

Reportable:	YES/NO
Circulate to Judges:	YES/NO
Circulate to Magistrates:	YES/NO
Circulate to Regional Magistrates:	YES/NO



**IN THE HIGH COURT OF SOUTH AFRICA  
NORTH WEST DIVISION – MAHIKENG**

**CASE NO: M325/2019**

In the matter between:

**MEMBER OF THE EXECUTIVE COUNCIL  
FOR RURAL ENVIRONMENT AND AGRICULTURAL  
DEVELOPMENT NORTH WEST  
PROVINCIAL GOVERNMENT** **APPLICANT**

and

**WJ BOTHA NO (CITED IN HIS CAPACITY  
AS ARBITRATOR)** **FIRST RESPONDENT**

**SEASONS FIND 635 CC T/A  
SEASONS TRAVEL** **SECOND RESPONDENT**

## ORDER

- (i) The jurisdictional point in *limine* of the second respondent is upheld.
- (ii) The application is dismissed.
- (iii) The applicant is ordered to pay the costs of this application.

## JUDGMENT

**REDDY AJ**

### **Introduction**

[1] At the heart of the application before this Court the applicant seeks to declare an arbitration award in the sum of R 4 709 220. 85 made on 18 January 2019, against the applicant for services rendered by the second respondent be declared a nullity. In the first alternative, the applicant proposes that it be ordered that the arbitration be instituted *de novo*; in the second alternative that this Court review and sets aside the award of the R 4 709 220.85 and remitting it to a *de novo* hearing before another arbitrator; or in the third alternative directing the applicant to apply for rescission of

judgment of the award made in favour of the second respondent in terms of Rule 49 of the Magistrates' Court Rules.

### **The Parties**

- [2] The applicant is the Member of the Executive Council for the Department of Rural Environment and Agricultural Development, ("the Department") a Provincial Department within the North West Provincial Government as contemplated in the Public Service Act, 1994 with its Head Office situated at Agri Centre Building, Corner Dr James Moroka and Stadium Road, Mmabatho and Jones Close, Leopard Park, Mahikeng, North West Province.
- [3] The first respondent is WJ Botha N.O, ("Botha") a practicing Advocate, cited in his nominal capacity as the arbitrator in a private arbitration between the applicant and the second respondent, with his work address situated at Brooklyn Advocate's Chambers 220 Dey Street Room 41, Nieuw Mucklenuck, Pretoria, Gauteng.
- [4] The second respondent is Seasons Find 635 T/A Seasons Travel ("Seasons Travel") duly registered and incorporated in terms of the laws of the Republic of South Africa, with its principal place of business situated at 8 Langenhoven Drive, Riviera Park, Mahikeng.
- [5] Botha has filed an affidavit to abide. Seasons Travel opposes the relief.

### **The litigation history**

- [6] This dispute has somewhat of a tortuous litigation history. On or about 1 November 2010, the Department and Seasons Travel concluded a written Service Level Agreement “(the SLA)”, in terms of which Seasons Travel would perform travelling management services for the Department. The nub of the travelling management services primarily entailed the making of travel and accommodation arrangements and reservations in respect of the various officials of the Department. On or about 23 September 2011, a written addendum to the SLA had been entered into by the respective parties. A regurgitation of terms and conditions of the amended SLA does not require further elucidation for present purposes. As per the amended SLA, Seasons Travel commenced to render services to the Department from about 2010.
- [7] On 27 May 2011 the SLA was suspended on behalf of the Department by Mr. Mothupi Pakisho, the Chief Financial Officer, who found a plethora of contraventions of the SLA. Pursuant to the latter, Seasons Travel alleged that the Department was indebted to it in the amount of R 6 399 626 46.
- [8] The dispute resolution procedure provided for in the SLA, set out two primary requirements. Firstly, the Department and Seasons Travel had to negotiate in good faith and, secondly should the dispute remain unresolved, the dispute could be referred to mediation. Should mediation be unsuccessful, the dispute had to be arbitrated in terms of the Rules of the Arbitration Foundation of South Africa. The dispute remained unresolvable. On 8 March 2013, the Department and Seasons Travel consented to have the matter adjudicated in the Magistrates’ Court Moloopo, Mmabatho,

North West Province, notwithstanding the explicit arbitration requirement provided for in the SLA.

[9] Resultedly, Seasons Travel on 30 April 2013, issued summons out of the Magistrates Court, Molofo in which it claimed an outstanding amount of R 6 399 626. 46. The Department defended this action. Seasons Travel was invited to provide proof of the quantified debt, which the Department acceded to paying on being accurately proved with supporting documentation. On 5 September 2017, this action was jettisoned by an agreement between the parties. The parties agreed that it would be more expedient to revert to arbitration proceedings.

[10] At this point, the Department's legal team comprised of Mr Tshingwala Mulalo(" Mulalo") of the Office of the State Attorney, Mahikeng. The following formed the substratum of the future arbitration proceedings:

- (i) the parties agreed to hold a pre-arbitration meeting at a date to be agreed upon, either by a physical attendance or telephonically.
- (ii) the pleadings filed in the Magistrates' Court action would serve as the pleadings in the arbitration proceedings.
- (iii) no formal leading of evidence will take place, but the parties will rather consider and discuss each individual disputed invoice on an *ad hoc* basis and require the arbitrator to rule thereon.
- (iv) the arbitration proceedings were to take place between 19 – 21 September 2017.

[11] The various timelines agreed by the parties were not adhered to. Ultimately, a telephonic pre-arbitration meeting was held on 30 November 2017. Seasons Travel attorney of record Mr Van Der Westhuizen (“Van Der Westhuizen”), did prepare minutes of the pre-arbitration meeting, which was duly signed by Mulalo, on 10 January 2018. The material terms of this pre-arbitration meeting are heavily relied on by the Department as it sets the tone for what ultimately forms the nucleus of the Departments’ version. Therefore, the material terms of this pre-arbitration minute require proper ventilation:

- (i) Advocate Chwaro of the Johannesburg Bar was to be appointed as arbitrator.
- (ii) The arbitration was to be held between 17-19 January 2018.
- (iii) Communications would be exchanged per email with the respective counsel being included in all communications.

[12] On 18 January 2018, the first arbitration meeting did convene before Advocate Chwaro. An interim ruling was issued by agreement between the parties. The forensic investigation into the claims of the parties had been duly referred to the Special Investigating Unit (“SIU”). The SIU declined in a communication signed 2 August 2018 to become embroiled, in what it considered to be predominantly a civil dispute that should be resolved by arbitration. The SIU declined to determine liability simply because of what was determined to be a lack of mandate. The SIU however

found that there was no untoward conduct by the submission of invoices by Seasons Travel.

[13] Of importance was the fact that Mulalo had been substituted by the Office of the State Attorney with Mr Mahlodi Mabapa (“Mabapa”). Mabapa was informed that Chwaro was not available to arbitrate as he would be acting as a Judge in the North West Division of the High Court for the third term of 2018. Attorneys for Seasons Travel informed Mabapa of same. Botha was one of the two names proposed as the new arbitrator. Mabapa confirmed with the attorneys of Seasons Travel that Botha will be an acceptable replacement for Chwaro. Mabapa also consented with the attorneys of the Seasons Travel that the arbitration proceedings would continue on 5 November 2018. The pre-arbitration agreement specifying that Counsel of the Department, would be carbon copied on all correspondence between the parties, inclusive of the set down of the arbitration hearings, was not adhered to.

[14] The following pertinent facts regarding the arbitration hearing that was set down on 5 November 2018 needs expounding:

- (i) Mabapa failed to communicate to any of the Departmental officials that Chwaro was temporarily unavailable to arbitrate.
- (ii) Mabapa failed to communicate or to seek instructions from the Department whether the arbitration date should

accommodate Chwaro's availability or whether a replacement arbitrator ought to be agreed upon.

(iii) Mabapa failed to obtain the approval of the Department prior to agreeing to the appointment of Botha.

(iv) Mabapa failed to ascertain the availability of the Department's witnesses prior to informally agreeing to the arbitration to proceed on 5 November 2018.

[15] On 24 October 2018 Mabapa informed the Director of Legal Services of the Department of the need to arrange a consultation date to prepare for the arbitration hearing set down for 5-7 November 2018. Mabapa was mandated by the Department to make alternative arrangements founded on two grounds. Firstly, there was short notice of the arbitration hearing and an alternative arrangement had to be made. Secondly, to determine whether the re-appointment of Chwaro was permissible given the Department's absence of consent to the appointment of Botha.

[16] On 3 November 2018, Mabapa telephonically contacted Counsel for the applicant, Advocate Mmolawa ("Mmolawa") to enquire about his future availability. In turn Mmolawa, contacted Chwaro, who confirmed his availability to be seized with the arbitration hearing on 28-30 January 2019. This latter date was also confirmed with the Director Legal Services, that this date was suitable to him and the witnesses.

[17] Notwithstanding a mandate to have the matter set down for 28-30 January 2019 Mabapa, acquiesced for the matter to be postponed



to 9-11 January 2019. Further, Mabapa failed to attend to have Botha substituted. Mabapa neglected to inform the Department and Mmolawa of the arrangement that he had made, more so that the date that Mabapa had agreed to was not as per his mandate.

[18] On 9 January 2019, at the arbitration hearing before Botha, the absence of representation for the Department caused Botha to postpone the hearing to the next day for the Department to be afforded an opportunity to attend the proceedings, and to make submissions regarding the continuation of the matter. An interim award dated 9 January 2019, was emailed to the Department.

[19] On 10 January 2019, at the continued arbitration hearing, there appeared no legal representative for the Department. Botha ruled that the arbitration hearing was to proceed in the absence of the Department as entrenched in terms of section 15(2) of the Arbitration Act 42 of 1965.

[20] In *lieu* of making alternative arrangements prior to 5 November 2018, Mabapa attended at the attorneys' offices of Seasons Travel, where the arbitration was to continue. Mabapa, without a mandate, tendered the wasted costs in respect of this date, as well as the preparation costs for Seasons Travel.

[21] On 11 January 2019 (although the date of the award is recorded as 18 January 2019), a final default arbitration award was made against the Department in the following terms:

- (i) The defendant is ordered to pay Seasons Travel an amount of R 4 709 220 .85.

- (ii) The defendant is ordered to pay interest on the aforesaid amount at the applicable prescribed interest rate published in the Government Gazette from time- to- time from the date of service of the summons to final date of payment thereof.
- (iii) The Department was ordered to pay the costs of the arbitration.

[22] On 13 January 2019, Dr Ditaba Rantsane (the Director of Legal Service of the Department), communicated with Mabapa via short message service(SMS) to arrange for consultations in anticipation of the arbitration hearing of 28 January 2019. This SMS elicited no response from Mabapa. On 14 January 2019 when Mabapa was contacted, he indicated to Dr Ditaba Rantsane that the matter was finalized.

[23] On or about 7 March 2019, Seasons Travel brought an application in this Court under case number **M111/2019** to have the default arbitration award of 18 January 2019, be made an Order of Court within the confines of section 31 of the Arbitration Act 42 of 1965. The latter application for ease of reading will be referred to as the enforcement application.

[24] On or about 24 June 2019, the Department launched an application for review under case number **M325/2019**, alternatively for a declaratory order remitting the arbitration award to the arbitrator in accordance with section 32(2) of the Arbitration Act 42 of 1965. On 1 July 2019, Seasons Travel had filed a Notice to Oppose this review application.

- [25] On 27 June 2019, this Court acquiesced to Seasons Travel's application and made the arbitration award an Order of Court in the absence of the Department. This led to a warrant of execution being granted in favour of Seasons Travel. The Department reacted by launching an urgent application in November 2021, under case number **M111/2019**, for an order suspending the enforcement of order of Djaje J (as she then was), pending the adjudication of a rescission application (Part B).
- [26] On 20 January 2022 the default order dated 27 June 2019 under case number **M111/2019** was rescinded, and the Department was granted leave to file its replying affidavit within ten (10) days from the date of this order. To date, the replying affidavit had not been delivered. The court order of 27 June 2019 had a legal consequence. It transformed the arbitration award to an Order of Court. This rendered the review application under case number **M325/2019** moot, as there existed no arbitration award to render reviewable.
- [27] Seasons Travel filed a supplementary affidavit, in which it draws attention to certain timelines. Firstly, this application was issued on five (5) months after the arbitration award was ordered. Secondly, it was served on the Botha, three (3) years after the award was made. Thirdly, Seasons Travel pointed out that when the answering affidavit was filed in November 2019, ten (10) months after the arbitration award was made, the Department filed a Notice of Irregular step in terms of Rule 30 of the Uniform Rules of Court but did not follow through with same. Because of the Department's legal inactivity to proceed with the application, Seasons Travel duly set the matter down for 02 February 2023.

[28] On 02 February 2023, the Department argued an opposed application for postponement. The application was dismissed, with the Department ordered to file its heads of argument by 10 February 2023, and Seasons Travel to file supplementary heads by 13 February 2023. Notwithstanding several meetings between the attorneys of the various parties, the record of proceedings and the respective heads of argument could not be located.

[29] No filed heads of argument could be traced at the Offices of the Registrar of this Court, notwithstanding the parties' averments of having filed same. Mrs Neethling contended the heads for Seasons Travel may not have been transmitted to the Registrar due to loadshedding during the week that it was due to be filed. The heads of argument were filed on 24 October 2024, with judgment being reserved.

### **The Department's version**

[30] The main gripe of the Department is centred on the change of arbitrators. Chwaro was appointed as the arbitrator, to hear the matter from 17 to 19 January 2018. Specified terms of reference were agreed upon. Chwaro had become unavailable between August 2018 to October 2018, due to him having taken up an Acting Judge's appointment in the North West Division of the High Court.

[31] Attorneys for the Seasons Travel, informed Mabapa of the unavailability of Chwaro. The names of two alternative arbitrators were suggested by the Seasons Travel's attorneys. Mabapa agreed to the arbitration to be heard on 5-7 November 2018.

Notwithstanding, a duly signed pre-arbitration minute dated 10 January 2018, which recorded that counsel for the Department would be copied in written correspondence between the parties. There was non-acquiescence with the latter by Mabapa.

[32] The Department contends that Mabapa failed to communicate to any of the officials of the Department that Chwaro was unavailable to arbitrate this dispute. The Department indicts the erstwhile attorney Mabapa, of the following:

- (i) He failed to communicate or seek instructions from the Department as to whether the arbitration date should accommodate Chwaro's availability or whether a replacement arbitrator ought to be agreed upon.
- (ii) He failed to obtain the approval of the Department prior to agreeing to the appointment of Botha.
- (iii) He failed to ascertain the availability of the Department's witnesses prior to agreeing to the arbitration to proceed on 5 November 2018.
- (iv) He only informed the Director of Legal Services of the Department on 24 October 2018 of the need to arrange consultation to prepare for the arbitration on 5-7 November 2018 before a new arbitrator.
- (v) He did not make arrangements prior to 5 November 2018, instead, he attended at the offices of Campbell Attorneys and without a mandate to do so, tendered the wasted costs in relation to 5 November 2018.

- (vi) On 3 November 2018, Mabapa called Mmolawa to enquire about his future availability. Mmolawa indicated he was available on 28-30 January 2019. It was further indicated by Mabapa that Chwaro was available on 28-30 January 2019.
- (vii) Mabapa acting again without mandate, did not have the arbitration postponed to 28-30 January 2019, instead he postponed it to 9-11 January 2019. Mabapa did not inform the Department or Mmolawa of the dates of 9-11 January 2019. The arbitration was held in the absence of the Department on 10 January 2019.

### **Seasons Travel's version**

- [33] Seasons Travel retorts Mabapa was acting on the instructions of the Department. Mabapa had written emails confirming the dates of 5-7 November 2018 as the date of arbitration. He had on 5 November 2018 called a representative of the Department and confirmed the date of 9-11 January 2019, as the date of hearing of the arbitration.
- [34] Even though counsel for the Department was not carbon copied in written communication, the attorney for the Department also did not copy counsel for the applicant and for the second respondent in all written communications. To this end, the second respondent denies any irregularity that can be laid at its door.
- [35] On 5 November 2018, the matter came before the arbitrator, Botha. By agreement, the arbitration hearing was postponed to 9-11 January 2019. Pursuant to the arbitration, Botha issued a final

award in favour of Seasons Travel, in the absence of the Department. On 27 June 2019, this Court as per Djaje J, (as she then was) granted an order confirming the arbitration award.

[36] The dilatoriness of the Department is explicated in the timelines as set forth. The lack of legal appetite by the Department to dispose of the matter caused Seasons Travel to apply for a date for a hearing, which resulted in the presence hearing.

### **Points *in limine***

[37] Seasons Travel has raised three (3) points *in limine*. I propose to deal with each in turn.

### **Jurisdiction**

[38] Seasons Travel asserts that this Court is not clothed with the requisite jurisdiction to hear the matter. Seasons Travel expounds the lack of this Court's jurisdiction to hear the matter is as follows. Botha practices at Room 41, Brooklyn Advocates Chambers, 2020 Dey Street, Nieuw Muckelneuk, Pretoria. Seasons Travel is alleged to have its registered address at 8 Langenhoven Drive, Riviera, Mahikeng, North West Province and/or care of its attorneys at 11 Agate Avenue, Riviera, Mahikeng, North West Province.

[39] As per the original summons Seasons Travel contends its address is 11 Shepherd Avenue, Beverly Gardens, Randburg Gauteng. The award that was made in favour of the Seasons Travel was made in Gauteng, which is not within this Court's jurisdiction. The ancillary proceedings and urgent application of November 2019 which fell

within the jurisdiction of this Court cannot serve to cure the existing absence of jurisdiction.

[40] Mr Masike avows that Seasons Travel does not deal with the address of 8 Langehoven Drive Rivera Park, Mahikeng, North West Province, which falls within jurisdiction of this Court. The latter address was provided by Seasons Travel and now that Seasons Travel feels the pinch of the proverbial shoe it seeks to conveniently jettison an address that falls within the territorial jurisdiction of this Court.

[41] In its simplest form, jurisdiction is the power vested in a court to adjudicate upon, determine and dispose of a matter. (See: *Gallo Africa Ltd and Others v Sting Music (Pty) Ltd and Others* [2010 \(6\) SA 329](#) (SCA) at paragraph [6]). This power is territorial. It axiomatically follows that this territorial power does not extend beyond the boundaries of, or over subjects or subject-matter not associated with the Court's ordained territory. (See: *Ewing MacDonald & Co Ltd v M & M Products Co* 1991(1) SA 252 (A) at 256G-H).

[42] The territorial jurisdiction of the High Courts are predicated on *inter alia*, the Constitution of the Republic of South Africa Act, 108 of 1996, the High Court's inherent jurisdiction, the common law, with the pivotal legislation being in the form of the [Superior Courts Act 10 of 2013](#) ("the Superior Courts Act"). These primary sources are by no means a closed category. [Section 21](#) of the [Superior Courts Act](#), [materially](#) mirrors its predecessor, s 19(1) of the



Supreme Court Act 59 of 1959. [Section 21](#) of the [Superior Courts Act](#), the primary legislation reads as follows:

“21. Persons over whom and matters in relation to which Divisions have jurisdiction.

(1) A Division has jurisdiction over all persons residing or being in, and in relation to all causes arising and all offences triable within, its area of jurisdiction and all other matters of which it may according to law take cognizance, and has the power—

(2) A Division also has jurisdiction over any person residing or being outside its area of jurisdiction who is joined as a party to any cause in relation to which such court has jurisdiction or who in terms of a third-party notice becomes a party to such a cause, if the said person resides or is within the area of jurisdiction of any other Division.”

[43] Extracting the core of [section 21\(1\)](#) of the [Superior Courts Act](#), [it](#) provides that a division of the High Court has jurisdiction over all persons residing or being in, and in relation to all causes arising and all offences triable within, its area of jurisdiction and all other matters of which it may according to law take cognizance. (See: *Gulf Oil Corporation v Rembrant Fabrikante en Handelaars (Edms) Bpk v Braun Woodworking Machinery (Pty) Ltd* 1991(1) SA 482(A) at 486 H-J).

[44] At the core of the common law, the doctrine of effectiveness is the principle of jurisdiction. A judgment would be ineffective if it would yield an empty result. Effectiveness is the basis of a court’s jurisdiction.

[45] It stands to reason, that to determine the substance of this jurisdictional legal point an examination of all the addresses that have been provided must be conducted. Botha’s practices at room 41, Brooklyn Advocates Chambers, 220 Dey Street Nieuw

Muckleneuk, Pretoria. Undoubtedly, the latter address does not fall within this Court's jurisdiction. It axiomatically follows that the jurisdiction of this court could not be founded on Botha's address. The truism of this legal point is the Departments claim to this Court's jurisdiction is not founded on the address of Botha. Botha's address is therefore of no moment. Had it been the fulcrum of the Department's claim to this Court's jurisdiction, Seasons Travel's legal point would have to be upheld, as the cited address of Botha would indisputably be within the North Gauteng High Court territorial jurisdiction. Consequently, this address need not detain this Court any further.

[46] The arbitration award was made in Pretoria, Gauteng Province. Therefore, it follows that this Court would not be clothed with jurisdiction.

[47] There appears to be consensus between the parties that the address of the correspondent attorney of Seasons Travel is inadequate for purposes of engaging this Court's jurisdiction.

[48] Seasons Travel concedes that the address provided by it more than a decade ago namely: 8 Langenhoven Road, Rivera Park, Mahikeng falls within the territorial jurisdiction of this Court. Closely allied to this, Seasons Travel contends that nowhere is the aforesaid address noted as the chosen *domicilium citandi et executandi*, it is claimed to be the principal place of business. The summons issued out of the Molopo Magistrate's Court on 22 November 2013 in the particulars of claim describes “ **the plaintiff is Season's Travel Find 635 CC t/a Seasons Travel, a close corporation duly**

**registered in terms of the statutes of the Republic of South Africa with registered address at 11 Sheperd Avenue Beverly Gardens, Randburg.** More appositely, the principal place of business of Seasons Travel is 11 Sheperd Avenue Beverly, Gardens Randburg Gauteng. It is beyond question that the latter address falls within the territorial jurisdiction of Gauteng.

[49] Reliance by the Department on the address in annexure “PM1” to the founding affidavit to find jurisdiction is misplaced. Annexure “PM1” refers to “Data Provided by the SERVICE PROVIDER.” Annexure “PM1” thus does not come to the jurisdictional rescue of the Department.

[50] Our case law is replete with authorities where it has been held that where a litigant submits himself/herself by a positive act or negatively by not objecting to the jurisdiction of the court, such a litigant may confer jurisdiction on that court. See: *Mediterranean Shipping Co v Speedwhale Shipping Co Ltd and Another* 1986(4) SA 329 (D), *Bonugli and Another v Standard Bank of South Africa (Ltd)* 2012 (5) SA 202 (SCA). This is not the Department’s version on jurisdiction.

[51] On an assessment of this point, I find that this Court’s jurisdiction is not engaged. Therefore, this point in *limine* must be upheld. This signals the beginning of the end for Department’s version on the merits.

[52] Notwithstanding my finding on jurisdiction, and to circumvent piece meal adjudication, I consider the remaining two points in *limine*.

### ***Exceptio res judicata***

[53] This point was abandoned in view of the setting aside of the enforcement order.

### **Award already recognized**

[54] Notwithstanding its contention that the arbitration award is void and unenforceable, due to the absence of proper notice of the proceedings, the Department has performed in terms of the award made by Botha, which it contends to be void and unenforceable. To this end, the Department has cohered to the payment of costs orders of 5 November 2018, 28 March 2019 and the costs of the arbitration proceedings of 18 January 2019, which it asserts are *void ab origine*. Further, the Department made payment of an amount of R774 309.74 under case number **M111/2019**. The nub of this point *in limine* being that the Department has substantially performed in terms of an arbitration award which it now asseverates is void simply because it failed to appear on the arbitration date agreed upon.

[55] Mr Masike submits that the payment of the various costs of the awards is by no means an admission or recognition of the award. As far as the order under case number **M111/2019**, dated 27 June 2019, to make the arbitration award an order of court has been rescinded and this according to Mr Masike shows the invalidity of the award is in question.

[56] The golden thread that connects all the various payments is that this by no means is an admission or recognition of the award.

There is no merit in this contention of Seasons Travel and ordinarily, this point would have been dismissed.

## **Costs**

[57] It is trite that the issue of costs is within the discretion of the court. There is no basis to deviate from the usual order that costs follow the result. The Department opines that this cost order should be on an attorney and client scale had it been successful. The scale of an attorney and client scale is an extra ordinary one which should be reserved for cases where it can be found that the litigant conducted itself in a clear and indubitably vexatious and reprehensible manner. Such an award is exceptional and is intended to be very punitive and indicative of extreme opprobrium. See: *Public Protector v South African Reserve Bank* ZACC 2019 (6) SA 253 at paragraph [8], *Plastic Converters Association of South Africa on behalf of Members v National Union of Metalworkers of SA* 2016 ZALCA 37 IJL 2815 (LCA).

## **Order:**

[58] In the premises, the following order is made:

- (i) The jurisdictional point in *limine* of the second respondent is upheld.
- (ii) The application is dismissed.
- (iv) The applicant is ordered to pay the costs of the application.

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**A REDDY**  
**ACTING JUDGE OF THE HIGH COURT**  
**OF SOUTH AFRICA.**  
**NORTH WEST DIVISION, MAHIKENG**

**APPEARANCES:**

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Date of Hearing:

24 October 2023

Date of Judgment:

20 February 2024