



THE LABOUR COURT OF SOUTH AFRICA

(HELD AT JOHANNESBURG)

Not reportable

CASE NO: J735/2020

In the matter between:

THANDEKA SAFARIS (PTY) LTD

Applicant

and

**COMMISSION FOR CONCILIATION
MEDIATION AND ARBITRATION**

First Respondent

P GREYLING N.O.

Second Respondent

CHARL WATTS

Third Respondent

NELIA WATTS

Fourth respondent

Date enrolled: 4 August 2020 (By agreement, decided in Chambers)

Date of judgment: 18 August 2020. Judgment distributed by email at 14:00

JUDGMENT

VAN NIEKERK J

- [1] This is an urgent application in which the applicant seeks an order staying part-heard arbitration proceedings conducted under case number **LP 8968-18**, pending judgment in a review application filed in this court under case number **JR650/20**.
- [2] The second respondent is the arbitrator in the dispute referred for arbitration. On 20 March 2020, the second respondent issued a ruling in which he dismissed an application brought by the applicant for his recusal. On 20 May 2020 the applicant applied to review and set aside the recusal ruling, and in the alternative, to review and set aside a ruling made on 29 October 2019, when the second respondent held that a sound recording on which the third and fourth respondents sought to rely may be introduced in evidence in the proceedings despite the unavailability of a certified transcript of the recording.
- [3] In the present application, the applicant submits that it enjoys reasonable prospects of success in the review application, in that the second respondent took umbrage to the application for his recusal and drew conclusions not justified by the record. In addition, the applicant submits that it has reasonable prospects of success in relation to the admission of the sound recording into evidence and what it contends is the breach of its right to a fair hearing as a consequence.
- [4] The applicant states that the review application was launched on 6 May 2020. The annexures to the review application indicate differently – all of the annexures submitted as proof of service record service by fax and email on 20 May 2020. Even if the application was served and filed on 6 May 2020, that is outside of the prescribed 6-week time limit. The application is not accompanied by an application for condonation. In these circumstances, there is no proper review application before the court (strictly, the court does not have jurisdiction to entertain it) and thus no pending review for the purposes of the present

application. Further, and to the extent that the applicant seeks to review and set aside the ruling made on 29 October 2019, that application is hopelessly out of time, and again, there is no application for condonation for the late filing of the review of that ruling. To the extent that the applicant seeks to interdict the part-heard arbitration proceedings pending the outcome of the review application, there is thus no review application before the court, and the present application stands to be dismissed on that basis.

- [5] In any event, this court is not empowered to intervene in incomplete arbitration hearings unless the court is satisfied that it is just and equitable to review a decision or ruling before the issue in dispute has been finally determined. The insertion of s 158 (1A) into the LRA by way of the 2014 amendments sought to avoid the piecemeal review of arbitration proceedings in favour of a single review application to be brought at the conclusion of the hearing and after the delivery of an award. In the present instance, the second respondent issued a comprehensive 27-page ruling in which he dismissed the application for recusal. On the face of it, the ruling is considered not one that suggests that intervention by this court at this point is either just or equitable. The scope of intervention in incomplete arbitration proceedings must necessarily be informed by s 138 (1) of the LRA which requires commissioners to conduct arbitration in a manner they deem appropriate, in order to determine the dispute fairly and quickly, dealing with the substantial merits of the dispute with the minimum of legal formalities. The essence of the review application is one which relates to the second respondent's dealing with the matter of the transcript of the sound recording of the disciplinary hearing and its introduction into evidence. This is eminently a matter that can be dealt with by way of any review once an award has been made. It does not follow, as the applicant appears to suggest, that a ruling made against them, some months prior to the filing of the application for recusal, is in itself a basis on which to question the impartiality of the second respondent. In short, the applicant has failed to establish that it is just and equitable for this court

to intervene in incomplete arbitration hearing and the application stands to be dismissed on this basis.

- [6] Finally, insofar as costs are concerned, s 162 of the LRA requires the court to have regard to the requirements of the law and fairness in any consideration of an order for costs. There is no reason to deny the third and fourth respondent the costs that they have incurred in opposing these proceedings.

I make the following ruling:

1. The application is dismissed, with costs.

André van Niekerk

Judge of the Labour Court of South Africa