THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG.

Reportable

Case No: J1744/16

JR2275/13

In the matter between:

PETRO CHEM TECHNICAL

SERVICE (PTY) LTD **Applicant**

and

MOTOR INDUSTRY BARGAINING

COUNCIL DISPUTE RESOLUTION CENTRE **First Respondent**

COMMISSIONER RUSSEL MOLETSANE *N.O.* **Second Respondent**

PATRICK MUTEMA **Third Respondent**

NAPE CORNELIUS MAPUMA **Fourth Respondent**

Heard: **11 July 2019**

Date Delivered: **14 November 2019**

Summary: Review of arbitration award – practice and procedure – Practice Manual of the Labour Court – clause 11.2.7 – excessive delay in prosecution – clause 11.4.1 – failure to progress review application - by the time review was heard, the application had in effect lapsed and been archived in terms of Practice Manual of the Labour Court - as such this court has no jurisdiction –

the applicant should have filed a separate rule 11 application seeking condonation for the undue delay – failure to subsequently demonstrate truly exceptional considerations and good cause, Labour Court lacks the jurisdiction to hear the review application.

JUDGMENT

YEATES AJ

Introduction.

[1] This matter concerns a joint set down of the Applicant's application under case number J1744/16, to stay the enforcement of the arbitration award, which underpins this review application, which has been brought in terms of section 145 of the Labour Relations Act 66 of 1995, as amended ("**LRA**").

[2] The Applicant, Petro-Chem Technical Service ("**Applicant**") seeks to review and set aside the arbitration award of the Second Respondent, acting in his capacity as Arbitrator under the auspices of the First Respondent, the Motor Industry Bargaining Council Dispute Resolution Centre.

[3] Rule 23 of the Rules for the Conduct of Proceedings in the Labour Court ("**Labour Court Rules**") permits this court to make an order consolidating any separate proceedings pending before it if it deems the order to be expedient and just.

[4] I can see no reason why the matters referred to above should not be consolidated as both matters emanate from the same facts.

[5] It is a well-established principle in this Court that, in terms of the Labour Court Practice Manual ("**Practice Manual**"), a review application is urgent, and that the prosecution of a review must be completed in 12 months. Where this does not happen, the review application lapses and is archived.

[6] The Practice Manual however does provide litigants with some relief, as it provides that if this period cannot be complied with, then at least good cause

must be shown in order to resuscitate the review application – i.e. a proper condonation application must be brought, explaining the reason for the delay.

[7] In his judgment in the matter of *Matsha and Others v Public Health and Social Development Sectoral Bargaining Council and Others* (2019) 40 ILJ 2565 at [1], Snyman AJ, in my view, accurately reflects this Court's sentiment when confronted with review applications which have been excessively delayed on the part of the applicant –

> "[1] *In Toyota SA Motors (Pty) Limited v Commission for Conciliation, Mediation and Arbitration and others*[1] *the court expressed the following sentiment*:
>
> > *"Excessive delays in litigation may induce a reasonable belief, especially on the part of a successful litigant, that the order or award had become unassailable. This is so all the more in labour disputes."*
>
> *[2] However, and despite this sentiment, this Court is still being inundated by applications in terms of rule 11 of the Labour Court Rules to dismiss review applications for a lack of diligent prosecution thereof by litigants. Not only does this unnecessarily clog up the court roll, but it leaves a dispute which was always intended to be expeditiously resolved, hanging in the air. This kind of situation creates uncertainty, may compound liability and serves to disappoint parties before this Court seeking nothing else but justice. After all, justice delayed is justice denied.*"

[8] The operative effect of a review application which has lapsed in terms of clause 11.2.7 of the Practice Manual, is that it is no longer properly before this Court, and the Court lacks the requisite jurisdiction to determine the review application, unless good cause has been shown, and the matter is re-instated by an order of this Court.

Background

[9] This matter, unfortunately, has a long and complex history.

[1] (2016) 37 ILJ 313 (CC) [also reported at [2015] JOL 34970 (CC), [2016] 3 BLLR 217 (CC), 2016 (3) BCLR 374 (CC) – Ed] at para [45].

[10] The Third Respondent ("**Mr Mutema**") was employed by the Applicant on 8 November 2010 as a mechanic and was dismissed on 2 April 2013 for gross dishonesty. It was alleged that the Third Respondent fraudulently completed a trade union membership form on behalf of one Mr Knowledge Magwaza ("**Magwaza**"), without his permission. The Fourth Respondent ("**Mr Mapuma**"), a boilermaker in the Applicant's employ, was also dismissed by gross negligence, in that it was alleged that he failed to check if the membership form of Mr Magwaza, was false before handing it over for deduction from his salary.

[11] The Third and Fourth Respondents both became members of the United Chemical Industries Mining Electrical State Health and Aligned Workers Unions ("**UCIMESHAWU**"). They conducted recruitment activities amongst the Applicant's employees on behalf of UCIMESHAWU.

[12] On or about 30 January 2013, the Applicant charged the Third Respondent with gross misconduct and dishonesty. The Applicant alleged that the Third Respondent forged or falsified a trade union membership application form, as if it constituted a membership form completed by Knowledge Magwaza, who at the time of the completion of the forged document was on leave in his home country, Zimbabwe.

[13] The Fourth Respondent was similarly charged with gross misconduct and dishonesty, as well as gross negligence. The Applicant alleged that the Fourth Respondent submitted the forged or falsified trade union membership form by leaving it on the desk of Elrina Rheeder, the Applicant's financial administrator at the time, for processing.

[14] On 2 April 2013, following a formal disciplinary inquiry, the Third Respondent was found guilty of gross dishonesty and the Fourth Respondent was found guilty of gross negligence. Subsequently, they were summarily dismissed with effect from 2 April 2013.

The Arbitration

[15] UCIMESHAWU, on behalf of the Third and Fourth Respondents, referred an unfair dismissal dispute for arbitration to First Respondent. The Applicant was duly represented at the arbitration proceedings by J.J.M. Kruger ("**Kruger**"), a member of the AHI Employer's Organisation. The matter came before the Second Respondent who heard the matter on 26 August 2013 in Randburg.

[16] On 10 September 2013, the Second Respondent issued his arbitration award in which he found the dismissal of the Third Respondent to be substantively unfair in that Applicant acted inconsistently. He further found the dismissal of the Fourth Respondent to be substantively unfair in that Applicant did not prove that the reason for dismissal was a fair reason related to his conduct.

In the Labour Court

[17] The Applicant, once again represented by Kruger, instituted review proceedings in this Court in terms of section 145 of the LRA on 23 October 2013 under case number J2275/2013.

[18] The First Respondent delivered the record of the arbitration proceedings to the Registrar of the Labour Court on 2 December 2013. Applicant subsequently uplifted and then filed the record of proceedings with the Registrar on 28 March 2014.

[19] The Applicant filed its supplementary affidavit, without any condonation application, only on 8 August 2014.

[20] The Third and Fourth Respondents filed their Notice of Intention to Oppose the review application on 2 December 2014.

[21] The Applicant only prepared the review application court file on 13 June 2016 when it filed its indices.

First section 158(1)(c) application

[22] On 21 November 2013, and whilst the review proceedings were pending, UCIMESHAWU launched an application under case number J2418/2013 in

terms of section 158(1)(c) in order to make the arbitration award an order of court.

[23] This application was apparently brought without the knowledge of the Third and Fourth Respondents. The Applicant, duly represented by Kruger, successfully opposed the application and this application appears now to have fallen away.

Second section 158(1)(c) application

[24] However, on 28 May 2014 another application in terms of section 158 (1)(c) was launched under case number J1314 / 2013, this time by the Third and Fourth Respondents acting in their personal capacities and without the assistance of their trade union.

[25] The matter came before Snyman AJ in the Applicant's absence and on 17 September 2014, the Second Respondent's arbitration award was made an order of court.

First rescission application

[26] The Applicant, this time represented by Marcus Malan Attorneys, and on 25 November 2014, launched an application to rescind the default court order under case number J1314/2013, on the basis that the Applicant was unaware of any litigation against it under this case number. Interestingly, however, the Applicant's founding papers in this application were deposed to by Kruger.

[27] In his supporting affidavit in the Applicant's rescission application, Kruger notes the following at paragraph 4.2 thereof –

> "*As our Supplementary Affidavit is duly delivered, I consequently submit it is now the duty of the Respondents to file their Answering Affidavit. It appears they prefer another route to finalize the matter rather than to participate in the Reviewing Application."*

[28] Accordingly, the Applicant's rescission application came before Louw AJ on 5 January 2016, who granted the application for rescission.

Urgent application to stay enforcement

[29] During the week of 7 August 2016, the Sheriff of Germiston South attended at the Applicant's premises and proceeded to attach 3 Light Delivery Vehicles in execution of the Arbitration Award.

[30] The Applicant launched an urgent application under case number J1744/16 to stay the enforcement of the Arbitration Award.

[31] The urgent application came before Whitcher J who handed down her order on 1 September 2016 staying the enforcement of the award, pending the outcome of the review application.

Second rescission application

[32] Finally, after further postponements granted by Prinsloo J at the pre-enrolment hearing of the matter, this review application was set down for argument on the opposed motion roll on 22 August 2018.

[33] The Applicant was not in attendance at the hearing of the matter.

[34] The matter came before Moshoana J who made the following order –

a. The application for review under JR2275/13 is hereby dismissed.

b. The award made by the Dispute Resolution Centre Bargaining Council is hereby made an order of court.

c. The applicant in the review application and the respondent in the section 158(1)(c) application is to pay the costs of both applications.

[35] On 25 September 2018, the Applicant again applied for the rescission of the court order.

[36] The matter came before Nkutha-Nkontwana J who rescinded the court order which dismissed the review application and ordered on 5 February 2019 that the Registrar enrol the matter on an expedited basis on the opposed motion roll.

[37] The matter was finally set down for argument on 11 July 2019.

Issues for determination

[38] Whether this court has the requisite jurisdiction to determine this review application.

Evaluation

[39] In *National Education Health and Allied Workers Union v University of Cape Town and Others*[2] Ngcobo J said:

> *"By their very nature labour disputes must be resolved expeditiously and be brought to finality so that the parties can organize their affairs accordingly. They affect our economy and labour peace. It is in the public interest that labour disputes be resolved speedily . . ."*

[40] Rule 11(4) of the Labour Court Rules further provides that in the exercise of its powers and in the performance of its functions, or in any incidental matter, the court may act in a manner that it considers expedient in the circumstances to achieve the objects of the Act. Any delay in the resolution of labour disputes undermines the primary object of the LRA[3].

[41] The Practice Manual gives effect to this primary object.

[42] In the matter of *Tadyn Trading CC t/a Tadyn Consulting Services v Steiner and Others at p*aragraph 11, the court refers to *In re: Several matters on the*

[2] (2003) 24 ILJ 95 (CC) [also reported at [2003] JOL 10448 (CC), 2003 (2) BCLR 154 (CC) – Ed] at para [31]. See also *Billiton Aluminium SA Ltd t/a Hillside Aluminium v Khanyile and Others* (2010) 31 ILJ 273 (CC) [also reported at [2010] JOL 25025 (CC), [2010] 5 BLLR 465 (CC), 2010 (5) BCLR 422 (CC) – Ed] at para [46]; *Strategic Liquor Services v Mvumbi NO and Others* (2009) 30 ILJ 1526 (CC) [also reported at [2009] 9 BLLR 847 (CC), 2009 (10) BCLR 1046 (CC) – Ed] at paras [12]–[3].

[3] *Toyota SA Motors (Pty) Ltd v Commission for Conciliation, Mediation and Arbitration and Others* [2016] 3 BLLR 217 (CC) at para 1.

urgent court roll 18 September 2012[4], where the court held that in law the Judge President was entitled to issue practice directives relating to the procedure of setting down matters on the roll.

[43] This was discussed further in *Ralo v Transnet Port Terminals and Others* in paragraph 9 of the judgment by Van Niekerk J[5]:

> *"I agree. The practice manual contains a series of directives, which the Judge President is entitled to issue. In essence, the manual sets out what is expected of practitioners so as to meet the imperatives of respect for which the court as an institution, and an expeditious resolution of labour disputes (see paragraph 1.3). While the manual acknowledges the need for flexibility in its application (see paragraph 1.2) its provisions are not cast in the form of a guideline, to be adhered to or ignored by parties at their convenience."*

[44] In paragraph 14 of *MJRM Transport Services CC v Commission for Conciliation, Mediation and Arbitration and Others*, it is expressed that "*inasmuch as the provisions of the manual call for flexibility in their application where required, litigants are nevertheless bound by them*[6]."

[45] Clause 11.2.7 of the Practice Manual reinforces that a review application is by its nature an urgent application. Therefore, an applicant in a review application is required to ensure that all the necessary papers in the application are filed within twelve (12) months of the date of the launch of the application and the registrar must be informed in writing that the application is ready for allocation for hearing. Where this time limit is not complied with, the application will be archived and be regarded as lapsed unless good cause is shown why the application should not be archived or be removed from the archive.

[46] The Practice Manual came into effect during April 2013. The review application *in casu* was instituted on 23 October 2013. Therefore, the Practice Manual applies to the review application. Whilst the Supplementary Affidavit was filed out of time on 8 August 2014, there was no further steps taken by

[4] [2014] 5 BLLR 516 (LC).
[5] [2015] 12 BLLR 1239 (LC).
[6] [2017] 1 BLLR 40 (LC).

the Applicant to progress the review application until the Third and Fourth Respondents filed their Notice of Intention to Oppose to the review application on 2 December 2014.

[47] This date is important. Even if one were to give the Applicant the benefit of the doubt concerning the late filing of its supplementary papers, the Applicant was required to comply with clause 11.2.7 by 23 October 2014 in order to avoid its review application lapsing.

[48] This is evident in the wording of clause 11.2.7 which reads –

> *"11.2.7 A review application is by its nature an urgent application. An applicant in a review application is therefore required to ensure that all the necessary papers in the application are filed within twelve (12) months of the date of the launch of the application (excluding Heads of Arguments) and the registrar is informed in writing that the application is ready for allocation for hearing. Where this time limit is not complied with, the application will be archived and be regarded as lapsed unless good cause is shown why the application should not to be archived or be removed from the archive.*"

[49] The Applicant does not at any stage inform the registrar that the application is ready for allocation for hearing, be it on the opposed or even the unopposed motion roll.

[50] On the contrary, the Applicant's representative, Kruger, appears to be waiting for the Third and Fourth Respondents to file their answering affidavits. This is evident from his supporting affidavit in the rescission application under case number J1314/14.

[51] The Applicant's logic in this regard, is however fundamentally flawed.

[52] It appears from the papers in the matter that the Third and Fourth Respondents only served and filed their Notice to Oppose the review application on 2 December 2014. There was no reason for the Applicant to wait for their answering papers. However, even if the Applicant were under the impression that the review application was opposed, the Applicant failed

to progress the review application within the requisite 12-month period with due regard to clause 11.4 of the Practice Manual which reads –

> *"11.4.1If the respondent has delivered a notice of intention to oppose but fails to deliver an answering affidavit within the prescribed time limit, the registrar must at the request of the applicant, enrol the application on the opposed motion roll and serve a notice of set down to all parties.*"

Hearing of the matter 11 July 2019

[53] At the hearing of this matter on 11 July 2019, I specifically requested the Applicant's representatives to address this Court on good cause for the reinstatement of the review application.

[54] Adv Crouse advanced eight grounds upon which the Applicant relied to substantiate good cause. In summary, the Applicant's representations in this regard were the following:

a. Adv Crouse submitted that given the multiple section 158(1)(c) applications which were launched by UCIMESHAWU and the Third and Fourth Respondents' respectively, the Applicant was too busy opposing these applications as well as launching an urgent application to stay the enforcement of the arbitration award, in order to progress the review application;

b. It was also submitted at the hearing of the matter that the Applicant could not progress its review application, as the Third and Fourth Respondents did not serve and file any answering papers in opposition to the review application;

c. The Applicant further relied on the court order of Prinsloo J dated 26 October 2017, wherein the review proceedings were postponed and ordered the Registrar to enrol the matter on an expedited basis;

d. A further pre-enrolment hearing was held during 2018 and was presided over by Van Niekerk J. Adv Crouse argued that the matter was considered ripe for hearing as no objection had been raised;

e. At both of the above hearings, the Respondents were present and represented and did not raise any jurisdictional challenges;

f. In both the above hearings the respective Judges 'seemed happy' regarding the times and the pleadings being filed;

g. The Applicant did rely on the court order of Prinsloo J which provided that the matter be set down for hearing; and

h. Adv Crouse argued that by virtue of the court order of Prinsloo J and the pre-enrolment hearing of Van Niekerk J, the Labour Court's jurisdiction to hear the review application was confirmed.

[55] In considering these grounds for good cause, I simply cannot agree with the Applicant's submissions as constituting grounds for good cause to reinstate the review application.

[56] The court in *Allround Tooling v NUMSA and another* held that a practitioner's busy schedule is not an acceptable explanation for delay in observing time limits[7]. This approach was followed in *Minister of Social Development v Veldhuizen*[8]. For this reason, the fact that the Applicant's representatives were busy with the other applications brought forward, is insufficient.

[57] The Applicant's contention that it could not progress its review application in the absence of the Respondents answering papers is equally flawed. I have already referenced clause 11.4.1 of the Practice Manual above in this regard. The Applicant had ample opportunity, even after filing its supplementary affidavit late on 8 August 2014, to request the Registrar to set the matter down, and thus avoiding the review application from lapsing.

[58] The Applicant's reliance of the court order of Prinsloo J is perplexing. Even though it may not be evident on Prinsloo J's court order itself, a file note made on the court file indicates that the matter was postponed *sine die,* because the pleadings filed by the Applicant contained comments and remarks made by

[7] [1998] 8 BLLR 847 (LAC) at para 10.
[8] [2009] JOL 24322 (LC) at para 27.

the Applicant and the court could not consider the papers with personal comments and notes.

[59] It therefore appears to me that Prinsloo J could not have considered the merits of the review application and the postponement was given in order to afford the Applicant party an opportunity to file unmarked pleadings.

[60] In *NUMSA v Hillside Aluminium*[9] Murphy AJ wrote at paragraph 12:

> *"…to do justice to the aims of the legislation, parties seeking condonation for non-compliance are obliged to set out full explanations for each and every delay throughout the process. An unsatisfactory and unacceptable explanation for any of the periods of delay will normally exclude the grant of condonation, no matter what the prospects of success on the merits."*

[61] On this basis alone, Prinsloo J would not have considered the timelines, let alone considered any resemblance of a condonation application for good cause. There were no submissions made to Prinsloo J concerning the time periods, to which she could have applied her mind, before ordering the Registrar to set the review application down on an expedited basis. At the very least Prinsloo J would not have known, given the reason for the postponement of the matter, that she would be 'confirming' the Labour Court's jurisdiction as argued by Adv Crouse. I am of the view that the Applicant's submission in this respect, is opportunistic.

[62] The Applicant's reliance on the pre-enrolment hearing presided over by Van Nierkerk J is equally opportunistic. The purpose of the pre-enrolment hearings was to determine whether matters were ready for set down in order to alleviate the burden on the court roll of unnecessary postponements and preliminary points. It was not an in-depth analysis of the merits of the matter. Jurisdictional challenges could be raised at any point in time, notwithstanding the features of the pre-enrolment process.

[9] [2005] 6 BLLR 601 (LC).

[63] I do not agree that the Honourable Justices' failure to raise lateness during the respective pre-enrolment hearings, confirmed the Labour Court's jurisdiction or created an impression that a substantive application for reinstatement of the review application was not necessary.

[64] According to Lallie J, in *Kula v Nxuba Local Municipality and Another*, *"in the absence of reasonable explanation for the delay, there is no need to consider the prospects of success*[10]*."*

[65] In the absence of an application to reinstate the review application, the Court cannot exercise its discretion in a vacuum. To, therefore, request the Court to exercise its discretion, and to ignore the fact that no formal request or application has been made is indeed a big ask, which the Court cannot accede to[11].

[66] The law is quite clear in that should I determine the review in the absence of a substantive reinstatement application, I would be doing so without having the requisite jurisdiction[12].

[67] However, where submissions were advanced on behalf of the Applicant for good cause, I find that the Applicant failed to discharge this onus.

[68] The *dictum* in *Ferreira v Die Burger*[13] has particular relevance *in casu*, where the court said:

> *"I am sympathetic to the fact that the applicant may have a case but, were we to grant this application, this court would subvert a crucial principle in matters which deal with personal relationships, namely labour relations, that these disputes have to be dealt with expeditiously and finalized as quickly as possible. Where in a case such as this, there has been so flagrant of violation of the rules, then, as Myburgh JP correctly decided, a lack of any explanation at all shrugs off other considerations."*

[10] [2016] 1 BLLR 55 (LC) at para 7.
[11] *South African Municipal Workers Union obo Mlalandle v South African Local Government Bargaining Council and others* [2017] JOL 37418 (LC) at para 11.
[12] *Macsteel Trading Wadeville v Francois van der Merwe N.O and Others* (JA67/2016) [2018] ZALAC 50; (2019) 40 ILJ 798 (LAC) (12 December 2018) at para 25 ("*Macsteel*").
[13] (2008) 29 ILJ 1704 (LAC) at para [8].

[69] In his judgement in the matter of *Matsha and Others v Public Health and Social Development Sectoral Bargaining Council and Others*[14] Snyman AJ echo's my own sentiment in this matter -

> *"[22] The Practice Manual is not just some sort of guideline which litigating parties may or may not comply with at their leisure, but has binding force, just like the Labour Court Rules.*[15] *It follows that the applicants were obliged to comply with clause 11.2.7. Compliance means, in the context of the current matter, that the record had to have been filed within 12 months of the date when the applicants brought the review application. That due date was therefore 5 November 2017 and was clearly not met.*
>
> *[23] What is then the consequence of such a failure to comply? First, and upon the expiry of the time period, it caused the review application to lapse, and following on, the archiving thereof. The result of this was described in Macsteel Trading Wadeville v Van der Merwe NO and others*[16] *as follows:*
>
> > *"As indicated, the review application was archived and regarded as lapsed as a result of NUMSA's failure to comply with the Practice Manual. There was also no substantive application for reinstatement of the review application, and no condonation sought for the undue delay in filing the record. As contended for by Macsteel, the Labour Court was, as a matter of law, obliged to strike the matter from the roll on the grounds of lack of jurisdiction, alternatively, give Macsteel an opportunity to file a separate rule 11 application demonstrating why the matter should be dismissed or struck from the roll on the basis of undue delay.""*

[70] Following the dicta of *Macsteel*, wherein the facts are very similar to the present circumstances, the correct approach would have been for the Applicant to request a postponement of the matter, and to bring a substantive Rule 11 application.

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[14] [2019] JOL 45094 (LC)
[15] See *Sepheka v Du Pont Pioneer (Pty) Ltd* (2019) 40 ILJ 613 (LC) [also reported at [2018] JOL 40493 (LC) – Ed] at para [7]; *National Education Health and Allied Workers Union on behalf of Leduka v National Research Foundation* (2017) 38 ILJ 430 (LC) at para [31].
[16] See *fn 12 supra*

[71] On the issue of costs, I am mindful of the fact that at no stage, other than the filing of their heads of argument and supplementary heads of argument, did the Third and Fourth Respondents serve and file any pleadings in the review application. It is unfortunate that this Court's time and resources were wasted over the course of years when the main review application had indeed already lapsed. Multiple court applications were brought, and numerous court orders were handed down without any of the parties detecting that the review application had lapsed, until this Court *mero motu* raised the question about its jurisdiction, which it is entitled to do. Unfortunately, there is no mechanism in place whereby the Registrar of the Labour Court can notify litigants that their review applications have lapsed by operation of clause 11.2.7 of the Practice Manual. Often jurisdictional challenges are raised in opposing parties' submissions and pleadings and in this current matter, not even the Third and Fourth Respondents representative raised the issue of the Court's jurisdiction.

[72] In light of the above, I am of the view that it would not be just and equitable to punish the Applicant with an adverse costs order.

Conclusion

[73] In conclusion, I find that in the absence of truly exceptional considerations and good cause, which the Applicant failed to demonstrate, this Court lacks the jurisdiction to hear this review application, as the application has lapsed in terms of clause 11.2.7 of the Practice Manual.

Order

1. The Applicant's application under J1744/16, and the review application under JR2275/13 are hereby consolidated under JR2275/13.
2. The review application under case number JR 2275/13 has lapsed and been archived in terms of Practice Manual of the Labour Court.
3. Labour Court lacks the jurisdiction to hear the review application.
4. No order as to costs.

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YEATES AJ

Acting Judge of the Labour Court of South Africa

APPEARANCES:

For the Applicant: Advocate Johan Crouse

Instructed by Henk Kloppers

For the Respondent: A Goldberg of Goldberg Attorneys