

SOUTH AFRICA / JUDGMENT

# Woolworths (Pty) Ltd v Commission for Conciliation, Mediation and Arbitration and Others (JR1326/12) [2016] ZALCJHB 383 (6 October 2016)

[2016] ZALCJHB 383

## COURT

Labour Court Johannesburg

## BEFORE

Lagrange

## CASE / FILE NUMBER

JR1326/12

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Not reportable

THE LABOUR COURT OF SOUTH AFRICA, HELD AT JOHANNESBURG

## JUDGMENT

Case no: JR 1326/12

In the matter between:

WOOLWORTHS (PTY) LTD Applicant (Respondent in application for leave to appeal) and  
COMMISSION FOR CONCILIATION, MEDIATION AND ARBITRATION First Respondent  
COMMISSIONER LERATO SIKWANE N.O Second Respondent REUBEN LUCAS PODILE Third  
Respondent (Applicant in application for leave to appeal)

## JUDGMENT

ON APPLICATION FOR LEAVE TO APPEAL

LAGRANGE J

## Introduction

- [1] The citation of the parties in the review proceedings are retained subject to their new status in this application as indicated above.
- [2] In the review application hearing on 18 may 2016, I upheld the belated special plea by the applicant in the review proceedings that the arbitration award it sought to review had prescribed. I further decline to make an order of costs.

- [3] The third respondent appeals against both the finding that the award had prescribed and the cost order.
- [4] The Labour Appeal Court in *Myathaza v Johannesburg Metropolitan Bus Service (Soc) Limited t/a Metrobus; Mazibuko v Concor Plant; Cellucity (Pty) Ltd v CWU obo Peters*[1] held that the Prescription Act applies to arbitration awards made in terms of the LRA regardless of whether it is a compensatory or reinstatement award with or without back-pay and that a review application and a warrant of execution do not interrupt prescription. However, that judgement recently went on appeal before the Constitutional Court which heard argument on the matter on 1 September 2016.[2] Consequently, I cannot rule out the possibility that the Constitutional Court may come to a different conclusion from the Labour Appeal Court which would naturally have implications for the correctness my ex tempore judgement in this matter on the prescription issue.
- [5] The third respondent also contends that the court erred in not awarding him his costs incurred in opposing the applicant's belated plea of prescription. Moreover, he contends that the court erred in allowing the applicant to file its supplementary affidavit in support of its prescription plea. While I do not believe there is any merit in the last mentioned point, I agree there is a reasonable prospect that another court might come to a different view on the cost award even though the award of costs is a discretionary matter.

#### Order

- [6] Leave to appeal is granted against the judgement in the review application handed down on 18 May 2016 and against the costs order.
- [7] Costs of the appeal shall be costs in the cause.

-----

Lagrange J

Judge of the Labour Court of South Africa

(In Chambers)

6 October 2016

[1] (JA122/14) [2015] ZALAC 45; [2016] 1 BLLR 24 (LAC) (6 November 2015)

[2] *Sizwe Myathaza v Johannesburg Metropolitan Bus Services (SOC) Limited t/a Metrobus and another and Another* CCT 232/15

### Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

**ORIGINAL SOURCE**      <https://www.saflii.org/za/cases/ZALCJHB/2016/383.html>

**CASE PAGE**              <https://chat.esheria.ai/case-law/south-africa/woolworths-pty-ltd-v-commission-for-conciliation-mediation-and-arbitration-and-others-unknown-topic-alcjhb-2016>

Prepared on 12 October 2026 · Esheria