



June 2024 e-periodical issue 17



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Hope is a waking dream

Welcome to ***Arbitrarily Speaking!***



We remain hopeful that the country, its people and the economy will be the principal beneficiaries of the recent political realignment and the formation of a government of national unity.

In this issue of ***Arbitrarily Speaking!*** our members and readers are provided with some of the latest developments in the alternative dispute resolution (ADR) environment.

Disclaimer: The articles published in ***Arbitrarily Speaking!*** solely represent the views of their authors. The Association of Arbitrators (Southern Africa) NPC and its editor do not necessarily endorse or approve of the authors' views or any advice, or purported advice, given by them. Readers are reminded that it is their own responsibility to obtain appropriate advice on any particular issue concerning them from their own appointed legal representatives.

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UNCLE OSWALD'S Q&A FORUM

UNCLE OSWALD ADVISES HIS OLD FRIEND, FEARLESS FRIKKIE, IS ON A LEVY DEBT PERTAINING TO A UNIT IN A SECTIONAL TITLE DEVELOPMENT

On this occasion, Fearless Frikkie is the beneficiary of Uncle Oswald's advice in respect of the question whether the body corporate (BC) of a sectional title development scheme may refuse to issue a levy clearance certificate to him for a levy debt that allegedly has prescribed. At the core of this issue lies the question whether the BC is entitled to invoke section 13(1)(e) of the Prescription Act to support a delay of prescription.

For more astute advice from Uncle Oswald on your ADR queries, send your questions to our General Manager, [Rochelle Appleton](#).





ARBITRATION EDUCATION STATION

Since its inception, the Association has promoted the greater use of arbitration as a means of resolving disputes. It is able to appoint competent and experienced arbitrators, as well as other specialists in ADR. To support these core activities, the Association has a proud history of providing excellent training and tutelage by a team of dedicated specialists.

We congratulate the following twenty-eight Fellows who successfully passed the 2023 Fellowship Admission Course or the 2023 Accelerated Fellowship Course for Advocates and Attorneys. We are proud of their achievement and wish them well in their future endeavours.

- General Information
- Accelerated Fellowship Course for Advocates and Attorneys
- Certificate Course in Arbitration
- Fellowship Admission Course
- Specialisation in Construction Law Course

TOOLS OF THE TRADE

FIDIC GOLDEN PRINCIPLES: THEY APPLY TO ALL CONSTRUCTION CONTRACTS!

Association Fellow, Kevin Spence, an acknowledged expert on the FIDIC suite of contracts, emphasises five indispensable core principles applicable to FIDIC contracts, which, according to him, could and should find application in other construction contracts too.

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ADJUDICATORS MUST PAY CAREFUL ATTENTION WHEN DRAFTING THEIR DETERMINATIONS

Association Fellow, Brad Boertje, highlights some of the most common pitfalls in the drafting of determinations by adjudicators.

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RECUSAL OF AN ADJUDICATOR OR ARBITRATOR

Association Fellow and director, Chris Binington Pr. Eng., deals with the situation where an adjudicator or arbitrator must decide on an application for his or her recusal based on their own conscience and as guided by the legal principles applicable to the recusal process. In this regard, Chris considers two leading cases on the topic, namely: *South African Human Rights Commission obo, South African Jewish Board of Deputies v Masuku and Another 2022 (4) SA 1 (CC) [2022]*, and *The President of the Republic of South Africa v South African Rugby Football Union [1999] ZACC 9; 1999 (4) SA 147 (CC); 1999 (7) BCLR 725 (CC)*.

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A CASE IN POINT: RECENT CASE REPORTS

Close-Up Mining (Pty) Ltd and Others v The Arbitrator, Judge Phillip Boruchowitz and Another 2023 (4) SA 38 (SCA).

The Supreme Court of Appeal's judgment in this case is analysed and discussed by Association Fellow and director, Adv Kiki Bailey SC, under the caption 'Does an arbitrator have the discretionary power to decide a dispute which has not been pleaded?'.

This regular column features interesting and informative case reports and judgments, and we invite you to add to our growing collection of analyses of important cases.

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TOOLS OF THE TRADE *ctd.*

CHALLENGING AN ARBITRATION AWARD ON THE GROUNDS OF SERIOUS IRREGULARITY – LESSONS FROM THE UK

Alastair Hay draws valuable lessons from an English case, namely *The Federal Republic of Nigeria v Process & Industrial Developments Ltd* [2023] EWHC 2638 (Comm) (Date of judgment, 23 October 2023) to illustrate how a party's fraudulent conduct can upset the proverbial apple-cart.

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ALL ABOUT THE AOA

As part of the Association's ongoing mission to provide upskilling opportunities for everyone interested in Alternative Dispute Resolution (ADR), we hold regular events.

If you have missed an event, you can catch up!

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