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The importance of placing of a complete record of the arbitration proceedings – the transcript of the arbitration proceedings

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On 10 October 2023, we published our article titled *"the importance of a complete record of arbitration proceedings"* in a review application wherein the Labour Court dealt with the importance of and requirement for it to be provided with a full and proper record in review proceedings. In that article, we discussed the duty on all parties in review proceedings to place a complete and full record before the reviewing court.

It goes without saying that one of the most important pieces of the record in review proceedings is the transcript of the arbitration proceedings which gave rise to the award sought to be impugned on review.

Rule 7A(6) of the Labour Court Rules places an obligation on the applicant to furnish the Court and each of the parties with a copy of the record. The record includes the transcription of the actual proceedings forming the subject matter of the review. In addition, Rule 7A(7) provides that the cost of the transcription of the record together with the costs of copying and delivering the record shall become the costs in the review.

The question which then arises is whether the applicant has to utilise the services of a professional transcription company when transcribing the record of the arbitration proceedings? In other words, whether only a professionally transcribed record is sufficient for purposes of Rule 7A(6) read with Rule 7(A)(7)? The short answer is No. This was the finding of the court in *Van Straaten v Whenke NO and Others* [2023] JOL 61162 (LC).

In this case, the Employee was dismissed following a disciplinary hearing. Unhappy with the Employer's decision he referred an unfair dismissal dispute to the CCMA on the basis that he was unfairly dismissed. The CCMA arbitrated the dispute and concluded that the Employee's dismissal was fair.

Dissatisfied with the CCMA's finding, the Employee launched review proceedings before the Labour Court in terms of which he sought to review and set aside the CCMA's Award. In prosecuting the review, and in an attempt to comply with Rules 7A(6) and 7A(7) of the Labour Court's rules, the Employee produced his own "*home-brewed*" transcription of the record of the arbitration proceedings. The Employer objected to the transcript and argued that on a proper interpretation of Rule 7A(7) only transcripts produced by a professional transcriber are acceptable in review proceedings.

The Labour Court rejected this argument. The court looked at the applicable constitutional provisions (section 23, 33 and 34 of the Constitution) together with the demands of social justice. Relying on the purposive interpretation of the said provisions, together with the LRA, the Labour Court held that any transcript, irrespective of its creation, serves the purpose of a record as contemplated in Rule 7A(6) and Rule 7A(7). The Court held that requiring a transcript from a professional transcription company will unduly burden indigent litigants and will stifle a litigant's fundamental rights.

The Court found that if the Respondent is not happy with the record, it is not barred from placing a record before it which the Respondent believes to be authentic. Anyway, so added the court, the Respondent also bears a duty of ensuring that a proper record is placed before a review court.

Thus, the current legal position is that a transcript, regardless of how it was created, completes the record for purposes of Rule 7A(6) read with Rule 7A(7). It is not required that an applicant should place a professionally transcribed record which is normally accompanied by a

transcribers certificate.

If the respondent is unhappy with the quality and authenticity of the transcript then the respondent can place a proper transcript (which is professionally transcribed) before the review court or, as the court said in its criticism of the Respondent Employer, the respondent can request the electronic disk obtained from the CCMA or the relevant bargaining council (as the case may be) from the applicant and verify the accuracy of the "*home-brewed transcript*".

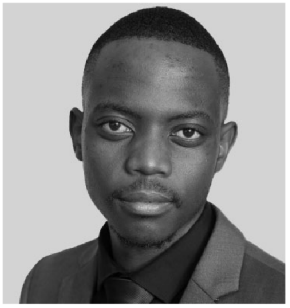
All things being equal, the parties will then rely on the self-same *home-brewed* transcript.



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