

# Challenging Arbitration Awards in South Africa: A Procedural Overview

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## INTRODUCTION

In South Africa, arbitration has become widely regarded as a preferred mechanism for resolving disputes due to its expediency and efficiency. Arbitration awards are generally regarded as final and binding, however, under specific circumstances, the outcome of an arbitration proceeding may be subjected to judicial scrutiny. The process governing such review is regulated primarily by the Arbitration Act 42 of 1965 and Rule 53 of the Uniform Rules of Court.

This article outlines the grounds for taking an arbitration award on review as well as the procedural requirements for setting aside an arbitration award in accordance with South African law.

## ARBITRATION ACT AND UNIFORM RULES OF COURT:

The main piece of legislation regulating arbitration proceedings is the Arbitration Act 42 of 1965 (**"the Act"**). The grounds for rescinding arbitral awards are outlined in Section 33 of the Act. In addition, the application process for taking an arbitration award on review in the High Court is outlined in Rule 53 of the Uniform Rules of Court (**"the Rules"**), which deals with the requirements for procedural correctness and fairness.

## STATUTORY GROUNDS FOR REVIEW UNDER SECTION 33 OF THE ACT:

According to Section 33(1) of the Act, an arbitration award may be taken on review on the following grounds:

1. misconduct on the part of the arbitrator, such as partiality, inequity, or inappropriate behaviour that compromises the fairness of the proceedings;
2. severe irregularities in the arbitration process, such as failure to follow the established protocol or denying the other party a chance to be heard;
3. by rendering a decision on matters that were not brought to arbitration, for example, the arbitrator exceeded its mandate and/or authority; and
4. illegally obtaining the award, whether by deception, conspiracy, or undue influence.

In accordance with Section 33 of the Act, the applicant must, together with the notice of motion, deliver a Founding Affidavit setting out the grounds for review.

In addition, Section 33(4) of the Act emphasizes the principle of minimal intervention in arbitration awards by stating that an award is nonetheless enforceable and binding unless an order of court directs otherwise.

The High Court must receive an application to set aside an arbitration award within six weeks of the award's publication. This stringent time period encourages promptness in resolving disputes and preserves the finality of arbitration awards. Regardless of the application's merits, it stands to be dismissed on procedural grounds if a party seeking such review fails to bring an application within the six-week time period.

## PROCEDURE UNDER RULE 53 OF THE RULES:

The Applicant must, file a notice of motion directed to the arbitrator and all affected parties. This notice calls upon the arbitrator to provide the record of proceedings and reasons for the award.

The Applicant must clearly outline the grounds for review in their affidavit. These grounds as set out in Section 33 of the Arbitration Act, are misconduct, gross irregularity, or exceeding its powers

The applicant has the right to add additional grounds for review to the notice of motion and founding affidavit after receiving and reviewing the record, so long as such grounds are directly related to the record. The fairness and factual accuracy of the review application are guaranteed by this procedural flexibility.

It must be borne in mind that a setting aside application is not a process where facts which have already been established or decided in the arbitration are reassessed and it is trite that any attempt to do so, is impermissible.

## CONCLUSION

In conclusion, the Arbitration Act and Rule 53 of the Uniform Rules of Court carefully limit the scope of instances where an arbitration award can be taken on review and set aside. A party that wishes to have an award taken on review and set aside is required to submit its application to the High Court within the six-week period and which sets out the grounds for review that the applicant seeks to rely on in accordance with Section 33 of the Act. The review procedure preserves the integrity and accountability of private adjudication by striking a balance between the requirement for finality in arbitration proceedings and the right to judicial oversight in circumstances of procedural or substantive unfairness.



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