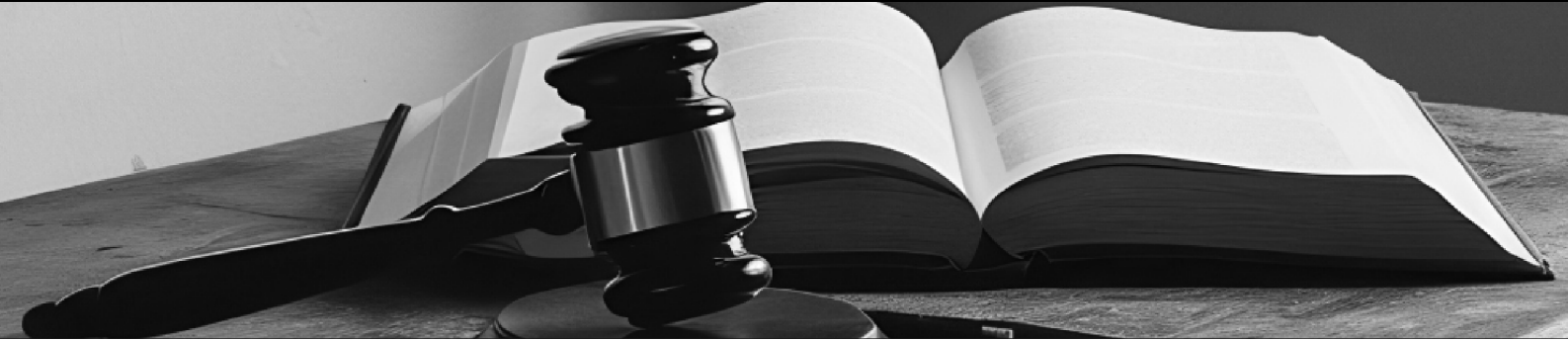




EMPLOYMENT

Alexkor Soc Limited and Another v Carstens (JA7/24) [2025] ZALAC 28 (15 May 2025)

9 June 2025 3 min read

by Bankey Sono, Director and Neo Sewela, Senior Associate

1. Does the Labour Court have the power to declare a pre-arbitration minute invalid and set it aside? This was the central question before the Labour Appeal Court in *Alexkor Soc Limited and Another v Carstens* (JA7/24) [2025] ZALAC 28 (15 May 2025).
2. In this case, Mr Cartens was employed by Alexkor and was later dismissed. Unhappy with his dismissal, he referred an unfair dismissal dispute to the CCMA contending that his dismissal was unfair. At some point before the commencement of the hearing, the parties arranged for a pre-arbitration process and concluded a pre-arbitration minute. The arbitration proceedings commenced. Alexkor led the evidence of the first witness, Mr Shokie Bopape. Mr Bopape's evidence was mainly based on the concessions made by Alexkor as recorded in the pre-arbitration minute. The matter was then postponed.
3. After the postponement, but before the matter sat again for resumption of the hearing, Alexkor terminated the mandate of its erstwhile attorneys and appointed a new set of attorneys. Subsequently, Alexkor contended that it was not aware of existence of the pre-arbitration minute and upon learning of its existence, instructed the new set of attorneys to request Mr Carsten to abandon the pre-arbitration minute and hold a further pre-arbitration conference. Mr Carsten's rejected this request. Alexkor, through its attorneys, then approached the CCMA with the same request and the CCMA similarly rejected it. Having failed again, Alexkor brought an application to set aside the pre-arbitration minute contending that the pre-arbitration minute was inaccurate and that its previous lawyers were not mandated to conclude the pre-arbitration minute. This application was heard by the CCMA Commissioner and the Commissioner also dismissed this application.
4. The matter then went to the Labour Court which dismissed the review application before it. Alexkor then appealed to the LAC. The LAC rejected the argument that the Labour Court had the power to declare a pre-arbitration invalid and to set it aside. Relying on the Labour Courts' decision in *MTamila v Samacor Western Chrome Mines and Others* [2023] ZALC 324, wherein the Labour Court had earlier held that it does not have the power to review and set aside a pre-arbitration hearing, the LAC re-affirmed that the Labour Court does not have the power to interfere with a pre-arbitration procedure and dismissed the appeal. The LAC also clarified that the CCMA similarly does not have the power to declare as invalid and set aside a pre-arbitration minute concluded in terms of Rule 20 of the CCMA's Rules.
5. Alexkor is thus an important warning light for litigants to seriously consider the contents of a pre-arbitration minute before signing it. Alexkor settles, for now, the question as to whether the Labour Court has the jurisdiction to pronounce on the validity of pre-arbitration minutes and to set them aside. The legal position is thus, once validly concluded and signed, Parties will be bound by the contents of a pre-arbitration minute and neither the CCMA nor the Labour Court will have the power to declare it invalid and set it aside.

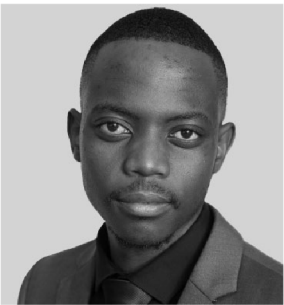
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