



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

DELETE WHICHEVER IS NOT APPLICABLE

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

Date: **14th March 2019** Signature: _____

CASE NO: 2017/33789

DATE: 14TH MARCH 2019

In the matter between:

RAMPHELE, VELILE CHRISTOPHER

Applicant

and

MLAMBO, MANDLENKOSI DENNIS

Respondent

JUDGMENT

ADAMS J:

[1]. This is an opposed application by the applicant for an order that an Arbitrator's award be made an Order of Court. The applicant also applies for an Order correcting certain discrepancies in the Award of the Arbitrator.

[2]. There is no dispute between the parties that the applicant is entitled to have the Arbitrator's Award made an Order of Court. Where the applicant and the respondent part ways is in relation to the applicant's prayer that the respondent be ordered to pay the costs of the Arbitrator and interest from the date on which the Award was made.

[3]. The Arbitrator's Award is dated the 19th of April 2016, but was only 'handed down' on the 19th of October 2016. The delay in the handing down of the award apparently resulted from the fact that the Arbitrator was not prepared to release his findings until such time as his fees had been paid in full. This was done during or about October 2016 by the applicant, the respondent having refused and / or neglected to pay his portion of the Arbitrator's fees payable by him in terms of the Arbitration agreement. I interpose here to mention that the Arbitration was conducted in accordance with the 'Rules for the Conduct of Arbitrations' of the Association of Arbitrators (Southern Africa) ('the Rules').

[4]. In terms of the Arbitrator's Award the respondent was ordered to pay to the applicant the amount of R109 521.57, together with 'the full cost of the [applicant] on the attorney and client scale for experts, attorney and Counsel on the High Court Scale', including the wasted cost occasioned by the postponement of the arbitration hearing on a date prior to the hearing. The award makes no mention of the payment of the Arbitrator's fees. It also gives no indication as to whether or not interest is payable on the capital amount of the award and from what date and the rate at which it should be paid.

[5]. On an enquiry made by the applicant in an email dated the 27th of October 2016, the Arbitrator confirmed to all the parties that his intention was to include in his cost award the Arbitrator's fees. In other words, the Arbitrator informally advised the parties on the 27th of October 2016 that, although his Award does not spell it out, it is implied therein that he ordered the respondent to pay the cost of the Arbitration, as part of the cost award against him in favour of the applicant.

[6]. The applicant's case for an Order to rectify the Arbitrator's Award is based on the provisions of section 31(2) of the Arbitration Act, 42 of 1965 ('the Act'). Section 31 of the Act provides as follows:

'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) The court to which application is so made, may, before making the award an order of court, correct in the award any clerical mistake or any patent error arising from any accidental slip or omission.
- (3) An award which has been made an order of court may be enforced in the same manner as any judgment or order to the same effect.'

[7]. The applicant contends that the omission by the Arbitrator to make reference to the Arbitrator's fees amounted to a clerical mistake or a patent error as envisaged by section 31(2) and that this Court has the power to make an Order correcting that mistake. In view of the fact that the Arbitrator himself acknowledges that his intention was to order the respondent to pay the Arbitrator's fees as part of the cost awarded in favour of the applicant, I am of the view that this aspect of the matter falls squarely within the ambit of section 31(2).

[8]. The respondent opposed this portion of the relief sought on the basis that the procedure the Arbitrator should have followed to correct his award was not complied with. In that regard, Mr Richard, who appeared on behalf of the respondent, referred to the provisions of Rule 38(1) and (3), which prescribes a procedure to be followed by the Arbitrator in order to correct in any Award any clerical mistake or any error arising from any accidental slip or omission. This procedure was not followed by the Arbitrator and therefore, so Mr Richard submits, the Award cannot and should not be corrected.

[9]. There is no merit in this submission on behalf of the respondent. Objectively speaking, and having regard to the facts in this matter, there can be no doubt, as I indicated above, that the Arbitrator probably intended to include in his cost award an order that the respondent pays the Arbitration costs as well. That is in terms of the legal principles applicable. There is also no merit in the argument that the parties had agreed, as per the Rules, that they would be liable, jointly and severally, to the Arbitrator for the due payment of his fees and expenses. This provision regulates the relationship between the litigants and the Arbitrator and makes the parties liable for the Arbitrator's charges. It has no relevance to the award for cost as between the parties in the Arbitration proceedings, which remains an issue which falls within the discretion of the Arbitrator. Rule 39(1) provides that the award of costs shall be at the discretion of the Arbitrator.

[10]. The applicant is therefore entitled to an order that the award for cost should include an order that the respondent pays the Arbitration costs, inclusive of the Arbitrator's fees.

[11]. As regards the issue of the interest, this aspect of the matter is governed by the provisions of section 29 of the Act, which provides as follows:-

'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.'

[12]. This, in my judgment, means that ex lege the applicant is entitled to interest on the capital sum of R109 521.57 at the applicable legal rate from the 27th of October 2016, which is the date on which the Award was published.

[13]. The applicant's application should therefore succeed.

Costs

[14]. The applicant has been successful in his opposed application against the respondent. This means that, applying the general rule, the applicant is entitled to a cost order.

[15]. I can see no reason to deviate from the general rule and cost should therefore be awarded in favour of the applicant against the respondent.

Order

In the result, I make the following order:-

The Award dated the 19th of April 2016 by the Arbitrator, Mr G B C Ahier, be and is hereby made an Order of this Court and Judgment is granted in favour of the applicant against the respondent as follows:

1. Payment of the sum of R109 521.57.

2. Payment of interest on the said amount of R109 521.57 at the rate of 10.25% per annum from the 19th of October 2016 to date of final payment.
3. Payment of the applicant's cost of the Arbitration, including any and / or all attorneys' fees, Counsel's charges, expert charges and the Arbitrator's fees and charges, on the High Scale as between attorney and client, inclusive of the wasted costs occasioned by the postponement of the Arbitration hearing during June 2015.
4. The respondent shall pay the applicant's cost of this opposed application.



L R ADAMS
Judge of the High Court
Gauteng Division, Pretoria

HEARD ON:	12 th March 2019
JUDGMENT DATE:	14 th March 2019
FOR THE APPLICANTS:	Adv J H Jooste
INSTRUCTED BY:	Dreyer & Dreyer Attorneys
FOR THE RESPONDENT:	Adv C Richard
INSTRUCTED BY:	Hutton & Odendaal Incorporated