**IN THE REPUBLIC OF SOUTH AFRICA**

**THE HIGH COURT OF SOUTH AFRICA**

**(GAUTENG DIVISION, PRETORIA)**

(1) REPORTABLE: NO/YES

(2) OF INTEREST TO OTHER JUDGES: NO/YES

(3) REVISED.

(4) Signature 21/02/2020. Date

**CASE NO: 3519/17**

**CASE NO: 21816/17**

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| **LYDIA ANNA VAN DER MERWE** | **1ST APPLICANT** |
| **RUSSEL JOHANNES VAN DER MERWE** | **2ND APPLICANT** |
| **ELIZABETH SNOW HOLTZHAUSEN** | **3RD APPLICANT** |
| **And** | |
| **BEVCON MANAGEMENT SREVICES (PTY) LTD** | **1ST Respondent** |
| **ADVOCATE JOHAN PRINSLOO** | **2ND Respondent** |

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**JUDGMENT**

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**KHUMALO J**

[1] The Applicants, Mrs L A van der Merwe and Mr R J van der Merwe, who are husband and wife, 1st and 2nd Applicant, respectively and Ms E S Holtzhauzen, the 3rd Applicant, seek an order in terms of Rule 53 of the Uniform Rules of Court, reviewing and setting aside an arbitration award that was granted by the 2nd Respondent on 17 November 2016 in favour of the 1st Respondent and dismissing their counterclaims.

[2] The 1st Respondent is a building construction company. It was contracted to the Applicants to built or erect a residence and effect alterations on their stand in Benoni. In these proceedings the 1st Respondent is represented by their director Brian Robert Houghton who has deposed to its Answering Affidavit.

[3] The 2nd Respondent is cited in his capacity as the Arbitrator who presided over the Arbitration Hearing (referred to herein as the "Arbitrator") and whose decision the Applicants are seeking to review. No order is sought against the Arbitrator and he is not opposing the Application.

[4] The 3rd Applicant is the 1st Applicant's mother in law. She together with the 1st and 2nd Applicants signed the building contract dated 4 December 2013 that is now a subject of contention.

**Background Facts**

[5] In September 2014, nine (9) months after signing the contract, nearly at the end of the contract, the Applicants took occupation of the building. Subsequently a dispute arose between the parties. They agreed to send the matter for arbitration for adjudication as per terms of their contract. The 2nd Respondent an advocate of five years' experience was appointed by agreement between the parties to preside over the proceedings. The terms of arbitration were then concluded.

[6] The 1st Respondent had sought in his application for arbitration:

> [6.1] as Claim 1, compensation for certain **extras and variations** with regards to **certain materials and fixtures**, which were alleged to have been done on the instructions of the 1st Applicant amounting to R452 976.00.
>
> [6.2] as Claim 2. Compensation for alleged enrichment in the amount of R312 451.00.

[7] On the other hand the Applicants filed a counterclaim for:

> [7.1] Rental Expenditure amounting to R50 000.00
>
> [7.2] Payment for various expenses
>
> [7.3] Alleged bad workmanship by the 1st Respondent which totals R957 478.00

[8] The Arbitrator upheld 1st Respondent's Claim 1 and in Claim 2 he only granted an order for 2 amounts that totals R27 815.00 plus interest. The Applicants' Counterclaim was dismissed.

[9] The award was to be complied with within 30 days from the date of the award, that is 17 November 2016. As a result of no payment forthcoming from the Applicants, the 1st Respondent applied in terms of s 31 (1) of the Arbitration Act 42 of 1965 ("the Act") for the award to be made an order of court which was opposed by the Applicants who indicated their intention to bring an Application in terms of section 32(2) of the Act for Review of the Award. They consequently applied for the suspension of the s 31 (1) Application until after they have filed their Review Application. On 29 March 2017, the Applicants proceeded to launch their Review Application. The 1st Respondent's s 31 (1) Application was subsequently pended to be heard simultaneously with the Review

Application, in the event the matter is decided in favour of the 1st Respondent. Both Applications are therefore before me.

[10] It is the Applicants' contention that the award is reviewable as it **was improperly obtained** and also as **there was gross irregularities committed by the Arbitrator during the arbitration proceedings.**

**Failure to administer an Oath on the witnesses**

[11] The Applicants allege that:

[11.1] the evidence of the witnesses was not given under oath, that even though reference to an oath was made it was never administered. The witnesses only confirmed having no objection to taking an oath and to consider it binding on their conscience. As a result their evidence that was not sworn to has no bearing on the decision of the Arbitrator. The total proceedings therefore constitute a gross irregularity.

[11.2] the Arbitrator failed to apply the laws of evidence, the Supreme Court Act and the Uniform Rules of Court as agreed to be applicable to the dispute.

**On 1st Respondent's Claims) (lack of supporting documents)**

[11.3] The arbitrator granted the award for Claim 1 **finding that the 1st Respondent has proven the quantum of its claim, without the discovery and production of the necessary invoices, slips, proof of payments and bills of quantities for the materials and fixtures in relation to extras and variations** claimed in Claim 1 in order to substantiate the Claim. (No documentary evidence to substantiate its claim).

[11.4] As a result, the Arbitrator failed to apply the laws of evidence to the quantum of the 1st Respondent's claim, therefore the granting thereof constitutes a gross irregularity.

[11.5] In addition, the 1st Respondent's claims were granted without certificate of final completion being issued or the date of final completion being established, **whereupon any summons or statement of claim issued for payment by the Respondent would be premature and without a cause of action. Certain snaglists were not yet completed.**

On Applicant's claim and defence **(Decision based on Lateness of enquiries/claims or contentions)**

[11.6] The Applicants' defence was not fully and or fairly determined in that:

[11.7] **The arbitrator never determined or confirmed the completion date,** yet rejected Applicant's claims as well as the evidence of the experts appointed by the Applicants on the basis that they fell outside the **timeframe envisaged in Clause 13 of the agreement,** contrary to his finding that the experts reports fall outside the time periods as set out in the contract for which any defects should be attended to /made mention of or notice to be given to the Claimant.

Clause 13 reads:

13.1 The contractor shall at its own cost

**13.1.1 Make good any defects in the workmanship and materials which may have manifested themselves during a period of three (3) months from the Completion Date and any damage to the works resulting from the materials or workmanship.**

13.1.2 Carry out such repairs and or to make such replacement as may be necessary to eliminate roof leakages which may have manifested themselves during the period of twelve months from the **Completion Date** and ensure that rain water is properly discharged from the roof and diverted away from the building.

13.1.3 Carry out such works and repairs as may be necessary to rectify any material structural failure of foundations, brickwork and structural timbers, which many have manifested themselves during a period of five years from **Completion date** which undertaking may not be ceded or transferred by the Customer.

13.1.4 The contractor shall forthwith upon receipt of written notice of the defect commence the work required to be performed to remedy the defect and shall complete the same within a reasonable period.

**13.1.5 The contractor shall be absolved and relieved form the obligations in terms of 13.1 if the customer fails to give the Contractor notice in writing by registered post, within 21 days of the expiry of any of the said periods of three months, twelve months or five years, as the case may be. Provided nothing in this clause 13 shall be construed to restrict or eliminate in any way the Contractor's liability for any defects or insufficiencies in the works or materials which a reasonable examination would not have disclosed.**

**Clause 12.3 reads:**

**12.3. The works shall be deemed to have been completed on the date (hereinafter referred to as "the Completion Date") stated in a certificate by the bank or an architect or designer appointed by the Bank, that there has been practical completion of the works, subject to completion of any outstanding minor works which may be listed in such certificate, and subject to the Contractors obligations in terms of clause 13.**

[12] **Applicants therefore argue that as it can never be found that completion took place in terms of the building agreement, the granting of the 1st Respondent's claims and rejection of the Applicants'** without establishing the completion date or referring to evidence which confirms the completion date, constitute a gross irregularity. **Furthermore that the completion date has yet to arise** nor was

it ever communicated to the Applicants and therefore not aware when complaints expired. The 1st Respondent had admitted that the certificates including the occupation certificate were never provided to the Applicants.

[13] The Arbitrator held that the payments made by the Applicants indicate that they were fully aware of the payments being due, contrary to clause 11.6 that states that "No payments made in respect of work done and materials supplied shall constitute an acceptance by the **Customer of the adequacy or sufficiency thereof**" and thereafter finding the enquiries made thereafter to be farfetched and too late or due to the duration of time.

[14] The Applicants also found it to be a gross irregularity for the Arbitrator to have concluded that the Applicants were not entitled and had no legal basis to request vouchers from the 1st Respondent, despite the agreement giving the Applicants the right to do so.

[15] **They allege that no evidence was led on compliance by the 1st Respondent with clause 12.3. Further that, without a completion date the Arbitrator ruled that the defects raised fell outside of clause 13.1**. Also that the Applicants were out of time, thereby claiming that their claims arose 3 months after the Completion Date, when **the occupation certificate was not properly obtained from the Ekurhuleni Municipality** and ought not to have been relied upon. No certificate as contemplated in clause 13.3 was provided for the satisfactory attendance to the snaglist by the Contractor and therefore completion never established.

**Improperly obtained award Reliance on Invalid Certificates**

[16] The Applicants allege that;

[16.1] **the Engineer Compliance Certificate relied upon during arbitration proceedings and accepted by the Arbitrator as authentic is** fraudulent even though it is signed by the Engineer on 30 June 2014 and countersigned by 1st Respondent on 20 February 2015. The document in possession of Ekurhuleni Municipality was **discovered by the Applicants on 25 February 2017** that it is not signed by the 1st Respondent as owner's representative and does not have the Professional Indemnity Insurance Policy Number of the Engineer. Also Engineer Certificate issued after the Occupation Certificate.

[16.2] The Arbitrator rejected a witness' testimony, Mr Ferreria, on the authenticity of the Certificates issued. Mr Ferreira had testified that the Gas Certificate was signed off by a different person from the one that installed the gas, the gas bottles at the house have not been installed properly and gas leaking, the Plumbing Certificate is signed off although there are numerous problems with the plumbing with the owner raising inconsistencies around the house, there is poor storm water drainage at the back of the house. **Applicants allege that failure to take into consideration such integral part of the testimony amounts** to gross irregularity.

[16.3] Further that as the Engineer Completion Certificate remains uncompleted, the completion date never arose. As without it the Completion

Certificate cannot be issued. **The 1st Respondent perjured himself or misled the Arbitrator when he stated that the completion date was September 2014.**

[16.4] The irregularities are very gross in nature and prevented the case from being fully and fairly determined. The evidence of all the experts' witnesses was rejected on the basis of their inspections being out of time of the 3 months completion date.

**Answering Affidavit**

[17] In response thereto, the 1st Respondent raised a technical point *in limine* with regard to the Founding Affidavit which was signed by the 1st Applicant but also carried the full signatures of the two co - Applicants. He contended that the deponent to the affidavit is indicated to be the 1st Applicant and indicating to her singularly deposing to the Affidavit stating that "I the undersigned" but full signature of the three Applicants appear on the line for the deponent. The Commissioner does not indicate which signature his certificate refers to.

[18] On allegations of the Applicants on the merits, the 1st Respondent denies that any irregularities occurred when granting the award. He avers:

**On the administering of the oath**

[19] On administering of an oath – He says he believes that he was under oath and sure all other witnesses too and that the oath was properly administered. During adjournments they were reminded that they were under oath. None of the parties' legal representative objected to how the oath was administered. Whether the oath was properly administered or not, all the evidence had a bearing on the decision of the Arbitrator having been taken into consideration in its totality. Therefore there could not be prejudice suffered by any of the parties. He argues that by the Applicants' alleging that he committed perjury on the occupation date, it means that she admits that the oath was properly administered by the Arbitrator.

**On the 1st Respondent's claim that:**

[20] On its claim the Respondent alleges that:

[20.1] the Arbitration was referred to specific invoices and reliance was also to the spreadsheet which specifically sets out the amounts and corresponds with the invoices that has been discovered. The spreadsheet was provided to the Applicants several times prior to Arbitration.

[20.2] each party was given an opportunity to present its case. The rules and laws in terms of the Uniform Rules of the High Court and the Superior Court Act with regard to evidence as agreed upon were properly applied taking into account that Arbitration Act would still be applicable.

**On completion date**

[21] In respect of the completion date. He avers that:

[21.1] the Applicants moved in on 27 September 2014 and the Certificate of Occupancy was dated 12 November 2014, the experts for the Applicants only examined and reported the property about or more than a year thereafter when

the contract made it clear that the defects are to be reported within three months of completion so the delay was out of the time frame in clause 13.

[21.2] The evidence presented during arbitration was that the date to be considered was either the **date of occupation or date of issue of the occupancy certificate. Applicants' Counsel also made a submission that the date of the Occupancy Certificate had to be considered as the date of completion.**

[21.3] **The Applicants had three (3) months after completion of the work to submit a snag list. The fact that a snag list was submitted shows that the parties had considered the building works to be completed**, also that the parties were aware of such completion. The issue outstanding on the snaglist had no bearing on the fact that the completion date had already occurred.

[21.4] 1st Respondent takes note that it admitted that the certificates including the Occupation Certificate were never provided to the Applicants, **but explains that this was due to the fact that final payment was not yet made** and denies that the completion date never arose.

[21.5] **There was no cause nor was any further agreement canvassed during the arbitration proceedings that payment would only be due after the certificate of final completion**. The 1st Respondent has incurred the costs and entitled to payment.

[21.6] He admits to the contents of clause 12.3 however **denies that the Arbitrator was tasked with the determination of the completion date**, and that it was necessary for the purpose of arbitration. **The evidence of both parties was that it was either date of occupation or date of occupancy certificate.**

[21.7] it is not correct that the evidence about there being no Certificate issued by the designed persons in terms of clause 13 was never led during the arbitration proceedings**, the Applicants instead put before the arbitrator that the completion date was at date when the occupancy certificate was issued which was admitted by the 1st Respondent.**

[21.8] it is not correct that the snaglist /obligations were never completed, the Applicants made it impossible for him to fulfill the remainder of their obligations.

[21.9] it is not correct that the completion date was never established or never arose. **The Applicant's advocate had stated that they had to go on the Occupancy Certificate. Even their expert testified that "the completion date is on the day that you complete the work and all the certificates are issued and you have got an Occupancy Certificate." 1st Respondent never responded when asked about the completion date as the Applicants had already taken occupation when the enquiry came.**

[21.10] it is not correct that the Arbitrator was to make a finding with regard to completion date **but it is the Applicant herself that stated that the reports fell outside the correct time periods to report defects**. The completion date was therefore determined. Since the Occupation Certificate was issued, therefore **the date of occupancy was confirmed**. Evidence was also led with regard to

Completion date and submissions made. Date of Occupancy sufficiently confirmed.

[21.11] **it is not correct that the Arbitrator found the Completion Date to have arisen without saying when and then ruled that the Applicants were out of time in terms of their claims as per clause 13.1.1. The 1st Applicant herself had determined that their report was out of time and therefore Arbitrator finding in line with the Applicant's evidence as well as that of the 1st Respondent.** The reports were also out of time not only with few days but months, so the Arbitrator did not need to make a ruling thereon. The claims were out of the time frame to report defects due to the fact that the Applicants did not give notice of such defects within the required time period and therefore such claim had lapsed. The Applicants only reported defects before the Arbitration proceedings which **the arbitration had to deal with, both parties agreed it was only the snaglist** and the Occupation date did arise and certificate of occupation issued.

[21.12] the authenticity of the Occupancy Certificate was never raised and no witness from the Municipality was called to testify on its authenticity, but only that the certificate used to obtain occupancy was not proper. With regards to other Certificates issued, the issuer of the Certificate is responsible for it as confirmed by the Applicants' witness.

[21.13] Reference to the Housing Consumer Protection Measures Act was referred to during argument but not whilst presenting evidence.

[21.14] **the issue raised by the Applicants' that it was wrong of the Arbitrator to reject their claim when a certificate of final completion had not been issued or date of final completion not having been established** is not a review issue as it was never raised by the Applicants during the Arbitration proceedings. **The outstanding payments were with regard to variations to the contract where the Applicants would choose fixture or materials over and above the cost or quantity as quoted and would be paid as soon as possible. The Applicants even undertook to pay after the 1st Applicant received funds from a pending deal.** There was no agreement that this would be payable at the occurrence of any event. Therefore summons not premature.

[21.15] **The Applicants were aware of the Completion date and date of submission of defects reports as they had already submitted their snaglist. He admits that the Certificate including the Occupation Certificate were never provided to the Applicants as the Applicants had refused to make payment of the outstanding amount owed to the 1st Respondent.** With regard to Applicants allegations that the Arbitrator established that the snaglist that consists of small things was provided to the 1st Respondent in December 2014 and accepted the 1st Respondent's testimony that snaglist incomplete as attended to until there was breakdown of communication. It can therefore never be found that completion took place in terms of the building agreement. He says that Applicants' own witness who used to work for the 1st Respondent had testified that he had completed all items on the snag list. Also the items on the snaglist are dealt with after completion date had arrived.

[21.16] The payment of the 1st Respondent's fees was not dependent on the completion date or upon certain certificates being issued therefore there was no gross irregularity in granting the 1st Respondent's claim. With regards to Applicant's claim all parties agreed that there was only one snaglist to which the arbitration had to deal with. The fact that there was a snaglist indicate that the Applicants were aware of the completion date as a snaglist follows a completion date. The Applicants' claim does not deal with the snaglist but new items which were not reported to the 1st Respondent in terms of clause 3.

[22] The occupation certificate can only be obtained once all the necessary compliance certificates have been submitted.

[23] The information on Mr Blyth was not raised at the arbitration proceedings and therefore inappropriate for the Applicants to raise it now and no confirmatory Affidavit was filed by him. Mr Ferreira does not work for the Municipality and would therefore not have the necessary information or knowledge of the reasons why an occupancy certificate had not been issued. He did not issue the Occupancy Certificate. The Certificate stands as long as it is not retracted. Also as long it is not found to be invalid or fraudulent it remains valid and used to determine completion date.

[24] **The document the Municipality alleges to have and AB10 was never discovered or produced at the arbitration proceedings therefore its authenticity never tested under cross examination.** Since this is a review of a decision taken on 17 November 2016, the allegations made are therefore after the facts. The applicant is attempting to introduce new evidence. The experts report fell out of the relevant time periods. The Arbitrator allowed the Applicants the opportunity to set out their case fully and in doing the matter was fully and fairly determined.

**Applicant's Reply**

[25] The Applicants persists with its opposition to the administering of an oath. They argue that what had happened is not condonable. The evidence was not under oath, therefore of no value.

[26] In relation to the invoices they were also unwavering in their contention that no invoices were submitted and therefore there was no evidence that led/justified granting of Claim 1. They argue that the spreadsheet is not enough proof in a building dispute where the amount claimed is placed in dispute, it has got no probative or evidential value without evidence having been led on the source document. The Applicants also allege that the Arbitrator's finding with regard to 1st Respondent's claim is incorrect. The vouchers and proof of expenses was sought and never supplied. The spreadsheet was queried before the Arbitration.

[27] Furthermore they allege that it is evident from Blyth's Affidavit filed with the Supplementary affidavit that Houghton committed fraud and intentionally misled not only the Applicants but also the arbitrator, which constitute the most gross of reviewable irregularities.

[28] **The Applicants deny that the completion date was agreed to be 12 November 2014.** The 1st Applicant indicates that when she asked Houghton about completion date she never got an answer. The date was disputed as was confirmed by

the 1st Respondent's Counsel. The 1st Respondent's worker also could not confirm the date.

[29] The Applicants deny that the snaglist is sufficient proof that completion took place. Evidence in that regard led by the Applicants has been ignored by the Arbitrator.

[30] The Occupancy Certificate has since been withdrawn by the Municipality that indicates that it is a fraud. It is not only the Applicants who were misled but also the Arbitrator with an invalid or fraudulent Occupancy Certificate as is conformed in Blyth Affidavit. She confirms that the snaglist was within the time limits.

[31] The Applicants argue that the Arbitrator applied the provisions of the contract in a haphazard and inconsistent manner. **They argue that according to the contract payment can only be made after the completion date**. The contract also makes specific reference to the completion date.

[32] Occupation was taken by the Applicants because they had nowhere else to live. The Occupation Certificate was withheld because it was fraudulent or did not exist.

[33] **The Applicants reiterate that the purpose of this Application for review is due to the fraudulent activities of the Respondent in obtaining the Occupational Certificate. The fraud was perpetrated prior and during the arbitration and confirmation of the fraud came to light thereafter**. This is the purpose of the review. Had the arbitrator aware of the fraud the result would have been different. . Therefore submit that valid and substantial grounds exist to justify the review of the arbitration award.

**Signing of Founding Affidavit**

[34] On the proper signing of the Founding Affidavit the 1st Applicant states that she signed as the deponent as indicated on the Affidavit, with the 2nd and the 3rd Applicant signing the Affidavit in error next to her signature after it was already commissioned. The same Commissioner also commissioned the Confirmatory Affidavits. The Commissioner of Oaths and the 2nd and 3rd Applicants have filed Confirmatory Affidavits attesting to the allegations made by 1st Applicant.

**Issues in dispute**

[35] The main issues in dispute are:

[35.1] whether the contentions raised are reviewable issues. If yes

[35.2] whether the arbitrator committed a gross irregularity in granting the 1st Respondent the award for his claim 1 and Part of Claim 2 and /or if it was improperly obtained considering the relevant evidence that was presented or led during the arbitration proceedings.

[35.3] If the Applicants claims were not properly dismissed.

[36] However prior to the main issues, the points *in limine* in relation to the Founding Affidavit raised by the 1st Respondent have to be resolved first. The Applicants have also applied for condonation for their late filing of the Review Application which on

consideration of Counsel's argument and the relevant submissions on Affidavits I have concluded that the principles of justice and fair play demand that condonation be granted.

[37] In relation to the signing of the Founding Affidavit, the provisions of the Regulations on Administering Of Oaths and Affirmations as promulgated in terms of Act 16 of 1963 are discretionary and therefore the court has got a discretion whether or not to refuse an affidavit which does not comply with the Regulations subject to whether or not there has been substantial compliance. I am satisfied with the explanation proffered by the Applicants. It is clear who the deponent of the Founding Affidavit is. The other two signatories to the Affidavit have filed their personal affidavits confirming the contents of the 1st Applicants' Affidavit. I do not believe that the Respondent would suffer any prejudice if the Founding Affidavit is accepted in its form.

**The legal framework on review**

[38] The statutory position that governs the circumstances under which a court can set aside an arbitration award are found in s 33 of the Arbitration Act reads:

> "(1) Where -
>
> (a) any member of an arbitration tribunal has misconducted himself in relation to his duties as arbitrator or umpire; or
>
> (b) an arbitration tribunal has committed **any gross irregularity** in the conduct of the arbitration proceedings or has exceeded its powers; or
>
> (c) an award has been **improperly obtained**,
>
> 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."

[39] In *Lufuno Mphaphuli and Associates (Pty) Ltd v Andrews and Another* 2009 (4) SA 529 (CC) the Constitutional Court at para 235 also held that:

> "... the values of our Constitution will not necessarily best be served by interpreting s 33(1) in a manner that enhances the power of Courts to set aside private arbitration awards. Indeed, the contrary seems to be the case."

[40] The Constitutional Court further held at para 236 that:

> "Courts should be respectful of the intention of the parties in relation to procedure. In so doing, they should bear in mind the purposes of private arbitration which include the fast and cost-effective resolution of disputes. **If Courts are too quick to find fault with the manner in which arbitration has been conducted, and too willing to conclude that the faulty procedure is**

> **unfair or constitutes a gross irregularity within the meaning of section 33(1), the goals of private arbitration may well be defeated."**

[41] If parties choose arbitration, courts endeavor to uphold their choice and do not lightly disturb it; see *Clarke v African Guarantee and Indemnity Co Ltd* 1915 CPD 68 at 77; *Telcordia Technologies Inc v Telkom SA Ltd* 2007 (3) SA 266 (SCA); *Lufuno Mphaphuli & Associates Pty Ltd v Andrews and Another* 2009 (4) SA 529 (CC). The provisions of s 33 were a subject of detailed consideration in *Telcordia* [4] and [5]

[42] **Where an arbitrator for some reason misconceives the nature of the enquiry in the arbitration proceedings with the result that a party is denied a fair hearing or a fair trial of the issues, that constitute a gross irregularity**; see *Ellis v Morgan*; *Ellis v Desai* 1909 TS 576 at 581; *Goldfields Investment Ltd v City Council of Johannesburg* 1938 TPD 551 at 560-561. **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.

[43] The onus of proof in such review proceedings is that Applicant must first prove the existence of the irregularity, and that it was so gross that it was calculated to prejudice him/her, and, only if he/she discharges that onus, then his/her adversary or opponent must satisfy the court that he/she in fact suffered no prejudice. *Hip-Hop Clothing* (*supra*) at 230 D-E. It is therefore upon the Applicants as the party alleging a gross irregularity to establish the irregularity that is so gross to justify a review of the decision. What an irregularity in proceedings mean is according to Ellis at 581 explained as follows:

> "**But an irregularity in proceedings does not mean an incorrect judgment**; it refers not to the result, but to **the method 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.**" (my emphasis)

[44] In Goldfields Investment Ltd v City Council of Johannesburg at p 551 its stated that:

> 'It is not merely high handed or arbitrary conduct which is ascribed as a gross irregularity; behavior 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.** (my emphasis)

## Analysis of the grounds for Review

[45] It is contended by the 1st Respondent that no oath was administered on the witnesses even though reference to an oath was made, therefore the evidence of the witnesses was not given under oath. The witnesses only confirmed having no objection to taking an oath and to consider it binding on their conscience. As a result since their evidence was not sworn to, it has no bearing on the decision of the Arbitrator. The total proceedings therefore constitute a gross irregularity.
1st Respondent argued that each party was given an opportunity to present its case. The rules and laws in terms of the Uniform Rules of the High Court and the Superior Court Act with regard to evidence as agreed upon were properly applied taking into account that Arbitration Act would still be applicable.

[46] Regulation 2 of the Regulations Governing the Administering of an Oath or Affirmation Act as amended provides that:

> (1) Before a commissioner of oaths administers to any person the oath or affirmation prescribed by regulation 1 he shall ask the deponent-
>
> *(a)* whether he knows and understands the contents of the declaration;
>
> *(b)* whether he has any objection to taking the prescribed oath; and
>
> *(c)* whether he considers the prescribed oath to be binding on his conscience.
>
> 2) If the deponent acknowledges that he knows and understands the contents of the declaration and informs the commissioner of oaths that he does not have any objection to taking the oath and that he considers it to be binding on his conscience the commissioner of oaths shall administer the oath prescribed by regulation 1(1).
>
> (3) If the deponent acknowledges that he knows and understands the contents for the declaration but objects to taking the oath or informs the commissioner of oaths that he does not consider the oath to be binding on his conscience the commissioner of oaths shall administer the affirmation prescribed by regulation 1 (2).

[47] In civil matters the Regulations Governing the Administering of an Oath or Affirmation, GN R3619, 21 July 1972 (the regulations) promulgated in terms of s 10 of the Justices of the Peace and Commissioners Of Oaths Act 16 of 1963 are merely directory and not peremptory; see *Absa Bank v Botha NO* 2013 (5) SA 563 (GNP); *S v Msibi* 1974 (4) SA 821 (T) at 830. The court has got a discretion to refuse evidence which does not comply with the Regulations subject to whether or not there has been substantial compliance with the Regulations.

[48] Which had seemed not to be the same in Criminal matters, where it was viewed as peremptory, as evidenced by the provisions of s 163 of the CPA. According to the section the testimony of a witness who has not been placed under oath properly, has not made a proper affirmation or has not been properly admonished to speak the truth as provided for in the Act, lacks a status and character of evidence and is inadmissible"

[49] This was however also reversed in a number of judgments mainly in Wayne Gavin Strong A 265/16 17 September 2018 WCHC where the Appellant had submitted that all of the viva voce testimony presented at the trial was inadmissible relying on the provisions of 162. The witnesses have been sworn as follows *"Do you swear the evidence you are about to give will be the truth, nothing but the truth, so help me God?" Instead of them saying 'I swear that the evidence that I shall give, shall be the truth, the whole truth and nothing but the truth, so help me God'.* The court held that at par 166 that:

> "The reason for evidence to be given under oath or affirmation or for a person to be admonished to speak the truth is to ensure that the evidence given is reliable. Knowledge that a child knows and understands what it means to tell the truth gives the assurance that the evidence can be relied upon. In the present matter the requirement that the witnesses should tell the truth was satisfied by the administration of the oath albeit without the words "the whole truth" included.

[50] The court held further that:

> "In the present matter I have come to the conclusion that "the substance" of the oath which was sworn to by the witnesses, ....., was sufficient to satisfy the requirement of section 162(1) and that the use of the exact words quoted in section 162(1) is not pre-emptory. Conversely the failure to use the exact words quoted in section 162(1) was not sufficient, on its own, to render the evidence of the witnesses unreliable.
>
> "Accordingly, in the circumstances of this case, it seems to me that we should have regard to the evidence given by all of the witnesses. There is, with respect, nothing in their evidence which indicates that they did not take the oath seriously and undertake to tell the truth, or to put it differently, that the omission of the words *"the whole truth"* served in any way to detract from the reliability of their evidence; See also *Cape Sheet Metal Works (Pty) Limited v JJ Calitz Builder (Pty) Limited* 1981 (1) SA 697 (O) at 699A-C"

[51] In the case of *S v Vumazonke* 2000 (1) SACR 619 (CPD), it was argued that the warning to be conveyed to the witness in terms of section 164(1) did not comply with the provisions of that section, in that the words used were not in accordance with the formula, namely "to speak the truth, the whole truth and nothing but the truth." Jali J (with whom Van Zyl J concurred) rejected this argument in the following terms:

> *"[14] It is my view that when a witness is being warned in terms of s 164(1), it was not the intention of the Legislature that exactly the same words should be used as prescribed in s 162(1). If that was the intention of the Legislature it would have been prescribed or conveyed in s 164(1) as in s 162(1), where the words to be used when the oath is administered are quoted. I am saying this without making any finding as to what the failure to use the exact words quoted in s 162(1) would result in.* ***In my view there is no merit in the submission that the oath should be in the same words or form as set out in the Act. It is the substance of what is being said which matters and not the form". (my emphasis)***

[52] In *S v Munn* 1973 (3) SA 734 (NCD), the deponent to an affidavit had signed it before taking the oath. It was accordingly argued that this defect invalidated the affidavit as the oath should first have been administered by the Commissioner of Oaths before the deponent signed the affidavit. **The issue for decision was whether the relevant regulations were peremptory or directory**

[53] The Court at p 736E analysed this issue in the following terms:

> *"An oath is no more than a calling on God to punish you if you say what is not true; and, if it is to be clothed with any efficacy, it can matter little what words or ceremonies are used in imposing it, provided the witness regards his conscience as bound thereby. The purpose of administering an oath - normally before a witness testifies - is to ensure that he does not speak lightly and frivolously, but weighs his words; to impress on him the solemnity of the occasion, and above all to provide a sanction against untruthfulness. Originally the sanction lay solely in fear of deferred punishment by God. This subjective potency of the oath has tended to diminish and been reinforced by the sanction of more immediate punishment by the State, as well as being extended to extrajudicial proceedings by statute. And courts and commissioners of oaths have inclined in modern times to fritter away the effect of the spiritual sanction by administering the oath in irreverent and perfunctory fashion, without giving its theoretical reinforcement effect, by informing or reminding witnesses of the temporal one. See Wigmore, secs. 1815 et seq. The valid criticism of 'the thoughtless, trivial, and degenerate modern practice' by Wigmore, vol VI, p. 295, in all probability led to the promulgation, in terms of Act 16 of 1963, of the new regulations contained in Government Notice R.1258 published in Government Gazette dated 21.7.1972."* AT 736E-737C

[54] The court thereafter concluded that:

> *"In my view both the 1961 and 1972 regulations are directory only and the reasoning in cases such is Ex parte Vaughan, 1937 C.P.D. 279; Mtembu v. R., 1940 N.P.D. 7; and R. v. Sopete, 1950 (3) S.A. 769 (E), irrefutable.*

[55] From the record it is apparent that all the witnesses went through the same procedure prior to them testifying. It is also correct that none of the parties raised the issue of the manner in which the witnesses were being sworn in, which was short of administering the oath itself. Indeed they were reminded as per the 1st Respondent's argument every time they resumed testifying after an adjournment that they were testifying under oath or remain under oath. None of the witnesses or the parties and their legal representatives ever raised a concern if there was any, or tried to stop or bring it to the attention of the Arbitrator, that they regard a witness/es not to be sworn in. Up to the time the Applicant had filed its application for review. The Founding Affidavit does not make reference to such a complaint.

[56] It is also apparent from the record that all the evidence had a bearing on the decision of the Arbitrator having taken the evidence into consideration in its totality. The Applicants had also not made any allegations of unfairness of the process as a result of the shortcomings relating to the oath. It has also failed to indicate having suffered any prejudice. As a result technical objections to less than perfect procedural steps should not be permitted in the absence of prejudice, to interfere with the expeditious and, if possible inexpensive decision of cases, although parties and legal practitioners are not to be encouraged to become slack in the observance of the rules; see *Trans-African Insurance Co Ltd v Maluleka* 1956 (2) SA 273 (A) at 277A-B; and *Rabie v De Wit* 2013 (5) SA 219 (WCC) at 222E-223A.

[57] The crucial question to be asked is whether the technical error prevented a fair trial of the issues. If it did, then it will amount to a gross irregularity. It has not been alleged to have prevented a fair trial of the issues as all the witnesses had believed to have been under oath and have not objected when they were warned that to be the case nor was

there an objection from the legal representatives. The Applicants' have also alleged on the basis of the same evidence that Houghton committed perjury in his testimony on the occupation date, it means that they admit and also believe that the evidence to have been sworn to.

[58] The Appellate Division, as the Supreme Court of Appeal was then known, in *Amalgamated Clothing and Textile Workers Union of South Africa v Veldspun (Pty) Ltd,* [1993] ZASCA 158; 1994 (1) SA 162 (A) at p. 169 C-E, when considering the effect of mistakes made by an arbitrator similarly held that:

> "... it is clear that the word [misconduct] does not extend to *bona fide* mistakes the arbitrator may make whether as to fact or law. It is only when a mistake is so gross or manifest that it would be evidence of misconduct or partiality that a Court might be moved to vacate an award: Dickenson & Brown v Fishers's Executors **1915 AD 166** at 174-81. It was held in Donner v Ehrlich **1928, WLD 159** at 161 that even a gross mistake, unless it establishes mala fides or partiality, would be insufficient to warrant interference."

**On 1st Respondent's Claims) (lack of supporting documents)**

[59] A gross irregularity is alleged to have been committed by the Arbitrator by granting the award for Claim 1, **finding that the 1st Respondent has proven the quantum of its claim, allegedly without the discovery and production of the necessary invoices, proof of payments and bills of quantities for the materials, fixtures for the extras and variations** to substantiate the Claim. As a result, the Arbitrator failed to apply the laws of evidence to the quantum of the 1st Respondent's claim, therefore the granting thereof constitutes a gross irregularity.

[60] The allegation is denied by the 1st Respondent who alleges that the Arbitrator was referred to specific invoices and reliance was also to the spreadsheet which specifically sets out the amounts and corresponds with the invoices that has been discovered. The spreadsheet was provided to the Applicants several times prior to Arbitration. The Appellants denied that such a spreadsheet was sent to them but then again it alleged that it was sent to them a long time ago. The Applicants further alleged that the invoices, slips, receipts or proof of payment for the extras have not been discovered. The principle espoused in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A), becomes relevant and applicable. What is more important is that the Arbitrator in his judgment does confirm that the invoices and spreadsheets were indeed presented to the arbitration, its admissibility debated by the parties and oral evidence considered by the Arbitrator in deciding the matter. I am not required to determine whether or not the award made by the Arbitrator is correct, but only as to whether the process was fair. Did this amount to an unfair hearing. On this aspect it cannot be said of the process.

[61] There is substantial authority that the grounds contained in Section 33(1) of the Arbitration Act are confined to the process that the Arbitrator followed. In *Telcordia Technologies Inc v Telkom SA Ltd* 2007 (3) SA 266 (SCA) it was held that:

> "[50] By agreeing to arbitration parties to a dispute necessarily agree that **the fairness of the hearing will be determined by the provisions of the Act and nothing else.** Typically, they agree to waive the right of appeal, which in

context means that they waive the right to have the merits of their dispute re-litigated or reconsidered."

"[51] Lastly, by agreeing to arbitration the parties limit **interference by Courts to the ground of procedural irregularities set out in s 33(1) of the Act**. By necessary implication they waive the right to rely on any further ground of review, 'common law' or otherwise. If they wish to extend the grounds, they may do so by agreement but then they have to agree on an appeal panel because they cannot by agreement impose jurisdiction on the Court."

[62] From the Judgment on the Arbitration Award it can be read that at the Arbitration proceedings what was presented and was considered by the Arbitrator were 3 invoices and 3 spreadsheets marked E "F" and "G" which are pages 43-50 of the bundle together with the agreement inter alia, clause 4.5. The factual findings made with regard to the interaction between the 1st Applicant and the 1st Respondent when the alterations and extras were commissioned and correlatively attended to also informed the Arbitrator's decision.

[63] On presentation of these documents to the arbitration there was no allegation that they never came to the attention of the Applicant but only that they are disputed. It is only the discussion on the spreadsheets that is denied and the receipt of invoices. However the record does not reflect the Applicants to have sought a ruling to compel the provision of any further documentation or information since the installation of the alterations and the extras were not denied. The Applicants had indeed made a payment already towards the costs. In these circumstances I do not see how the manner in which the matter was conducted can be construed to have resulted in a gross irregularity or to the prejudice of the Applicants. If there are any errors committed by the Arbitrator due to the insufficiency or discrepancy of the evidence that was before him, it can hardly be referred to as a gross error that would be a subject of review. The SCA stated that an alleged irregularity must be of such a nature that it renders the decision reached unreasonable in the circumstances. This is viewed from the context of *Telcordia* where it was held at para 85 that:

"An arbitrator 'has the right to be wrong' on the merits of the case, and it is a perversion of language and logic to label mistakes of this kind as a misconception of the nature of the inquiry".

To illustrate, an arbitrator in a 'normal' local arbitration has to apply South African law but if he errs in his understanding or application of local law the parties have to live with it. If such an error amounted to a transgression of his powers it would mean that all errors of law are reviewable, which is absurd."

[64] As determined in *Volkswagen SA (Pty) Ltd v Koorts NO and others*, 2011 (32) ILJ 1892 (LAC), a reviewing Court is not:

"... legally able to give effect to the parties' requirement that a private arbitrator render an award which is "rational and justifiable, or any other review standard for that matter. Unless the error thus vitiates the award **a review Court is bound to measure the product of private arbitration proceedings against the narrow grounds of review encapsulated in the Arbitration** Act of 1965" at p. 1897 A – C.

[65] Furthermore the Applicants allege that **the 1st Respondent's claims were granted without the certificate of final completion being issued or the date of final completion established,** whereupon any **summons** or statement of claim issued for payment by the Respondent would be **premature** and without a cause of action.

[66] The question of the prematurity of the 1st Respondent's claim 1 was not a subject of contention before the Arbitrator. It did not form part of the Applicants' defence. It therefore cannot form part of the information from which it can be determined whether or not the Arbitrator committed an irregularity. The matter of the Completion date was also not presented to the Arbitrator as an issue that he needed to establish in order to determine the 1st Respondent's Claim 1. The 1st Respondent had not put any reliance on the completion date of the contract as the basis for the due payment of the amount he was claiming. As a result in determining the 1st Respondent's Claim 1 the Arbitrator did not ponder on the date of completion. The Arbitrator instead referred to the relevant clause that deals with extras, variations, alterations and modifications, the allegations of consent of the 1st Applicant, of invoices, statement with spreadsheets of costs that were sent to the 1st Applicant on numerous occasions, together with the part payment and an undertaking to settle the remaining amount which allegations were not responded to but only noted by the Applicants. Therefore the issues raised in relation to this claim fall outside the ambit of a review. The dicta made by Harms JA in *Telcordia* with reference to *Dickenson& Brown v Fisher's Executors* 1915 AD 166 at para 55 is relevant, where he states that:

> *"the general principle that when parties select an arbitrator as the judge of fact and law, the award is final and conclusive, irrespective of how erroneous, factually or legally, the decision was... unless the mistake was so gross and manifest that it could not have been made without some degree of misconduct or partiality, in which event the award would be set aside not because of the mistake, but because of misconduct.".*

**On refusal of Applicant's claim and defence (Decision based on Lateness of enquiries/claims or contentions)**

[67] **The Applicants' defence was not fully and or fairly determined in that the arbitrator never determined or confirmed the completion date,** yet rejected Applicant's claims as well as the evidence of the experts appointed by the Applicants on the basis that they fell outside the **timeframe envisaged in Clause 13 of the agreement,** contrary to his finding that the experts reports fall outside the time periods as set out in the contract for which any defects should be attended to /made mention of or notice to be given to the Claimant.

[68] The parties in presenting their evidence had agreed that the snaglist provided was within the three months period envisaged in clause 13.1 which determined if their conduct and claims were in line with the provisions of their contract. They had indicated the date of completion from which the terms of clause 13 and 12.1 are applicable to be in relation to occupancy (when the Applicants moved back into the house). They therefore had presented both their argument in that context. The Arbitrator also dealt with the issue of the Completion date in the same context, as is evident from his judgment, the matter was concluded from the perspective that the parties themselves

had submitted to the Arbitration. The claims of the Applicant were adjudicated on that basis. Seemingly the Applicants are not satisfied with the Arbitrator's interpretation of the contract in relation to their submission, however it can hardly be regarded as a subject of review. The Applicants must indicate the Arbitrators conduct that is so gross that it had unfairly prejudiced the Applicants in the conduct of their case that taints the award that it has to be set aside.

[69] In Telcorda at 85 the court opined that:

> "**Likewise, it is a fallacy to label a wrong interpretation of a contract**, a wrong perception or application of South African law, or an incorrect reliance on inadmissible evidence by the arbitrator as a transgression of the limits of his power. The power given to the arbitrator was to interpret the agreement, rightly or wrongly; to determine the applicable law, rightly or wrongly; **to determine what evidence was admissible, rightly or wrongly**. Errors of the kind mentioned have nothing to do with him exceeding his powers; **they are errors committed within the scope of his mandate**. To illustrate, an arbitrator in a 'normal' local arbitration has to apply South African law but if he errs in his understanding or application of local law the parties have to live with it. If such an error amounted to a transgression of his powers it would mean that all errors of law are reviewable, which is absurd."

[70] In evaluating the exercise of a discretion by a presiding officer to interrogate a claim, each case must be decided on its own merits and that no hard and fast rule can be laid down as to when a presiding officer ought to be satisfied with the proof of a claim. The Applicants claim for rental was also adjudicated on the factual conclusions that he made from the evidence. The 1st Applicant had testified that she stayed in a house that was made available to her as an estate agent. The enrolment certificate for the construction was March 2014 and she moved back into her residence taking occupation in September 2014 and Certificate of Occupancy dated 12 November 2014, both dates within 6 months, that being the period stipulated by clause 12.1 of their agreement. She therefore had not made a case for her Claim 1. The Arbitrator could not have committed a gross irregularity by making deductions from the evidence that has been tendered by the litigants.

[71] The Arbitrator made a decision after having taken into account the evidence that was presented by the parties who were both represented by Counsel, generally accepted to be well acquainted with such processes and obligated to guard against any prejudicial conduct by the Arbitrator to their clients. In their opening address the Applicants' Counsel already conceded that the Applicants' claim where delayed as a result of the provisions of clause 13. Also having agreed that the Applicants 'snaglist that was submitted in December 2014 was within the scope of clause 13. The Applicants' claim seem to have come in only in 201 6.

[72] It is also worth mentioning that a review of an arbitrator's award does not deal with the merits, but the manner in which a decision was reached. It does not concern whether the decision was right or wrong. An appeal, on the other hand, amounts to a re-hearing of the matter and the appeal tribunal is restricted to the record of the proceedings before it, unless the statute provide otherwise. (See *Telcordia*

*Technologies Inc v Telkom SA Ltd* 2007 (3) SA 266 (SCA) para 85 where this court held that an arbitrator 'has the right to be wrong'.) Therefore this ground is misconceived as a ground to have the impugned award reviewed and set aside.

[73] The Arbitrator held that the payments made by the Applicants indicate that they were fully aware of the payments being due, contrary to clause 11.6 that states that "No payments made in respect of work done and materials supplied shall constitute an acceptance by the **Customer of the adequacy or sufficiency thereof**" and thereafter finding the enquiries made thereafter to be farfetched and too late or due to the duration of time.

[74] A wrong interpretation of a contract, or perception of what is the law and its application cannot be held to be a gross irregularity that vitiates the award. Whether the interpretation of the agreement is wrong or right, or the determination of what evidence is admissible is wrong, it cannot be a conduct that is to be classified as a transgression that goes beyond the limit of the Arbitrator's powers. The errors are still within his mandate and therefore not reviewable: see *Telcorda* on para 85, where it is further held that:

> "To illustrate, an arbitrator in a 'normal' local arbitration has to apply South African law but if he errs in his understanding or application of local law the parties have to live with it. If such an error amounted to a transgression of his powers it would mean that all errors of law are reviewable, which is absurd."

[75] At the same time the Arbitrator made a deduction that if the costs of the extras and the materials effected at the request of the 1st Applicant were presented to the Applicants and they seemed not to have a problem with the amounts reflected therein, and also to have actually made a part payment towards such costs with a promise to settle the balance, the Applicants were regarded as having acquiesced to the costs reflected and therefore liable. The Arbitrator thus had regarded the enquiries made thereafter to avoid payment too late and farfetched. Clause 11.6 is in respect of the acceptance of adequacy of the work done or materials supplied not the costing the costs thereof. These are deductions or conclusions that falls within the Arbitrator's mandate to make, whether wrongly or rightly.

**Improperly obtained**

[76] The Applicants alleged that the Engineer Compliance Certificate relied upon during arbitration proceedings and accepted by the Arbitrator as authentic is fraudulent even though it is signed by the Engineer on 30 June 2014 and countersigned by 1st Respondent on 20 February 2015. The document in possession of Ekurhuleni Municipality was **discovered by the Applicants on 25 February 2017** that it is not signed by the 1st Respondent as owner's representative and does not have the Professional Indemnity Insurance Policy Number of the Engineer. Also Engineer Certificate issued after the Occupation Certificate.

[77] The alleged conduct was not presented before the Arbitrator and as is indicated by the Applicants that the facts that seem to solidify the Applicants' allegations of fraudulent procurement of the Occupancy Certificate were discovered after the date of

the award. It therefore cannot impact on the conduct of the Arbitrator, the manner in which the Arbitrator conducted the proceedings or the award that was made. There was no evidence led to indicate that the signing thereof by the Engineer and the 1st Respondent as alleged indeed affects its authenticity. Prior its retraction the Arbitrator was justified to decide on the basis of the Certificate having assessed it from the evidence that was presented by the parties and their witnesses. The parties themselves have indicated their consideration of the date of occupation or date of issue of Occupancy Certificate as the date of completion, to work from with regard to the operation of Clause13. The validity of the other certificates was also argued before the Arbitrator including accountability thereto, albeit that Mr Blyth's Affidavit only came after the decision of the Arbitrator, indicating the withdrawal of the certificate due to a signature missing on one of the related certificate not fraud. The information on Mr Blyth was not raised at the arbitration proceedings and therefore inappropriate for the Applicants to raise it now; see *Patcor Quarries CC V Issroff* 1998 (4) SA 1069 (SE). The Certificate stands as long as it is not retracted. Also as long it is not found to be invalid or fraudulent it remains valid and used to determine completion date. The Arbitrator's decision might be not palatable to the Applicants however it is devoid of any misconduct.

[78] In cases of fraud one party to the arbitration, through fraud or other improper means, obtains an Award in his or her favour. This can either be in the form of a bribe or by misleading and false or fraudulent representations which lead to an Award being granted in that party's favour." *Moloi v Euijen and Others* [1997] 8 BLLR 1022 (LC) 1029 at E-G.72] I do not find that at the time that the parties made their representations there was any deliberate fraud that was alleged or committed by the 1st Respondent to induce the Arbitrator to grant the Award in his favour. The prevailing circumstances were presented by the parties in their evidence. The Applicants have failed to establish any misconduct on the part of the Arbitrator or gross irregularity committed by the Arbitrator that could have resulted in the unfair conduct of the proceedings which could have been prejudicial to the Applicants.

[79] Under the circumstances the following order is made.

1. The Applicants are granted condonation to their late filing of the Review Application, no order as to costs.

2. The Application for the review and setting aside of the Arbitrator's award dated 17 November 2016 is dismissed with costs.

3. The Arbitration Award dated 17 November 2016 is hereby made an order of Court.

**N V KHUMALO J**
**JUDGE OF THE HIGH COURT**
**GAUTENG DIVISION; PRETORIA**

Counsel for Applicant: B D

Stevens

Instructed by: Jurgens Bekker Attorneys
Tel: 011 622 5472

Ref: A C E Boerner/V 442/AB643

Counsel for the Respondent: Mandy Joubert

Instructed by: Roger Devachander Attorneys
Tel: 012 361 3341
Ref: sheree@rdlaw.co.za