

Construction & Engineering

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SOUTH AFRICA

Cementing the power of adjudicators
in South African construction law



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Cementing the power of adjudicators in South African construction law

Dispute resolution in the construction industry is unique in that it must balance speed with fairness. South Africa, like many other jurisdictions, has adopted adjudication (in the present case under the Joint Building Contracts Committee (JBCC) Principal Building Agreement (a standard form construction contract)) as the first-tier dispute resolution mechanism. Adjudication offers a fast, binding but interim decision, ensuring cash flow and project continuity, which is critical, as construction projects are time sensitive in the extreme.

The recent judgment in *Pro-Khaya Construction CC v City of Cape Town and Johan G Wasserman SC* (High Court of South Africa, Western Cape Division, 15 August 2025) provides crucial guidance on the enforceability of adjudicators' determinations, the jurisdictional limits of adjudicators, and the narrow grounds upon which courts may interfere.

Background to the dispute

Pro-Khaya Construction CC (Pro-Khaya) was appointed by the City of Cape Town (City) in 2018 to construct an electrical depot in Hout Bay under a JBCC Principal Building Agreement, Edition 6.1 of March 2014 (Contract). Delays, extensions of time (EOTs) disputes, and disagreements over termination of the Contract culminated in adjudication.

The adjudicator, Adv. Johan Wasserman SC, issued a determination effectively awarding Pro-Khaya all the relief that it sought, namely:

- that the Contract had terminated on 30 August 2020;
- extensions of time, a revised date to practical completion, an adjusted contract value, certification of and pursuant thereto payment of concomitant preliminary and general costs in the amount of R999,528.40 (excluding VAT);
- a final account payment of R8,095,536.22 plus VAT within 14 days;
- return of construction guarantees; and
- payment of the adjudicator's fees by the City.

The City failed to pay and resisted Pro-Khaya's application to the High Court for enforcement of the determination, arguing that the adjudicator lacked jurisdiction and that his determination was reviewable.

Issues before the High Court

The court had to determine two main issues, namely:

1. Whether the adjudicator's determination was valid and enforceable.
2. Whether the determination was susceptible to review on the grounds advanced by the City.



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Applicable legal principles referred to by the court

The court referred to the following aspects in arriving at its decision:

- Rule 1.1 of the JBCC adjudication rules defines adjudication as:

"[A]n accelerated form of dispute resolution in which a natural person determines the dispute as an expert (and not as an arbitrator) and whose determination is binding on the parties for immediate compliance and which shall remain in force until verdict overturned by an arbitration award."

- Further, Rule 5.1.4 of the JBCC Rules reinforces this principle by stating that "the adjudicator shall act as an expert in determining the dispute."
- *Stefanutti Stocks (Pty) Ltd v S8 Property (Pty) Ltd* [2013] ZAGPJHC 388 (23 October 2013) confirmed that the adjudicator's determination is final and binding on the parties unless overturned by arbitration, litigation or mutual agreement between the parties.
- It is trite that the adjudicator's determination is generally binding and enforceable even if it contains an error of law effect.). Further, clause 30.6.3 of the JBCC Contract provides that "A determination given by the adjudicator shall be immediately binding upon and implemented by the parties."

- In the event where no notice of dissatisfaction against the decision of the adjudicator has been given within the prescribed period, the decision becomes final and binding on both parties, as confirmed in *Tubular Holdings (Pty) Ltd DBT Technologies (Pty) Ltd* [2014] (1) SA 244 (GSJ). Further, clause 30.6.4 of the JBCC Contract provides that where the adjudicator has given a determination, either party may give notice of dissatisfaction to the other party and to adjudicator within ten (10) working days of receipt of determination, or an extended time period provided in the JBCC Rules of Adjudication wherein such dispute is referred to arbitration.
- Where there is clearly no jurisdiction on the part of the adjudicator to decide a dispute, the court may decline enforcement on the basis that the determination is invalid.
- The principle regarding the limited powers of the court to review and set aside the adjudicator's determination was well pronounced in *Chelsea West (Pty) Ltd v Roodebloem Investments (Pty) Ltd* [1994] (1) SA 837 (C) at 856 (C-D), where the court held that unless there is fraud, collusion or capriciousness, or a manifestly unjust valuation, the parties are bound by the adjudicator's determination.



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The court's findings

Jurisdiction of the adjudicator

It was determined that the adjudicator's mandate derives strictly from the referral notice. The City alleged the referrals were out of time and incompetent. The court found otherwise in that both referrals were made in line with clause 30 of the Contract. The City participated in the process without timely objection, effectively acquiescing to jurisdiction. The adjudicator acted within his mandate and did not stray beyond the scope of the disputes referred.

The court concluded that jurisdiction was properly established.

Reviewability of the adjudicator's determination

The City attempted to rely on the common law and the Arbitration Act 42 of 1965 (Arbitration Act). However, the court held that adjudicators under the JBCC act as experts, not arbitrators. Thus, the Arbitration Act does not apply.

Review proceedings are permissible only in cases of fraud, collusion, capriciousness or a manifestly unjust determination, none were present before the court. The fact that the adjudicator ruled by default (since the City filed late submissions) was not a reviewable defect. JBCC Rule 5.2 expressly permits default determinations where a respondent fails to submit a response in time.

The court concluded that no grounds existed for judicial review.

Enforceability

Clause 30.6.3 of the JBCC Contract states that an adjudicator's determination is "*immediately binding and must be implemented by the parties*". Since the City did not issue a notice of dissatisfaction within the contractual 10-day period, the determination became final and binding.

The court ordered enforcement of the determination and dismissed the City's counter-application.

Broader legal significance of the court's decision

The judgment reinforces key principles in South African construction law, *inter alia*:

- **Adjudication as interim finality:** Adjudication provides a pay now, argue later mechanism. Even if flawed, determinations must be complied with unless jurisdiction is lacking or manifest injustice is shown.
- **Limited grounds for court interference:** Courts will not revisit the merits of an adjudicator's decision. Intervention is reserved for extreme cases (fraud, collusion, capriciousness or manifest injustice).
- **Jurisdictional objections must be timely:** A party cannot remain silent during adjudication and later claim lack of jurisdiction. Failure to object promptly amounts to acquiescence.



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- **Strict contractual compliance matters:** Parties must observe strict timeframes under the JBCC. The City's failure to file on time and its omission to issue a notice of dissatisfaction rendered the determination final and enforceable.
- **Adjudicator as expert, not arbitrator:** Distinguishing adjudication from arbitration narrows the scope of judicial review and underscores the contractual autonomy of parties who choose the JBCC regime.

Practical implications for construction stakeholders

Employers and contractors must take adjudication seriously; non-participation or late responses are risky.

Municipalities and state entities cannot resist enforcement by invoking administrative law principles unless jurisdiction is truly lacking. Legal practitioners must advise clients that adjudicators' determinations are enforceable almost as if they were court orders, subject only to narrow defences.

With regards to industry practice, this judgment strengthens confidence in adjudication as a quick, effective, and enforceable mechanism to resolve disputes and maintain cash flow in the construction industry.

Conclusion

The judgment affirms the South African courts' pro-enforcement stance on adjudication under JBCC and other forms of construction contracts. Parties must comply with adjudicators' determinations unless clear jurisdictional overreach or manifest injustice is shown. For construction law, this case underscores that adjudication is not a "dry run" for litigation but a binding contractual process that courts will robustly uphold.

In the South African construction landscape – where delays, payment disputes and extensions of time are endemic – the judgment provides much-needed certainty: **adjudication decisions are binding, enforceable and will not be lightly disturbed.**

Joe Whittle and Lakeen Kowlas



OUR TEAM

For more information about our Construction & Engineering sector and services in South Africa, Kenya, and Namibia, please contact:



Clive Rumsey

Sector Head: Construction & Engineering
Director: Dispute Resolution
T +27 (0)11 562 1924
E clive.rumsey@cdhlegal.com



Timothy Baker

Director:
Dispute Resolution
T +27 (0)21 481 6308
E timothy.baker@cdhlegal.com



Sentebale Makara

Director:
Dispute Resolution
T +27 (0)11 562 1181
E sentebale.makara@cdhlegal.com



Tsele Moloi

Director:
Banking, Finance & Projects
T +27 (0)11 562 1399
E tsele.moloi@cdhlegal.com



Khaya Mantengu

Director:
Dispute Resolution
T +27 (0)11 562 1312
E khaya.mantengu@cdhlegal.com



Desmond Odhiambo

Partner | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E desmond.odhiambo@cdhlegal.com



Andrew van Niekerk

Joint Sector Head: Projects & Energy
Director: Banking, Finance & Projects
T +27 (0)21 481 6491
E andrew.vanniekerk@cdhlegal.com



Joe Whittle

Director:
Dispute Resolution
T +27 (0)11 562 1138
E joe.whittle@cdhlegal.com



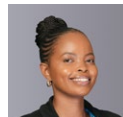
Daniel Kiragu

Senior Associate | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E daniel.kiragu@cdhlegal.com



Christine Mugenyu

Senior Associate | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E christine.mugenyu@cdhlegal.com



Zodwa Malinga

Associate:
Dispute Resolution
T +27 (0)11 562 1317
E zodwa.malinga@cdhlegal.com



Claudia Moser

Associate:
Dispute Resolution
T +27 (0)21 481 6336
E claudia.moser@cdhlegal.com



Kananelo Sikhakhane

Associate:
Dispute Resolution
T +27 (0)11 562 1404
E kananelo.sikhakhane@cdhlegal.com



Lakeen Kowlas

Associate Designate:
Dispute Resolution
T +27 (0)11 562 1647
E lakeen.kowlas@cdhlegal.com

BBBEE STATUS: LEVEL ONE CONTRIBUTOR

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JOHANNESBURG

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa.

Dx 154 Randburg and Dx 42 Johannesburg.

T +27 (0)11 562 1000 F +27 (0)11 562 1111 E jhb@cdhlegal.com

CAPE TOWN

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.

T +27 (0)21 481 6300 F +27 (0)21 481 6388 E ctn@cdhlegal.com

NAIROBI

Merchant Square, 3rd floor, Block D, Riverside Drive, Nairobi, Kenya. P.O. Box 22602-00505, Nairobi, Kenya.

T +254 731 086 649 | +254 204 409 918 | +254 710 560 114

E cdhkenya@cdhlegal.com

ONGWEDIVA

Shop No A7, Oshana Regional Mall, Ongwediva, Namibia.

T +264 (0) 81 287 8330 E cdhnamibia@cdhlegal.com

STELLENBOSCH

14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.

T +27 (0)21 481 6400 E cdh Stellenbosch@cdhlegal.com

WINDHOEK

1st Floor Maerua Office Tower, Cnr Robert Mugabe Avenue and Jan Jonker Street, Windhoek 10005, Namibia.

PO Box 97115, Maerua Mall, Windhoek, Namibia, 10020

T +264 833 730 100 E cdhnamibia@cdhlegal.com

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