipality v Nurcha Development Finance (Pty) Ltd and Others 2019 (3) SA 379 (SCA)

[32] The question to be determined is whether in the circumstances, the applicant's failure to respond in unequivocal terms to the first respondent's demand demonstrated its intention to reject the demand made.

[33] As stated above, where there has been demand by one party, it must have been rejected or there must be clear evidence that the other party having received the demand has allowed an 'unreasonable period of time to elapse without dealing with it properly', such that it can be inferred on a balance of probabilities that the other party intended to reject the said demand. An 'unreasonable period of time' is a question of fact to be decided upon the circumstances of each matter.

[34] The court's attention is brought to the letter of the 12 September 2017 from the first respondent's attorneys to the applicants. In particular, the first respondent avers that the said letter of demand sets out a dispute which was amplified in the Statement of Claim as follows:

"5.5 the defendant was required to procure that Household Goods and Vehicles stored with 'the existing service provider' referred to in clause 8.8 of annexure "SC2" were transferred by such service provider to the claimant upon the conclusion of the SLA or within a reasonable time thereafter."

[35] The first respondent's view is that there appeared to be agreement between the parties as to the applicant's obligations under the agreement. The dispute had also been identified from the outset and was contained in the letter of 12 September being whether the applicants were in breach of the agreement by not procuring transfer of the assets in the possession of AGS Fraser and also not providing the information required. The expectation on the part of the applicants that the

first respondent follows up with AGS Fraser was absurd as there was no contractual nexus between it and AGS Fraser. The damages on the part of the first respondent was ever increasing with the progression of time and as a result the relief sought evolved.

[36] I agree with the contentions of the first respondent that there was a dispute when the matter was referred to arbitration and the arbitrator was appointed. No response had been received from the second applicant within a reasonable period of time. I am of the view that the period granted to the second applicant to revert to the first respondent's attorneys of record in respect of the letter of 12 September was reasonable in the circumstances. Accordingly, it can be inferred on a balance of probabilities that the other party intended to reject the said demand.

Proper referral to arbitration under the SLA

[37] The first respondent contends that its referral to arbitration was based on Section 13 of the SLA which reads as follows:

"If the parties wish to arbitrate such difference or dispute, [then] such difference or dispute shall be submitted to arbitration."

[38] The general principles for interpretation have been espoused in the matter of *Natal Joint Municipal Pension Fund v Endumeni Municipality*[9]. The Judge of Appeal in that matter expressed that words must be read in context, in a businesslike manner and so as to promote the apparent purpose of the document. Furthermore, the court needs to consider the words in the contract which are the only relevant medium through which the parties have expressed their contractual

[9] 2012 (4) SA 593 SA (SCA) at para [18]

intentions.[10] Where documents make up an agreement, the documents must be read together as one agreement and the interpretation thereof entails a reading of all these documents which provide an important context.[11]

[39] Counsel for the applicants contends that on the face of the agreement Clause 13 requires that there be a *"difference or dispute"*. In addition, the clause requires that there should be a mutual desire or wish to refer the matter to arbitration. There is no evidence that there was such mutual wish to arbitrate. Absent the parties' wish to arbitrate, the difference or dispute cannot be referred to arbitration.

[40] I have dealt with the first contention and will deal with that of the mutual wish to arbitrate. It is evident from the letter sent by the first respondent's attorneys that they understood the procedure by making reference to it. No timeous response to the letter to the second applicant was received resulting in the first respondent referring the matter to the Chairperson of the Pretoria Bar Council requesting the appointment of an arbitrator in terms of Clause 13 of the SLA. The applicants contend that its consent to the arbitration was required.

[41] The first respondent brought the contents to paragraph 13.3 of the SLA to the court's attention. It reads as follows:

"13.3 ***Either party is entitled but not obliged,*** *by giving written notice to the other,* ***to require that a difference or dispute be submitted to arbitration*** *in terms of this Clause." (My emphasis)*

[10] Bothma-Batho (Edms) Bpk v S.Bothma & Seun Transport (Edms) Bpk 2014 (2) SA 494 (SCA) at par [12]
[11] Rustenburg Platinum Mines Ltd v Jensen

[42] This is inconsistent with the view of the applicants that the referral could only be by mutual agreement of the parties. I am satisfied that the referral to arbitration by the first respondent was proper in the circumstances and in accordance with the SLA.

Dispute referred to arbitration not dispute before arbitrator

[43] The applicants contend that the dispute referred to arbitration was not the same dispute as ultimately served before the arbitrator and that the dispute must be identified in the referral itself. I have dealt with the latter and will deal with the former issue. The applicant contends that the written notice serves not only to identify the area of expertise of the arbitrator but also to inform the other party to enable it to make a decision on whether to agree with the difference or dispute being referred to arbitration.

[44] The first respondent contends that the applicants' objections are without merit and denies that the dispute referred to arbitration differs from that which ultimately served on the arbitrator. The first respondent further contends that the underlying causa in the letter of 12 September and its Statement of Claim remain the same albeit, the relief claimed is couched in different but permissible terms which still accords with the underlying causa. The first respondent in its submissions also reminds that the court that although it was not dealing with an amendment of a prayer, a court will allow such amendment if the main issue remains the same. In these circumstances, the breach of the SLA remains the issue.

[45] It is correct that the claim for damages was not the dispute that was referred to arbitration. What was referred to arbitration was a claim for specific performance. But the issue the court must determine is whether the causa differs. I think not. I agree with the first respondent that

the underlying causa has remained the same. Accordingly, I am of the view that the applicants' objection is without merit.

The Review Application

[46] The application before this court has been brought in terms of Section 33 read with Rule 53 of the Uniform Rules of Court. In order to succeed the applicants must satisfy the court that:

(i) the second respondent deviated in relation to his duties as an arbitrator as contemplated in Section 33(1)(a) of the Act; or

(ii) the second respondent committed a gross irregularity in the conduct of the arbitration proceedings or exceeded his powers as contemplated in Section 33(1)(b) od the Act; or

(iii) the awards were improperly obtained as contemplated in Section 33(1)(c) of the Act.

Principles relating to the jurisdiction of arbitrators

[47] The applicants seek to review and set aside the awards of the second respondent arising out of the arbitration proceedings. Conversely, the first respondent, the applicant in Case No. 39944/2020, seeks an order to have such awards made an order of court. Ordinarily, parties who refer a matter to arbitration accept that they will be bound by the award of the Arbitration Tribunal. Such award is enforceable until it is set aside or remitted by the Court.

[48] A Court will always be reluctant to interfere with an arbitration award. A party that requires an award to be interfered with must satisfy the court that the arbitrator committed a gross irregularity in the conduct of the proceedings or that he exceeded his powers. A *bona fide* mistake of law or fact cannot be construed as misconduct unless it is so gross or obvious that it could not

have amounted to anything else. Gross irregularity relates to the conduct of the proceedings and not to the result. Such irregularity must be of such a serious nature that it resulted in the aggrieved party not having its case fully and fairly determined.[12]

[49] An award may also be set aside where the arbitrator has exceeded his powers. This would include exceeding his substantive jurisdiction. But it must be noted that an error of law on the part of the arbitrator on the merits cannot be successfully attacked on the basis that the arbitrator has exceeded his powers.[13] It must also be noted that it is not the function of a court in review proceedings to consider whether an arbitrator is correct or not.

[50] The second respondent issued a second arbitration award on 28 July 2020 in which he found that the first respondent (claimant) had succeeded in discharging the onus that it was and is entitled to be placed in possession of the household gods and vehicles and the information to be furnished by the applicants as prayed for in the Statement of Claim. The draft award declared, *inter alia,* that the applicants were contractually obliged to procure that all household and vehicles stored with AGS Fraser be transferred to the first respondent and to provide the first respondent with full details pertaining to all household good and vehicles stored with AGS Fraser.

[51] The applicants challenged not only the jurisdiction of the arbitrator but also the merits. The applicants contend that the arbitrator exceeded his powers by making reference to English Law instead of referring only to South African case law which was in conflict with the South African authorities. The applicants further aver that the arbitrator exceeded his powers by making reference the parties' subsequent conduct which was allegedly impermissible.

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[12] Telcordia Technologies Inc v Telkom SA Ltd 2007 (3) SA 266 (SCA) at paras 53 to 76
[13] Dickenson & Brown v Fishers Executors 1915 AD 166 at 175 and 180-181

[52] The applicants also contend that the arbitrator committed a gross irregularity in dismissing he applicants' special plea by finding that it was impossible on the pleadings to formulate when the first respondent's claim arose as this required evidence. Furthermore, the arbitrator committed a gross irregularity by denying the applicants a full and fair hearing.

[53] In response to these allegations, the first respondent avers that there is no merit in the allegations that the arbitrator exceeded his powers.

[54] The arbitrator granted an order declaring that the applicants were contractually obliged to procure that all household goods and vehicles stored with the former service provider AGS Frasers be transferred to the first respondent and to provide the first respondent with full details of all household goods and vehicles stored with AGS Frasers. The order was based on an amendment that was sought and granted in favour of the first respondent. This amendment was not opposed by the applicants which we are told was not intended to alter the substance of the relief initially sought.

[55] The applicants challenged the award on the merits. They contended that the hearing could in principle not be fair especially where the arbitrator misconceived his mandate.

[56] Having had regard to the papers and having heard submissions by both counsel for the applicants and counsel for the first respondent, I am of the view that the second respondent was correct in rejecting the applicants' arguments that the SLA was vague. As previously stated, a court may only interfere with an award where it has been satisfied that the arbitrator committed a gross irregularity in the conduct of the proceedings or that he exceeded his powers. A *bona fide* mistake of law or fact cannot be construed as misconduct unless it is so gross or obvious that it could not

have amounted to anything else. The fact that the arbitrator rejected the applicants' arguments does not give rise to a gross irregularity having been committed by him. Furthermore, I am of the view that the allegation that the second respondent denied the applicants a full and fair hearing is without merit. I also find that the award of the second respondent had been carefully reasoned, having considered the pleadings, the Statement of Agreed Facts, annexures and the submissions made on behalf of the parties. The fact that he did not agree with the applicants' arguments and submissions does not mean that he committed an irregularity and that he failed to apply his mind to the issues on hand.

[57] For the reasons as stated above, the following order is granted:

(i) the review application falls to be dismissed;

(ii) the applicants are ordered to pay the costs including the costs of two counsel.

[58] Concomitantly and in respect of Case Number 39944/2020, in which the first respondent applied for an order that the awards of the arbitrator be made orders of court, the following order is granted:

(i) the award of the second respondent dated 23 October 2019 is made an order of Court;

(ii) the award of the second respondent dated 28 July 2020 is made an order of Court;

(iii) the applicants are ordered to pay the costs including the costs of two counsel.

MOKOSE J

Judge of the High Court of
South Africa

Gauteng Division, Pretoria

For the First and Second Applicants:

Adv G Hulley SC

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On instructions of

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For the First Respondent:

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Adv M Nowitz

On instructions of

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Date of Judgement: 3 October 2022