THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Not Reportable
Case No: 1266/2021

In the matter between:

OCA TESTING AND CERTIFICATION
SOUTH AFRICA (PTY) LTD **APPELLANT**

and

KCEC ENGINEERING AND CONSTRUCTION (PTY) LTD **FIRST RESPONDENT**

HONOURABLE JUDGE N P WILLIS N O **SECOND RESPONDENT**

Neutral Citation: *OCA Testing and Certification South Africa (Pty) Ltd v KCEC Engineering Construction (Pty) Ltd and Another* (1226/2021) [2023] ZASCA 13 (17 February 2023)

Coram: PETSE AP, MOCUMIE and CARELSE JJA, MJALI and MASIPA AJJA

Heard: 11 November 2022

Delivered: 17 February 2023

Summary: Arbitration award – appeal against dismissal of application to set aside part of award – s 33(1) of the Arbitration Act 42 of 1965 – gross irregularity committed by arbitrator in making the award with respect to a substantial portion of the claim – award set aside in part and residue of the claim referred to a new arbitrator.

ORDER

On appeal from: Gauteng Division of the High Court, Johannesburg (Malindi J sitting as court of first instance):

1 The appeal is upheld with no order as to costs.

2 The order of the Gauteng Division of the High Court, Johannesburg, is set aside and in its place is substituted the following order:

‘1 The application to set aside the award insofar as it relates to the amounts claimed in respect of the second and third agreements succeeds.

2 The dispute between the parties in relation to the residue of the claim arising from the second and third agreements is to be submitted to a new arbitrator to be agreed between the parties within 20 days of this order and, failing such agreement, to be appointed by the Arbitration Foundation of South Africa.

3 No order as to costs is made.’

JUDGMENT

Petse AP (Mocumie and Carelse JJA and Mjali and Masipa AJJA concurring):

Introduction

[1] Does the failure of the arbitrator to deal pertinently with and determine a substantial portion of a composite claim that arises from two independent agreements trigger the provisions of s 33(1) of the Arbitration Act 42 of 1965 (the Act)? If so, does this then render the resultant arbitral award insofar as it relates to such agreements susceptible to be reviewed and set aside? This is the cardinal question raised in this appeal.

[2] The appellant, OCA Testing Inspection and Certification South Africa (Pty) Ltd (OCA Testing), said: ‘Yes’. On the contrary, the first respondent, KCEC

Engineering and Construction (Pty) Ltd, (KCEC Engineering) said: 'No'. The Gauteng Division of the High Court, Johannesburg (the high court) agreed with KCEC Engineering and answered both questions in the negative. It is now the task of this Court to resolve these contrasting contentions. What follows is how the dispute arose.

Background

[3] On three different dates, and at the instance of KCEC Engineering, three written offers were made by OCA Testing to KCEC Engineering to render advisory, technical and mechanical services for non-destructive test services to the latter's plants in the Northern Cape, subject to certain terms and conditions as agreed between the parties upon acceptance of OCA Testing's three offers.

[4] After the conclusion of the parties' three written agreements,[1] initially their contractual relationship seemed to operate smoothly, and various tax invoices submitted by OCA Testing to KCEC Engineering from time to time were settled without demur by the latter.

[5] Clause 14 of the parties' written agreements explicitly provided, amongst other things, that 'Any dispute or difference arising out of this Agreement shall be referred to the arbitration of a person to be agreed upon between the [parties] or, failing agreement, nominated by the President for the time being of the relevant Chartered Institute of Arbitration of Spain.' After running smoothly for some time, disputes between the parties emerged. The deterioration in the parties' relations culminated in KCEC Engineering refusing to settle tax invoices submitted by OCA Testing.

Litigation history

Arbitration tribunal

[6] With an impasse having arisen and the parties' best endeavours to break the logjam having failed to bear fruit, the parties agreed to refer their dispute to arbitration before a retired judge of this Court, Justice N P Willis, who was appointed by the Arbitration Foundation of South Africa in accordance with the

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[1] The first, second and third agreements were all concluded during June 2017.

parties' agreement. OCA Testing sued KCEC Engineering for payment of R2 603 729.44 in respect of services allegedly rendered during the period from 25 May 2018 to 25 August 2018. In so doing OCA Testing relied on three agreements. The aggregate sum claimed comprised three amounts. The amount of R142 002.46 had its genesis in the first agreement. The amount of R2 355 768.05 in the second agreement and the sum of R276 744.00 in the third agreement. How these three amounts were computed was not in dispute between the parties.

[7] KCEC Engineering admitted that the services in relation to which the claim arose were duly provided by OCA Testing. However, KCEC Engineering disputed liability on various grounds. Briefly stated, it asserted that: (i) the services by OCA Testing were rendered late, resulting in it suffering damages; (ii) it had overpaid OCA Testing to the tune of R1 961 770.24 which it sought to recover by way of its counter-claim; and (iii) it had suffered liquidated damages in the sum of R1 646 220.00 occasioned as a result of OCA Testing's default in breach of the latter's contractual obligation.

[8] In making his award, the arbitrator identified the issues in dispute as follows:

'(a) Whether the claimant was obliged to deliver the CoC[2] to the Defendant before payment could be made of the outstanding invoice (identified as 'POC15'), in terms of the first agreement;

(b) Whether the claimant has overcharged the defendant for services rendered in terms of the second agreement (which would result in the defendant being entitled to a rebate) by failing to meet, on a daily basis, the estimated daily production rate;

(c) Whether the defendant is entitled to the delivery of videos prior to payment of any outstanding invoice in respect of the third agreement;

(d) Whether the defendant's claim for damages is time-barred;

(e) Whether the claimant is responsible for the damages claimed by the defendant.'

[9] After an exhaustive analysis of the parties' pleadings, the evidence presented by both sides in respect of both the claim and counter-claim as well as contentions advanced by counsel for the parties, the arbitrator dismissed both the claim by OCA Testing and the counter-claim by KCEC Engineering. It bears mentioning that the arbitrator concluded that the claim for payment of the amount

[2] CoC is an acronym for 'Certificate of Conformity'.

of R142 002.46 in respect of the first agreement had to fail because OCA Testing had breached that agreement. Significantly, he then proceeded to hold that none of KCEC Engineering's two counterclaims was sustainable.

[10] What the arbitrator stated in the course of his award bears emphasis. He said:

'The claimant has sought judgment for monies due in terms of its unpaid invoices. The total amount allegedly owing to the claimant is in the sum of R2 603 729.44. The defence raised to the payment of the invoices relating to the first agreement was the failure by the claimant timeously to deliver the CoC to the defendant. The evidence makes it clear that [the] claimant was indeed in breach of its agreement with the defendant by failing so to deliver the CoC and, consequently, its claim must fail.'

[11] He then continued:

'Moreover, it may be pointed out, *en passant*, that the agreements were obviously not interlinked in the sense that a failure to pay an outstanding invoice due in terms of the second agreement and/or the third agreement would have the contractual consequence of not obliging the claimant to furnish the CoC in terms of the first agreement.'

[12] I pause here to observe that what the arbitrator said in the preceding two paragraphs is significant. The statements unquestionably demonstrate that the arbitrator was acutely alive to the fact that OCA Testing's breach was in relation to the first agreement only. This is borne out by what the arbitrator said immediately after making his finding encapsulated in paragraph 10 above. He was at pains to point out that:

'. . . the agreements were obviously not interlinked in the sense that a failure to pay an outstanding invoice due in terms of the second agreement and/or the third agreement would have the contractual consequence of not obliging the claimant to furnish the CoC in terms of the first agreement.' (My emphasis.)

I shall revert to this aspect later.

[13] The arbitrator dismissed KCEC Engineering's counter-claim for recovery of the alleged overpayment of R1 961 770.24 on the basis that such a claim was not based on the *condictio indebiti* and therefore had to fail. He also made short shrift of the counter-claim for R1 646 220.00, finding that at the conclusion of the parties'

agreements there was ‘no serious contemplation that [OCA Testing] may be liable for special damages’.

High Court

[14] A little over a month after the arbitrator’s dismissal of OCA Testing’s claim, OCA Testing instituted proceedings in the high court for the award to be reviewed and set aside in terms of s 33(1) of the Arbitration Act 42 of 1965 (the Act) together with ancillary relief. None of the two respondents entered the fray, with the consequence that the application was not opposed.

[15] In due course the application served before Malindi J who dismissed it with no order as to costs. After making reference to both s 32(1) and s 32(2) of the Act, the learned Judge set out what he considered was central to OCA Testing’s claims. He proceeded to say:

‘The question that arises therefore is whether the second respondent failed to deal with the validity of the claims under the second and third agreements. The applicant contends that although the second respondent correctly identified the dispute between the parties as relating to three separate agreements, he only considered the merits of the claim for the invoices relevant to the first agreement when he started: “ . . . relating to the first agreement was the failure by the claimant timeously to deliver the CoC to the defendant.”’

[16] He then continued:

‘In my view, although the award dismissed the claimant’s claim without traversing the claims under each agreement the second respondent clearly considers the claimed globular amount which comprises claims under all three agreements . . .’

[17] Ultimately, the learned Judge concluded that ‘there was no doubt that the whole claim for R2 603 729.44, inclusive of the claims under the three agreements, is dismissed, with all claims under each agreement having been separately considered.’ Thus, the learned Judge reasoned, the arbitrator had fully understood the nature of the enquiry into the first agreement and, in the result, there was no basis to set aside paragraph 1[3] of the award. Subsequently, on 20 October 2021, the learned Judge granted OCA Testing leave to appeal to this Court.

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[3] Paragraph 1 dismissed OCA Testing’s claim in its entirety.

[18] Before us, as it was in the high court, the basis of OCA Testing's attack of the arbitrator's award, broadly stated, was that the arbitrator 'could not have arrived at a conclusion to dismiss the aggregate claim' (ie totalling R2 603 729.44) with reference to the first agreement only. This argument was predicated upon seven broad contentions, namely:

(i) the amount claimed by OCA Testing was, as correctly observed by the arbitrator himself, an aggregate comprising three distinct claims arising from three different agreements;

(ii) the arbitrator was cognisant of the fact that the three agreements were not interlinked;

(iii) the contractual breach established in evidence by KCEC Engineering related to the first agreement only in respect of a minor portion, ie R142 002.46, of the aggregate amount;

(iv) the finding by the arbitrator that KCEC Engineering, 'evidence [made] it clear that [OCA Testing] was indeed in breach of [the first] agreement with [KCEC Engineering] by failing to deliver the CoC' hence its claim must fail;

(v) the words 'its claim' must, having regard to the factual matrix and viewed in context, be a reference to the first agreement which is what the arbitrator was pertinently dealing with;

(vi) having regard to the fact that KCEC Engineering's remaining defences – which would have nullified the total amount as claimed – were rejected by the arbitrator as devoid of merit, it followed axiomatically that the indebtedness in respect of the amounts arising from the second and third agreements was established;

(vii) the recognition by the high court that the arbitrator dismissed the claim in its entirety, ie the whole of the globular amount, 'without traversing the claims under each agreement'.

[19] In these circumstances, so went the argument, the arbitrator committed a gross irregularity in the conduct of the arbitration proceedings as contemplated in s 33(1)*(b)* of the Act. This, in turn, clouded the arbitrator's mind resulting in him misconducting himself in relation to his duties as arbitrator as envisaged in s 33(1)*(a)* of the Act.

Statutory framework

[20] In pursuit of the relief it sought in the high court, and before us on appeal, OCA Testing invoked s 33(1) of the Act. To the extent relevant for present purposes s 33(1), which is headed 'setting aside of award, provides as follows:

'(1) Where –

(a) any member of an arbitration tribunal has misconducted himself in relation to his duties as arbitrator . . .; or

(b) an arbitration tribunal has committed any gross irregularity in the conduct of the arbitration proceedings or has exceeded his powers; or

(c) . . .;

the court may, on the application of any party to the reference after due notice to the other party or parties, make an order setting the award aside.'

[21] I consider it convenient at this juncture to deal first with the current state of the law relating to the considerations that bear on the circumstances in which a court will come to the aid of a party relying on s 33(1) of the Act. Section 33(1) has been considered, albeit briefly, in many judgments of this Court and others. Some of the cases were analysed by Harms JA in *Telcordia Technologies Inc v Telkom SA Ltd*[4] (*Telcordia*). In para 72, Harms JA cited a passage from the judgment of Mason J in *Ellis v Morgan*; *Ellis v Desai*[5] (*Ellis*) in which the position was succinctly stated as follows:

'But an irregularity in proceedings does not mean an incorrect judgment; it refers not to the result, but to the methods of a trial, such as, for example, some high-handed or mistaken action which has prevented the aggrieved party from having his case fully and fairly determined.'

[22] In the course of his judgment, Harms JA also referred to *Goldfields Investment Ltd v City Council of Johannesburg*[6] (*Goldfields)*, stating that an arbitrator misconceives the nature of the inquiry in instances where he or she fails to perform his or her mandate. And '[b]y misconceiving the nature of the inquiry a hearing cannot in principle be fair because the body fails to perform its mandate.'[7]

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[4] *Telcordia Technologies Inc v Telkom SA Ltd* [2006] ZASCA 112; 2007 (3) SA 266 (SCA) (*Telcordia*).

[5] *Ellis v Morgan; Ellis v Desai* 1909 TS 576 at 581.

[6] *Goldfields Investment Ltd v City Council of Johannesburg* 1938 TPD 551 at 560-561 (*Goldfields*).

[7] *Telcordia* para 73.

In *Goldfields* Schreiner J was forthright when he, with reference to *Ellis v Morgan,* said:

'. . . it is not merely high-handed or arbitrary conduct which is described as a gross irregularity; behaviour which is perfectly well-intentioned and *bona fide*, though mistaken, may come under that description. The crucial question is whether it prevented a fair trial of the issues. If it did prevent a fair trial of the issues then it will amount to a gross irregularity.'[8]

[23] In *Palabora Copper (Pty) Ltd v Motlokwa Transport and Construction (Pty) Ltd*[9] (*Palabora Copper*), this Court reiterated that where 'an arbitrator engages in the correct enquiry, but errs either on the facts or the law, that is not an irregularity and is not a basis for setting aside an award.'[10] This is in keeping with the abiding principle that whenever parties elect to resolve their disputes through arbitration courts must defer to the parties' choice and not lightly intervene.[11]

Analysis

[24] I have already dealt with what is at issue in this appeal and how the arbitrator went about in arbitrating the dispute between the parties. It suffices to emphasise that there was no dispute about the amounts arising out of the second and third agreements. And allied to that was the arbitrator's finding that KCEC Engineering's defences to those two agreements are unsustainable. Yet, nowhere in his award did the arbitrator revert to the question as to what the fate of the amounts arising from the second and third agreements should be.

[25] In addressing this aspect in its judgment, the high court stated:

'[T]here is no doubt that the whole claim of R2 603 729.44, inclusive of the claims under the three agreements, is dismissed, with all claims under each agreement having been separately considered.'

And that:

[8] *Goldfields* at 560.
[9] *Palabora Copper (Pty) Ltd v Motlokwa Transport and Construction (Pty) Ltd* [2008] ZASCA 23; [2018] 2 All SA 660 (SCA) (*Palabora Copper*).
[10] Ibid para 8.
[11] *Clark v African Guarantee and Indemnity Co Ltd* 1915 CPD 68 at 77; *Lufuno Mphaphuli and Associates (Pty) Ltd v Andrews and Another* [2009] ZACC 6; 2009 (4) SA 529 (CC) para 219.

'[B]y addressing the defences to the claims under the second and third agreements, the [arbitrator] did consider their merits and came to the conclusion that they too are to be dismissed.'

And, with reference to *Palabora Copper*, concluded that no irregularity is committed by an arbitrator who 'engages in the correct enquiry, but errs on the facts or the law.' Consequently, the high court held that there would be no basis for setting the award aside.

[26] This then raises the question whether the arbitrator engaged in the correct enquiry in the context of the facts of this case. If this question is answered in the affirmative, that would be the end of the matter. However, if not, intervention by this Court would be warranted.

[27] What compounds matters in this case is that the arbitrator found that KCEC Engineering's defences in relation to the second and third agreements were devoid of merit. Insofar as the counter-claim was concerned, it was dismissed. Yet, the arbitrator inexplicably dismissed the residue of the globular amount claimed when he had already found that there was nothing standing in the way of an award in respect of those amounts relating to claims 2 and 3 being made in favour of OCA Testing. That the arbitrator did not do so manifests a lack of appreciation on his part of the fact that OCA Testing's globular claim comprised three components. This, in my view, is a typical case of an arbitrator having 'committed [a] gross irregularity in the conduct of the arbitration proceedings' as contemplated in s 33(1)*(b)* of the Act. Reflecting on the sentiments of Schreiner J in *Goldfields*, the crucial question is whether the arbitrator's conduct prevented a fair trial of the issues.

[28] That the arbitrator did not determine the fate of the residue of the globular amount claimed, after having dismissed the claim in respect of the first agreement, ineluctably leads me to conclude that his approach to the matter 'prevented a fair trial of the issues.' Simply put, the arbitrator was here called upon to decide whether OCA Testing was entitled to any monies representing amounts flowing from the second and third agreements. In short, the arbitrator simply did not direct his mind to the crucial question whether OCA Testing was entitled to the residue of the globular amount claimed, ie R2 603 729.44 less the amount of R142 002.46 in respect of the first agreement. Had he dealt with the amounts flowing from the

second and third agreements, his award would have been immune from impeachment under s 33(1) of the Act even though he may have been wrong on the facts or the law.

[29] As it emerges from the record, the tenor of the arbitrator's underlying reasoning makes it plain that he was alive to the fact that the total amount of R2 603 729.44 was made up of three components arising from three different agreements. To illustrate this point, the arbitrator said:

'[T]he amount of R142 002.46, is claimed by the claimant in respect of the first agreement. The amount of R2 355 767.05, is claimed in respect of the second agreement. The amount of R276 744.00, is claimed in respect of the third agreement.'

[30] And having analysed KCEC Engineering's defence in respect of the sum of R142 002.46, he concluded, as already mentioned, that OCA Testing had committed a material breach of the first agreement. Consequently, so the arbitrator held, OCA Testing was not entitled to payment, and its claim for R142 002.46 fell to be dismissed.

[31] However, what then followed was that the arbitrator inexplicably dismissed the claim in its entirety without, for once, engaging in any analysis in regard to the legitimacy or otherwise of the amounts claimed pursuant to the second and third agreements. That OCA Testing had elected to claim a composite amount combining three separate agreements was beyond question and the arbitrator, too, was cognisant of this fact. Thus, in failing to address the residue of the claim, just as he had done with the component of the claim flowing from the first agreement, the arbitrator effectively closed off his mind to the fundamental question that he was called upon to answer, namely whether OCA Testing's claim for the residual amount – that had its genesis in the second and third agreements – was sustainable. In my view, this omission prevented a fair trial of the totality of the issues and therefore amounts to a gross irregularity.

[32] In summary therefore, I am satisfied that OCA Testing has established that there is good cause to remit the dispute to a new arbitrator. As I have already found, this must be so because the arbitrator in this matter failed to deal with all the

issues that were before him.[12] As already indicated, we are here not dealing with a situation where the arbitrator got it horribly wrong without more, in which event there would have been no basis to disturb the award. Rather, he simply overlooked some of the crucial issues that he was required to determine.[13] Section 28 of the Act explicitly provides that absent an agreement between the parties to the contrary, an award shall, subject to the provisions of the Act, 'be final and not subject to appeal and each party to the reference shall abide by and comply with the award in accordance with its terms.'[14] And as Harms JA forcefully put it: '[A]n arbitrator "has the right to be wrong."'[15] Consequently, where an arbitrator errs in his or her interpretation of the law or analysis of the evidence that would not constitute gross irregularity or misconduct or exceeding powers as contemplated in s 33(1) of the Act.[16]

Should the arbitrator be substituted?

[33] Counsel for OCA Testing urged upon us that in the event of this Court upholding the appeal, we should review and set the arbitral award aside to the extent that it dismissed the claim in its entirety. Thereafter, the dispute should be remitted for re-consideration by a new arbitrator. Motivating for the substitution of the erstwhile arbitrator, counsel argued that given the fundamental irregularity committed by the arbitrator OCA Testing has lost confidence in him. Therefore, so the argument went, the interests of justice strongly militate against the remittal of the matter to the same arbitrator. Rather, they dictate that someone entirely divorced from the atmosphere of the abortive hearing would be ideally suited to determine the issues afresh without his or her mind being clouded by the dust of the previous conflict.

[34] There is much to be said for counsel's contentions although the proposed course raises the spectre of a re-hearing of the dispute with its attendant expense.

[12] See in this regard *South African Forestry Co Ltd v York Timbers Ltd* [2004] ZASCA 72; 2003 (1) SA 331 (SCA) para 14.
[13] Compare: *Kolber and Another v Sourcecom Solutions (Pty) Ltd and Others*; *Sourcecom Technology Solutions (Pty) Ltd v Kolber and Another* 2001 (2) SA 1097 (C).
[14] Section 28 reads: Unless the arbitration agreement provides otherwise, an award, shall, subject to the provisions of the Act, be final and not subject to appeal and each party to the reference shall abide by and comply with the award in accordance with its terms.
[15] See para 21 above for the full citation.
[16] See: *Doyle v Shenker and Co Ltd* 1915 AD 233 at 236-238; *Administrator, South West Africa v Jooste Lithium Myne (Eiendoms) Bpk* 1955 (1) SA 557 (A).

However, on balance I am persuaded that this is the route to take to ensure that justice is not only done but also manifestly seen to be done. In any event, s 33(4) of the Act provides that '*[i]f the award is set aside the dispute shall, at the request of either party, be submitted to a new arbitration tribunal constituted in the manner directed by the court.'* (My emphasis.)

[35] As to how the re-hearing of the dispute is to be conducted, that is a matter entirely to be determined by the new arbitrator. No doubt his or her approach will be informed by whatever submissions or representations the parties themselves may advance. If deemed convenient and practicable, the new arbitrator could, for example, determine the remaining issues between the parties on the recorded evidence without relying on the findings of the previous arbitrator, particularly so, if it is thought that the assessment of the demeanour of the witnesses who testified is not essential for a proper determination of their credibility. But, ultimately, these are all issues that fall squarely in the remit of the new arbitrator.

Relief

[36] This brings me now to the form of relief to be granted to OCA Testing in the light of the conclusion reached above that the arbitrator committed a gross irregularity. The award comprised two parts, the first part was a dismissal of OCA Testing's claim in its entirety. The second was a dismissal of KCEC Engineering's counter-claim. The latter part does not feature in this appeal, presumably because KCEC Engineering accepted the outcome of its counter-claim.

[37] In *Polabora Copper* this Court was confronted with a situation where only part of the award was found to be bad. The question then arose as to whether s 33(1) of the Act solely contemplates the setting aside of an award in its entirety or also countenances interference with only part of the award that is vulnerable to impeachment. After surveying various legal sources and seeking guidance from foreign jurisdictions, this Court concluded that '[t]here does not appear to be any sound reason why an arbitration, that has been properly conducted on certain issues and properly determined those issues, should be set aside in its entirety, because of an irregularity in relation to a wholly separate issue.'[17]

[17] *Palabora Copper* para 48.

[38] Here the issue is clear-cut. The portion of the arbitrator's award that has been impeached by OCA Testing relates to a part of the main claim and does not affect the counter-claim. The fact that OCA Testing has accepted its fate in relation to a minor portion of its claim (ie R142 002.46) does not, by parity of reasoning, detract from this principle. Accordingly, paragraph 1 of the award falls to be set aside albeit only to the extent that it relates to the amounts arising from the second and third agreements.

Costs

[39] There remains the issue of costs to address. Counsel for OCA Testing asked for costs of two counsel in the event that the appeal is upheld. In my view the appropriate order to grant in relation to costs is that there be no order as to costs. It goes without saying that where a litigant seeks costs against its adversary in the event that the application is opposed, there should be no order as to costs where the adversary has not opposed the application but, instead, elected to remain supine. This is precisely what happened in this case. In these circumstances, OCA Testing is not, in the absence of opposition, entitled to costs both in this Court and the high court.

[40] In the result the following order is made:

1 The appeal is upheld with no order as to costs.

2 The order of the Gauteng Division of the High Court, Johannesburg, is set aside and in its place is substituted the following order:

'1 The application to set aside the award insofar as it relates to the amounts claimed in respect of the second and third agreements succeeds.

2 The dispute between the parties in relation to the residue of the claim arising from the second and third agreements is to be submitted to a new arbitrator to be agreed between the parties within 20 days of this order and, failing such agreement to be appointed by the Arbitration Foundation of South Africa.

3 No order as to costs is made.'

X M PETSE
ACTING PRESIDENT
SUPREME COURT OF APPEAL

APPEARANCES

For the appellant:	B L Skinner SC (with I Veerasamy)
Instructed by:	Pather & Pather Attorneys, Durban
	Kramer Weihmann Attorneys, Bloemfontein
For the respondents:	No appearance