



**IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG**

Not Reportable

Case No: 2024-112730

In the matter between:

**OOSTLAND BOERDERY CC**

**Applicant**

and

**DEPARTMENT OF EMPLOYMENT AND LABOUR  
FREE STATE**

**First Respondent**

**SAME DIPHOKO N.O.**

**Second Respondent**

**COMMISSION FOR CONCILIATION,  
MEDIATION AND ARBITRATION**

**Third Respondent**

**Heard: 17 October 2024**

**Delivered: 22 October 2024**

**This judgment was handed down electronically by emailing a copy to the parties. The 22<sup>nd</sup> of October 2024 is deemed to be the date of delivery of this judgment.**

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**JUDGMENT**

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**ITZKIN, AJ**Introduction

- [1] The applicant has approached the court on an urgent basis seeking an order directing the second respondent to produce certain rulings (with reasons) in writing within five days, and directing that arbitration proceedings under case number FSBF 1470-24 be stayed pending the outcome of a review application which the applicant intends to launch in relation to those rulings.
- [2] The application stems from a compliance order made against the applicant which culminated in arbitration proceedings being convened before the Commission for Conciliation, Mediation and Arbitration (CCMA), during which certain unreasoned verbal rulings were made by the second respondent on 26 July 2024.
- [3] Those rulings pertained to the following issues:
- 3.1 Non-compliance with a directive issued by the second respondent pertaining to holding a pre-arbitration conference;
  - 3.2 The appointment of a Senior Commissioner in terms of section 137 of the Labour Relations Act<sup>1</sup> (LRA);
  - 3.3 A postponement application;
  - 3.4 Jurisdiction regarding employees; and
  - 3.5 Legal representation.
- [4] The application is unopposed.
- [5] I am satisfied that the application ought to be entertained on the urgent roll. The applicant seeks the rulings (and reasons) in order to launch a review application in the context of pending arbitration proceedings, and if the

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<sup>1</sup> Act 66 of 1995.

application was to be brought in the ordinary course, the applicant would not be afforded substantial redress. There is also no indication that the departure from the ordinary rules, and the abridging of time-periods, has resulted in any prejudice to any of the respondents.

### Evaluation

- [6] There are two aspects of this application which are to be distinguished.
- [7] The first pertains to the prayer seeking written rulings (with reasons) in respect of the matters on which verbal rulings were made on 26 July 2024.
- [8] The second pertains to the stay of the arbitration proceedings pending the outcome of a review application, which is intended to be launched after those written rulings are obtained.
- [9] With reference to the first issue, the applicant has made multiple requests to the CCMA for the written rulings, which have not been produced.
- [10] In terms of section 33(2) of the Constitution, “[e]veryone whose rights have been adversely affected by administrative action has the right to be given written reasons”.
- [11] Section 138(7)(a) of the LRA provides that commissioners are obliged to provide ‘brief reasons’ for their awards. Although the section refers to awards and not to rulings, this obligation has been held to extend to interlocutory rulings made by the CCMA.<sup>2</sup>
- [12] The obligation to furnish reasons is important because as was held by the Labour Appeal Court in *National Union of Mineworkers and another v Rustenburg Platinum Mine (Mogalakwena Section) and others*,<sup>3</sup> the

<sup>2</sup> See: *Afrox Ltd v Laka and others* [1999] 5 BLLR 467 (LC) at para 23. See also: *Ndokweni v Game Stores and others* [2001] 6 BLLR 643 (LC) at para 21.

<sup>3</sup> [2015] 1 BLLR 77 (LAC) at para 29.

furnishing of reasons underpins the accountability of commissioners and is important to achieve and sustain transparency, accountability and openness.

[13] At a practical level, rule 37(6) of the Rules regulating the conduct of the Proceedings of the Labour Court provides that “[t]he award or ruling that is sought to be reviewed must be annexed to the affidavit”. Counsel for the applicant argued that the effect of this rule is that the applicant requires the written rulings in order to launch its intended review application.

[14] Given the obligation to furnish reasons and the requirement in rule 37(6), the second respondent ought to produce the relevant rulings (with reasons) in written form.

[15] With reference to the prayer for the CCMA proceedings to be stayed pending the review application, the written rulings (with reasons) have not been produced yet, and there is no review application thereon currently pending, from which it follows that it is premature to seek such an order. It would also be premature to make a determination, at this stage, regarding whether it would be just and equitable, for purposes of section 158(1B) of the LRA, to review the rulings in issue.

[16] In the circumstances the following order is made:

#### Order

1. The non-compliance in respect of service, forms and prescribed time-periods in terms of rule 38 is condoned, and the application is entertained as an urgent application.
2. The second respondent is directed to provide the applicant, within 14 days of this order, written rulings (with reasons) for the verbal rulings issued on 26 July 2024 pertaining to the following issues:

- 2.1 Non-compliance with a directive issued by the second respondent pertaining to holding a pre-arbitration conference;
  - 2.2 The appointment of Senior Commissioner;
  - 2.3 The postponement application;
  - 2.4 Jurisdiction regarding employees; and
  - 2.5 Legal representation.
3. There is no order as to costs.

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R. Itzkin  
Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant : EG Lubbe

Instructed by : Symington De Kok Attorneys

For the Respondent s: No appearance.

LABOUR COURT