

African Journal of Law and Justice System (AJLJS)

ISSN 2753-3115 (Print) ISSN 2753-3123 (Online)

Indexed by SCOPUS, IBSS, EBSCO and SABINET

Volume 4, Number 2, August 2025

Pp 123 - 139

South Africa's Labour Relations Disputes, Legal Practitioners and Part-time Commissioners: Serving Justice or Conflict of Interest?

DOI: <https://doi.org/10.31920/2753-3123/2025/v4n2a6>

Mokoko Piet Sebola

University of South Africa

Email: mokoko.sebola@ipaginstitute.co.za

Abstract

The article investigates conflicting interests among South African lawyers, part-time commissioners, employers and employees at the Conciliation, Mediation and Arbitration (CCMA). There is evidence that employees who register disputes at the CCMA are subjected to a process that involves conflicts of interest between lawyers who represent their employers and CCMA part-time commissioners. This article uses a conceptual approach and secondary data from scientific articles, academic books, and government documents to argue that lawyers and part-time commissioners often share common interests driven by greed and money. Lawyers and part-time commissioners in South Africa's CCMA disputes serve personal financial profit interests rather than justice or fairness. The article concludes that the relationship between lawyers and CCMA part-time commissioners does not serve the interests of justice for employees.

Keywords: *Part-time Commissioner, Lawyer, Employee, Interests, Justice*

Introduction

South Africa established the Office of the Commissioner of Conciliation, Mediation and Arbitration (CCMA) in 1996 to fast-track resolution of employment disputes by removing them from the tedious court processes³¹⁹. However, this good intention of ensuring the speedy resolution of labour disputes was not without problems, especially those arising from the employers and the CCMA itself. Bernkinow³²⁰ blames the employers because their attitudes towards the CCMA processes defeat the primary purpose of its creation. The CCMA Office too has serious capacity limitations³²¹ and is ultimately forced to seek support staff from the external labour force. As Sebola³²² posits, CCMA is mostly staffed with part-time commissioners who do not have adequate customers in their private practices. As a result, most of these part-time commissioners have turned their CCMA appointments into full-time jobs and profit-making schemes. Instead of resolving the labour dispute problems, the CCMA has become anti-transformational, ineffective and, in some cases, useless for the majority of employees who lodge their cases with it. Employees and employers reserve limited rights for legal representation in the CCMA dispute resolution process, and the commissioner has the discretion of allowing or denying these parties the privilege of exercising these rights to representation³²³. Limitations on the right to legal representation are obviously negative for employees because employers always have legal departments with competent staff who may represent them at the CCMA. Therefore, this article, therefore, raises the following question: Do lawyers and CCMA part-time commissioners serve the interests of justice or personal financial profit.

³¹⁹MP Sebola, 'The Commissioner for Conciliation, Mediation and Arbitration Office in South Africa: Serving the Interest of the powerful or the powerless?' [2023] 3 JGRMCS30; M Rapatsa, 'The Commission for Conciliation, Mediation and Arbitration (CCMA) and Alternative Dispute Resolution (ADR) in labour relations in South Africa: An appraisal of efficacy and challenges' [2018] 8 JT 203

³²⁰R Bernkinow, 'Ten years of the CCMA: An assessment for labour' [2007] 11 LDD 13, 17

³²¹H. Bendeman, 'An analysis of the problems of the labour dispute resolution system in South Africa' [2006] 6 AJCR 81, 81

³²²MP Sebola, 'The Commissioner for Conciliation, Mediation and Arbitration Office in South Africa: Serving the Interest of the powerful or the powerless?' [2023] 3 JGRMCS30

³²³ 'CCMA Rule 25' (CCMA, 15 April 2023) <<https://www.ccma.org.za/wp-content/uploads/2023/06/CCMA-Rule-25-Information-Sheet-2023-01.pdf>> accessed 25 May 2025

To address this question, the article discusses theoretical perspectives, the nature of South Africa's CCMA disputes, legal representation rights at the CCMA, lawyers' and commissioners' interests in CCMA cases and employees' dilemmas on the CCMA disputes.

Theoretical Perspective

This article uses self-interest theory, which is discussed in disciplines such as psychology, sociology, organisational behaviour and philosophy³²⁴. Self-interest theory holds that an individual should do whatever is in one's own interest, regardless of the effects it might have on others³²⁵. The article pursues this theory from an economics perspective in accordance with Adam Smith's rational choice argument. Adam Smith is generally known as the commercial society's moral philosopher³²⁶, who states that human behaviour and action are influenced by economic, rather than moral, choices. According to Adam Smith, the pursuit of individual self-interests generates interests for the society as a whole³²⁷. Smith believes that individual self-interests involve self-love in all its manifestations, beyond just wealth³²⁸. Kamark³²⁹ notes that a fundamental assumption of economics is that a rational individual's dominant drive is to maximise self-interests over those of others. Generally, such individual self-interests are mainly personal pecuniary payoffs in nature that disregard associated negative consequences on other parties, especially the employees³³⁰. The hypothesis drawn on the basis of this theoretical perspective is that lawyers and part-time commissioners involved in South Africa's CCMA disputes serve personal financial self-interests rather than justice and fairness. As a result, employees who seek justice at the CCMA are met

³²⁴J Barbalet, 'Self-interest and the theory of action' [2012] 63 TBJS 412; J Getzler, 'Law and self-interest' [2013] UK IVR Conference 12 April 2013 Oxford UK; Z Zhang and GD Lynne, 'Is social capital motivated by self-interest only? A case study on a well-developed U.S. rural community' [2016] 4 UJAR 25

³²⁵S Beck, 'In defence of self-interest: A response to parfit' [1987] 6 SAJP 119

³²⁶TR Wells, 'Adam Smith on Morality and Self Interest' in C. Luetge (Ed.) *Handbook of the Philosophical Foundations of Business Ethics* (Springer 2013) 281, 2

³²⁷C McCarthy, 'An analysis of Adma Smith's Theory of Self-Interest through the mechanism of the philosophy of science' [2023] XXVII TSER 8

³²⁸E Bertusi, *An Analysis of Adam Smith's Concept of Self-Interest: From Selfish Behavior to Social Interest* (Libera Università Internazionale Degli Studi Sociali 2017) 8

³²⁹AM Kamark, *Economics as a Social Science* (University of Michigan Press 2002) 22

³³⁰R Cropanzano, B Goldman and R Folger, 'The self-interest: Defining and understanding incubator a human motive' [2005] 26 JOB 985

with legal injustices in the hands of legal practitioners' immoral selfishness³³¹ and profit-making self-aggrandisement. Regularly, labour dispute resolution processes are prolonged with unnecessary delays and technicalities that drain employees' financial resources, while lawyers and CCMA part-time commissioners benefit from legal fees. Also, the CCMA environment is dominated by moral controversies and challenges involving lawyers and part-time commissioners. Theoretically, if selfishness is not monitored and controlled, it may lead to unethical practices, institutional decay on the part of the CCMA and injustices for employees.

The Nature of South Africa's Ccma Disputes

Generally, CCMA offices across South Africa are crowded by poor and middle-class employee complainants lodging disputes against well-resourced employers³³². Presently, the CCMA's success is assessed in terms of disputes lodged and administered, rather than their effective and efficient conclusion. Berkinow³³³ and Alcock & le Roux³³⁴ lament employers' lack of cooperation because it defeats the primary purpose of the CCMA processes. The conduct of employers at the CCMA has demonstrated that executive management readily wields institutional power and resources against employees' labour rights, superseding the CCMA's conciliation, mediation and arbitration processes. While these CCMA processes humiliate employees, employees participate with arrogance because of the superiority of their institutional power and resources. Beyond the questionable administration of disputes, concerns have been raised with the systematic neglect of complaints about the impartiality of commissioners. Also, employees who lodge disputes at the CCMA come from different backgrounds and sectors of the economy, including government, academia, mining and security as well as low-

³³¹HO Rocha and S Goshal, 'Beyond self-interest revised' [2006]43 JMS 585; C McCarthy, 'An analysis of Adma Smith's Theory of Self-Interest through the mechanism of the philosophy of science' [2023] XXVII TSER

³³²MP Sebola, 'The Commissioner for Conciliation, Mediation and Arbitration Office in South Africa: Serving the Interest of the powerful or the powerless?'[2023] 3 JGRMCS30

³³³R Bernkinow, 'Ten years of the CCMA: An assessment for labour' [2007] 11 LDD 13, 17

³³⁴R Alcock and P le Roux, 'The labour and employment disputes review' (2020) LBR <https://www.ensafrica.com/uploads/newsarticles/0_the_labour_and_employment_disputes_review_edition3.pdf> accessed 15 May 2025, 123

income and high paying jobs. The general trend is that employers are favoured by the CCMA dispute outcomes in South Africa, and most employees do not have the resources to appeal CCMA judgements at the labour court. The CCMA was created to ensure that commissioners would play the essential role of justly and fairly settling labour disputes, but the reality has been that part-time commissioners have generally failed to perform this noble function³³⁵. Bhoola³³⁶ states that the Basic Conditions of Employment Act, no.57 of 1997 was promulgated to protect employees who are vulnerable to employers who abuse their purse strings and power in the event of labour relations disputes. Therefore, South African employees suffer from employers' abuse of power and from legal practitioners and part-time commissioners at the CCMA.

Legal Representation Rights at the Ccma

According to the CCMA Rule 25, the right to legal representation in the CCMA disputes that involve dismissals due to misconduct or incapacity is not automatic³³⁷; instead, conditional upon the commissioners' discretion. The CCMA Rule 25(1)(c) states as follows:

"If the dispute being arbitrated is about the fairness of a dismissal and a party has alleged that the reason for the dismissal relates to the employees conduct or capacity, the parties, despite subrule (1) (b), are not entitled to be represented by a legal practitioner in the proceedings unless-

1. the commissioner and all the other parties consent;
2. the commissioner concludes that it is unreasonable to expect a party to deal with the dispute without legal representation, after considering-
 - a) the nature of the questions of law raised by the dispute;
 - b) the complexity of the dispute;
 - c) the public interest; and
 - d) the comparative ability of the opposing parties or their representatives to deal with the dispute."³³⁸

³³⁵M Phungula and R Utete, 'A critical review of labour commissioners' dilemmas when dealing with workplace disputes in South Africa' [2024] 12 JLSD 1, 3

³³⁶U Bhoola, 'National Labour Law Profile: South Africa' (*International Labour Organisation*, 2002) <<https://www.ilo.org/resource/national-labour-law-profile-south-africa>> accessed 15May 2025, 5

³³⁷K Hawkey, 'CCMA: Right of Appearance' [2012] DR LSSA 1

³³⁸K Hawkey, 'CCMA: Right of Appearance' [2012] DR LSSA 1

As a result, employees are required to apply to commissioners and explain the legal complexities that necessitate the exercise of legal representation rights³³⁹. The irony of this CCMA Rule 25 is that 80% of labour relations disputes lodged at the CCMA involve dismissals for misconduct³⁴⁰. Whereas dismissals are generally regarded as the last resort in dealing with labour relations disputes³⁴¹, Smit & van Eck³⁴² report that 86% of disputes lodged with the CCMA in 2010 involved dismissals. This Rule 25 is unfair because cases of misconduct are by their nature complex.

The limitation to the right to legal representation is based on the idea that the CCMA is, like tribunals, an administrative arm rather than a court of law³⁴³. Additionally, it is argued that labour relations disputes are not criminal cases and that the bar of fairness is lower³⁴⁴ because the CCMA concerns itself with the balance of probability rather than proving beyond a shadow of doubt. They believe was that CCMA would resolve labour relations disputes faster and in a cost-effective manner to the benefit of both employees and employers³⁴⁵. The Law Society of the Northern Provinces applied to court, pleading that the CCMA Rule 25(1)(c) be declared unconstitutional and irrational³⁴⁶. The argument of the Law Society of the Northern Provinces was that the CCMA Rule 25 unfairly discriminates against members of the legal profession and that it

³³⁹KJ Selala, 'Constitutionalising the right to legal representation at CCMA Arbitration Proceedings: Law Society of the Northern Provinces V Minister of Labour 2013 1 SA 468 (GNP)' [2013] 16 PEJ 398

³⁴⁰CM van der Bank, 'A case study in determining fairness of dismissal as a sanction for misconduct in South African Labour Law' [2013] 7 AJPS 1; T Laubscher and M Jefferson, 'Employment Law Update: Legal Representation at the CCMA' [2014] DR LSSA 2

³⁴¹MP Sebola, 'The Commissioner for Conciliation, Mediation and Arbitration Office in South Africa: Serving the Interest of the powerful or the powerless?' [2023] 3 JGRMCS30

³⁴²P Smit and BPS van Eck, 'International perspective on South Africa's unfair dismissal law' [2010] 43 CILJSAfrica 46

³⁴³K Hawkey, 'CCMA: Right of Appearance' [2012] DR LSSA 1, 2-4.

³⁴⁴C Marumoagae and D Damane, 'Should employees be entitled to legal representation during Disciplinary Hearings in South Africa?' [2024] 39 SAJHR 274

³⁴⁵Cliffe Dekker Hofmeyr, 'Employment Alert' (2020) 26 October 2020 <https://www.cliffedekkerhofmeyr.com/export/sites/cdh/en/news/publications/2020/Employment/Downloads/Employment-Law-Alert-26-October-2020.pdf2> 20 May 2025

³⁴⁶KJ Selala, 'Constitutionalising the right to legal representation at CCMA Arbitration Proceedings: Law Society of the Northern Provinces V Minister of Labour 2013 1 SA 468 (GNP)' [2013] 16 PEJ 398, 3.

denies parties the right to legal representation of their own choice and advice. The CCMA argued that the right to legal representation may delay the resolution of disputes and defeat the purpose for the establishment of the CCMA. Critics of the right to legal representation at the CCMA argued that the CCMA processes were less serious and that they did not require legal expertise. Judge Truten, J, ruled for the suspension of the CCMA Rule 25(1)(c) for 36 months with the order that the CCMA must promulgate a new rule. This ruling was considered to be a temporary victory for lawyers and employees seeking legal representation at the CCMA³⁴⁷. Labour relations disputes are serious, and they necessitate the right to legal representation because they involve possible loss of livelihoods and disruptions to careers, especially where employers' conduct is driven by vindictive executives who readily abuse authority of office to serve their personal interests and pettiness. The debate about the right to legal representation at the CCMA seems to be focused on the employees' needs and interests, but employers are the parties that are always seeking legal representation in addition to their advantage of having access to labour relations experts in their employ. According to Bonda & Tsvangirai³⁴⁸, the "most disputing parties in that (CCMA) environment have become more litigious as opposed to managing disagreements through conciliatory methods". However, CCMA rule 14 determines that all conflicts should be managed through conciliatory methods³⁴⁹. As a result, commissioners commonly decide in favour of the application for the right to legal representation for parties in dispute. Ironically, the decision to allow the right to legal representation tends to favour employers because of their access to superior resources³⁴⁹. Also, such decisions tend to make the CCMA process legally technical and costly, disadvantaging employees who do not have access to financial resources. Generally, employees are disadvantaged in such CCMA environments wherein employers are able to abuse their resources and power to undermine transparency and justice.

³⁴⁷Legal Brief, *Legal Representation at the CCMA: A Constitutional Right?* (Juta 2012) 3

³⁴⁸I Bonda and FP Tsvangirai, 'Alternative dispute resolution mechanisms to manage workplace disputes among National Employment Councils in Zimbabwe' [2014] 15 TD1, 1

³⁴⁹CCMA Rule 14' (CCMA, 23 July 2025)1 March 2023 <https://www.ccma.org.za/wp-content/uploads/2023/06/CCMA-Rules-Information-Sheet-2023-01.pdf>

³⁵²M Phungula and R Utete, 'A critical review of labour commissioners' dilemmas when dealing with workplace disputes in South Africa' [2024] 12 JLS D 1

Interests of Legal Practitioners and Ccma Part-Time Commissioners

As already stated above, the majority of commissioners employed by the CCMA are part-time. In 2020, 65% and 35% of the CCMA commissioners were, respectively, part-time and full-time³⁵⁰, implying that most disputes are handled by part-time commissioners. The CCMA environment creates fertile ground for conflict of interest because the interests of serving justice and the pursuit of personal financial benefits are not consistent with each other. The CCMA was founded to serve justice, but the practical challenges and complexities faced by commissioners are yet to be studied in detail³⁵¹. Part-time commissioners claim to be serving the interests of justice and providing labour law expertise to assist the CCMA to alleviate the case backlog. Legal practitioners argue that these are the reasons why they participated through the Law Society of the Limpopo Province in the review application about the constitutionality of the CCMA Rule 25(1)(c), even though this act may appear to be self-serving for them. This article argues that legal practitioners and CCMA part-time commissioners are serving their selfish interests in CCMA disputes, at the expense of employees.

5.1 Part-time Commissioners

As already stated above, a significant majority of the CCMA disputes are arbitrated by part-time commissioners³⁵², who are contracted for 6 years. The renewal of these contracts is conditional upon performance, rather than automatic. However, the renewal of the contracts seems to be guaranteed because part-time commissioners carry 60% of the CCMA workload, leading to a situation where poor performance is rewarded with contract renewals. The CCMA has serious capacity challenges and a

³³Cliffe Dekker Hofmeyr, 'Employment Alert' (2020) 26 October 2020 <https://www.cliffedekkerhofmeyr.com/export/sites/cdh/en/news/publications/2020/Employment/Downloads/Employment-Law-Alert-26-October-2020.pdf>3.2 20 May 2025

³⁴M Phungula and R Utete, 'A critical review of labour commissioners' dilemmas when dealing with workplace disputes in South Africa' [2024] 12 JLS D 1, 4

³⁵P Benjamin, *Assessing South Africa's CCMA* (International Labour Office 2013) 11

limited pool of legal practitioners from which it can employ part-time commissioners. The appointment and renewal of part-time commissioners has been surrounded by controversy related to unethical conduct³⁵³. Phungula & Utete³⁵⁴ state that the other concern with part-time commissioners at the CCMA involves allegations that they compromise justice because of their questionable morals and work ethics. These claims have not been investigated, and the allegations are worrisome to the legal profession.

Generally, organisations employ staff on part-time to save costs and optimise staffing requirements³⁵⁵. Often, employers make these part-time arrangements while compromising the quality of service delivery. As a result, part-time appointments may mean that such staff are people who seek to perform extra duties to supplement their basic income. Most of the CCMA part-time commissioners have their own legal practices which are underperforming³⁵⁶ or abandoned. As a result, most part-time employees at the CCMA do not serve with dedication, and their purpose for taking such extra duties is not for personal financial benefit. According to Nelen, De Grip & Fourage³⁵⁷, human capital theory holds that part-time workers are less productive compared to full-time staff. Jacobsen³⁵⁸ states that part-time staff have no sense of commitment to the institutions, and they do not strive to achieve comparative advantage. At the CCMA, part-time commissioners find themselves in a situation where employers abuse their financial power to prolong dispute adjudication as a strategy for exhausting employees' financial resources. The CCMA pays part-time commissioners per sitting; as a result, prolonged dispute adjudication benefits part-time commissioners financially. There have been allegations that employers and CCMA commissioners are involved in brown envelope money self-serving

³⁶MP Sebola, 'The Commissioner for Conciliation, Mediation and Arbitration Office in South Africa: Serving the Interest of the powerful or the powerless?'[2023] 3 JGRMCS30

³⁷M Phungula and R Utete, 'A critical review of labour commissioners' dilemmas when dealing with workplace disputes in South Africa' [2024] 12 JLS 1, 16.

³⁸P Allart and L Bellman, 'Reasons for part-time work: An empirical analysis for Germany and the Netherlands' [2007]28 IJM557

³⁹MP Sebola, 'The Commissioner for Conciliation, Mediation and Arbitration Office in South Africa: Serving the Interest of the powerful or the powerless?'[2023] 3 JGRMCS30

⁴⁰A Nelen, A de Grip and D Fourage, *Is Part-time Employment Beneficial for Firm Productivity?* (The Institute for the Study of Labor 2011) 1

⁴¹DI Jacobsen, 'Managing increased part-time: Does part-time work imply part-time commitment?' [(2000) 10 MSQ 187

conduct³⁵⁹, rather than serving the interest of CCMA justice with loyalty and commitment. According to Ganero, Kampelmann & Rycx³⁶⁰, part-time employees are likely to be less committed to organisational goals and to investing their energies in competitive performance.

It is not surprising that outcomes of many cases involving dismissal of employees adjudicated by the CCMA are commonly successfully appealed in the labour court³⁶¹, with no consequences for the CCMA's poor performance on justice. However, most employees would not have financial resources to appeal their cases in the labour court because CCMA processes are generally prolonged. Such labour court appeals take no less than three years to be finalised, leaving aggrieved employees drained of financial resources. In renewing part-time appointments of commissioners, the CCMA does not consider the cases that are successfully appealed against them in the labour court. The renewal criteria ignores quality and justice.

Another challenge with the CCMA commissioners is that some may not be qualified legal practitioners³⁶². Generally, commissioners are appointed based on their experiences in arbitration, even if it may have nothing to do with legalities and ethical conduct. The CCMA's recruitment procedures risk appointing commissioners who may lack no legal qualifications or training in ethical conduct. As a result of such recruitment, employees are exposed to the risk of unethical conducts and conflict of interest between part-time commissioners and employers. Also, using part-time commissioners at the CCMA has not improved effectiveness and performance relating to labour relations dispute adjudication. The reliance on part-time commissioners merely reduces costs for the CCMA³⁶³, rather than serving the interest of justice. The CCMA processes also give excessive powers to commissioners to determine fairness in dismissal cases³⁶⁴ without being held accountable if

⁴²MP Sebola, 'The Commissioner for Conciliation, Mediation and Arbitration Office in South Africa: Serving the Interest of the powerful or the powerless?' [2023] 3 JGRMCS30

⁴³A Ganero, S Kampelmann and F Rycx, *Part-time Work, Wages and Productivity: Evidence from Belgian Matched Panel Data* (Institute for the Study of Labour 2013) 4

⁴⁴CM van der Bank, 'A case study in determining fairness of dismissal as a sanction for misconduct in South African Labour Law' [2013] 7 AJPS 1

⁴⁵U Bhoola, 'National Labour Law Profile: South Africa' (*International Labour Organisation*, 1 March 2002) <<https://www.ilo.org/resource/national-labour-law-profile-south-africa>> accessed 20 May 2025, 18

⁴⁶C Tilly, 'Reasons for the continuing growth of part-time employment' [1991] MLR 10

the labour court declares their judgements invalid. The general perception is that CCMA commissioners abuse these powers in the determination of fairness about dismissals in favour of employers³⁶⁵ because of the lack of transparency. CCMA commissioners' handling of dismissal cases has appeared to generally lack fairness, transparency and impartiality³⁶⁶, with impunity. Often, CCMA commissioners judge dismissal cases on the basis of allegations that are not corroborated by credible evidence, exercising caution and balance of probability in favour of employers. Generally, employees are expected to prove their innocence on the basis of allegations alone, rather than supporting evidence. This conduct by CCMA commissioners is problematic because labour relations disputes lodged are often a result of unfair and inappropriate internal disciplinary proceedings³⁶⁷. Even where there are clear procedural anomalies in the internal disciplinary proceedings, CCMA part-time commissioners avoid ruling in favour of employees, forcing employees to seek recourse in labour courts³⁶⁸ without financial resources. CCMA decisions limit employees because they often lack the resources to afford legal costs for appealing judgements at the labour court³⁶⁹. A minority of employees who have financial resources and membership of strong labour unions, such as the National Education, Health and Allied Workers Union (NEHAWU) and Public Servant Association (PSA), are able to successfully review CCMA judgements in the labour courts.

5.2 Legal Practitioners in the CCMA Arbitration Hearing

As already stated above, the Law Society of the Northern Provinces, representing legal practitioners, challenged the constitutionality of the CCMA Rule 25 in the Gauteng High Court on the grounds that the rule is unjust to labour relations dispute parties and that it discriminated against their legal businesses. The Law Society of the Northern Provinces

⁴⁷I Israelstam, *The Powers of CCMA Commissioners (Labour Law Management Consulting* 6 June 2018) <<https://www.labourlawadvice.co.za/articles/the-powers-of-ccma-commissioners/>> accessed 22 May 2025, 2

⁴⁸MP Sebola, 'The Commissioner for Conciliation, Mediation and Arbitration Office in South Africa: Serving the Interest of the powerful or the powerless?' [2023] 3 JGRMCS30

⁴⁹CM van der Bank, 'A case study in determining fairness of dismissal as a sanction for misconduct in South African Labour Law' [2013] 7 AJPS 1

⁵⁰H. Bendeman, 'An analysis of the problems of the labour dispute resolution system in South Africa' [2006] 6 AJCR 81

⁵¹A Myburgh, 'The correctness standard of review' [2023] 44 ILJ 724

claimed to be mounting this challenge in the best interest of employees and employers. However, it appears that they challenged CCMA Rule 25 for their selfish interests and personal financial benefits, rather than pursuit of justice. Significantly, the Supreme Court of Appeal noted that “the case of the *Law Society of the Northern Province* was indeed not acting in the best interests of litigants who use the CCMA, but rather in the interest of their members’ businesses. Even as CCMA Rule 25 remains in force, commissioners rarely exercise their discretion³⁷⁰ to refuse applications for legal representation. At the CCMA hearings, employers are always represented by highly qualified and experienced legal labour practitioners or labour relations officers, while employees rely on institutional labour union representatives or lawyers of their choice. In the end, lawyers representing employers and employees abuse the CCMA processes, with the complicity of part-time commissioners, to extract as many personal financial benefits as possible. As a result, the CCMA dispute adjudication processes are characterised by systematic failures involving “delaying tactics, squeezing opponents out financially, misrepresentation of facts, excessive legal fees, unnecessary information overload, technical point-taking and incompetence”³⁷¹. Seemingly, lawyers participate in CCMA processes for self-enrichment, rather than for serving justice. These abuses of the right to legal representation at the CCMA are also beneficial for part-time commissioners who stand to gain financial allowances from prolonged sittings and unnecessary postponements. Unsurprisingly, some cases run for periods between 3 and 5 years at the CCMA, during which part-time commissioners and lawyers receive financial benefits. In such situations, employees are the only parties that are most disadvantaged.

Employees’ Dilemmas: Conflicts of Interests and Justice at the Ccma

According to Rapatsa³⁷², it is difficult to assess the effectiveness of South Africa’s CCMA labour dispute administration and resolution because the

⁵²MP Sebola, “The Commissioner for Conciliation, Mediation and Arbitration Office in South Africa: Serving the Interest of the powerful or the powerless?”[2023] 3 JGRMCS30

⁵³C Marumoagae and D Damane, ‘Should employees be entitled to legal representation during Disciplinary Hearings in South Africa?’ [2024] 39 SAJHR 274

⁵⁴N Whitear and H Kruuse, ‘The ethics of legal practitioners in resource scarce institutions’ [2019] O 383, 386

environment is dynamic while institutional weaknesses persist unresolved. The CCMA's institutional challenges include the lack of appropriately qualified staff and incapacity to manage the disputes and caseload. As a result, the CCMA depends on part-time commissioners who do not have the required legal qualities for just and fair adjudication of labour disputes. Most of the labour cases concluded by the CCMA are referred back by the labour court because of poor substantive and procedural judgements. A major reason for poor CCMA judgments is the financial self-interest and conflict of interest of part-time commissioners regarding employees and employers.³⁷³ Employees refer cases to the CCMA mainly because they feel aggrieved by the sanctions imposed by their employers³⁷⁴. Generally, employers' internal hearing processes are compromised because of power imbalances between them and their employees. For internal disciplinary processes, employers decide on chairpersons, prosecutors, briefs and mandates of such committees. These powers that employers exercise create the impression that outcomes of internal disciplinary proceedings are biased against employees³⁷⁵. Clearly, the risk of employers abusing their powers in internal disciplinary proceedings is not countered by the CCMA processes. Also, most employees do not trust their union representatives because of claims that they are complicit in the employers' abuse of powers. According to Benjamin³⁷⁶, termination of employment of senior employees who are highly paid has been "disproportionally expensive, time-consuming and prejudicial to the operations of the employer". From time to time, labour relations officers seem to be protecting employers' interests, rather than those of employees. Aggrieved employees cannot reasonably deliberately waste time in labour disputes that place their livelihoods at stake.

At the CCMA proceedings, employees seek justice, but the same cannot be said for legal practitioners and part-time commissioners who seem to share a common goal of personal financial profiteering.

³⁷³M Rapatsa, 'The Commission for Conciliation, Mediation and Arbitration (CCMA) and Alternative Dispute Resolution (ADR) in labour relations in South Africa: An appraisal of efficacy and challenges' [2018] 8 JT 203

³⁷⁴MP Sebola, 'The Commissioner for Conciliation, Mediation and Arbitration Office in South Africa: Serving the Interest of the powerful or the powerless?' [2023] 3 JGRMCS30

³⁷⁵C Tshoose and JM Kgaphola, 'The pros and cons of a side hustle in an employment relationship' [2023] O 447

³⁷⁶C Marumoagae and D Damane, 'Should employees be entitled to legal representation during Disciplinary Hearings in South Africa?' [2024] 39 SAJHR 274

³⁷⁷P Benjamin, *Assessing South Africa's CCMA* (International Labour Office 2013) 11, 3

Unsurprisingly, some legal practitioners representing employees have been blamed for attending CCMA matters while being ill-prepared, creating the impression that they have been bribed to serve the employers' interests or to cause unnecessary postponements in their own personal financial interest and those of CCMA part-time commissioners. The latter are blamed for always being agreeable to lawyers' applications for postponement of CCMA matters. According to Tshoose & Kgaphola³⁷⁷, "South Africa's economy has cajoled many employees into seeking extra work to complement their primary employment earnings". Similarly, the majority of legal practitioners representing parties in disputes and the CCMA part-time commissioners are involved in these proceedings to supplement their primary incomes. As a result, the majority of cases that should have been fairly settled at the CCMA are reviewed in the labour court, which experiences case backlogs and capacity challenges.

Conclusion

The article argued that there are shared interests between legal practitioners and CCMA part-time commissioners in arbitration proceedings involving dismissed employees. Generally, employees are victims of unfair and inappropriate employers' internal labour relations dispute proceedings because of the power imbalances between employers and employees. Most low-earning employees might not be conversant with labour law processes when lodging disputes at the CCMA, being ultimately subjected to repeated postponements and draining of their financial resources. Generally, employees are unable to receive justice at the CCMA. There is a perceived shared interest in the pursuit of personal financial benefits, rather than justice, between legal practitioners and CCMA part-time commissioners. South Africa's CCMA does not appear to be serving the purpose of its establishment

References

- Alcock, R., & le Roux, P. (2020). The Labour and Employment Disputes Review. Law Business Research.
[https://www.ensafrica.com/uploads/newsarticles/0_the_labour_and_employment_disputes_review - edition 3.pdf](https://www.ensafrica.com/uploads/newsarticles/0_the_labour_and_employment_disputes_review_-_edition_3.pdf)

³⁷⁷C Tshoose and JM Kgaphola, 'The pros and cons of a side hustle in an employment relationship' [2023] O 447, 447

- Allart, P., & Bellman, L. (2007). Reasons for Part-Time Work: An Empirical Analysis for Germany and the Netherlands. *International Journal of Manpower*, 28(7):557-570.
- Barbalet, J. (2012). Self-Interest and the Theory of Action. *The British Journal of Sociology*, 63(3): 412-429.
- Beck, S.1987. In Defence of Self-Interest: A Response to Parfit. *South African Journal of Philosophy*, 6(4):119-124.
- Bendeman, H. 2006. An Analysis of the Problems of the Labour Dispute Resolution System in South Africa. *African Journal on Conflict Resolution*, 6(1): 81-112.
- Benjamin, P. (2013). Assessing South Africa's CCMA. International Labour Office: Geneva
- Bernkinow, R. (2007). R. Ten years of the CCMA-An Assessment for Labour. *Law, Democracy, Development*, (2014),13-24.
- Bertusi, E. (2017). An Analysis of Adam Smith's Concept of Self-Interest: From Selfish Behavior to Social Interest. Libera Università Internazionale Degli Studi Sociali. Italy.
- Bhoola, U. (2002). National Labour Law Profile: South Africa. International Labour Organisation. Available on:
<https://www.ilo.org/resource/national-labour-law-profile-south-africa>.
- Bonda, I., & Tsvangirai, F.P. (2014). Alternative Dispute Resolution Mechanisms to Manage Workplace Disputes among National Employment Councils in Zimbabwe. *The Dyke*,15(3):1-27.
- CCMA Rule 25. (n.d). <https://www.ccma.org.za/wp-content/uploads/2023/06/CCMA-Rule-25-Information-Sheet-2023-01.pdf>
- Cropanzano, R., Goldman, B., & Folger, R. (2005). The Self-Interest: Defining and Understanding Incubator a Human Motive. *Journal of Organizational Behavior*, 26 (2005): 985-991.
- Employment Alert. (2020). Cliffe Dekker Hofmeyr. Cape Town. Available
- Ganero, A., Kampelmann, S., & Rycx, F. (2013). Part-time Work, Wages and Productivity: Evidence from Belgian Matched Panel Data, IZA Discussion Papers, No7789, Institute for the Study of Labour (IZA), Bonn.
- Getzler, J. (2013). Law and Self-Interest. 2013 UK IVR Conference, 12 April 2013. Oxford.
- Israelstam, I. (2018). The Powers of CCMA Commissioners. Available on:
<https://www.labourlawadvice.co.za/articles/the-powers-of-ccma-commissioners/>
- Jacobsen, D.I. (2000). Managing Increased Part-Time: Does Part-Time Work Imply Part-Time Commitment? *Managing Service Quality*, 10(3):187-200.
- Hawkey, K. (2012). CCMA: Right of Appearance. *De Rebus*, Law Society of South Africa
- Kamark, A.M.(2002). Economics as a Social Science. University of Michigan. Michigan Press.
- Laubscher, T., & Jefferson. M.(2014). Employment Law Update-Legal Representation at the CCMA. *De Rebus*, Law Society of South Africa.

- Legal brief, 2012. Legal Representation at the CCMA: A Constitutional Right? Juta: Pretoria
- Marumoagae, C., & Damane, D. (2024). Should Employees be Entitled to Legal Representation during Disciplinary Hearings in South Africa? *South African Journal of Human Rights*, 39(4):274-300.
- McCarthy, C.(2023). An Analysis of Adma Smith's Theory of Self-Interest through the Mechanism of the Philosophy of Science. *The Student Economic Review*, XXVII (2023): 8-13.
- Myburgh, A. (2023). The Correctness Standard of Review. *Industrial Law Journal*, 44(2023):724-733.
- Nelen, A., De Grip, A., & Fourage, D. (2011). Is Part-Time Employment Beneficial for Firm Productivity? Discussion Paper No 5423. The Institute for the Study of Labor. Germany.
- Phungula, M. & Utete, R. (2024). A Critical Review of Labour Commissioners' Dilemmas when Dealing with Workplace Disputes in South Africa. *Journal of Law and Sustainable Development*, 12(2):1-26.
- Rapatsa, M. (2018). The Commission for Conciliation, Mediation and Arbitration (CCMA) and Alternative Dispute Resolution (ADR) in Labour relations in South Africa: An Appraisal of Efficacy and Challenges. *Judicial Tribune*, 8(2018): 203-211.
- Rocha, H.O., & Goshal, S. (2006). Beyond Self-Interest Revised. *Journal of Management Studies*, 43:3(2006):585-619.
- Sebola, M.P. (2023). The Commissioner for Conciliation, Mediation and Arbitration Office in South Africa: Serving the Interest of the Powerful or the Powerless? *Journal of Governance Risk Management Compliance and Sustainability*. 3(2):30-39.
- Selala, K.J. (2013). Constitutionalising the Right Legal Representation at CCMA Arbitration Proceedings: Law Society of the Northern Provinces V minister of Labour 2013 1 SA 468 (GNP). *Potchefstroom Electronic Journal*, 16(4):398-420.
- Smrit, P., & Van Eck, B.P.S. (2010). International Perspective on South Africa's Unfair Dismissal Law. *Comparative and International Law Journal of Southern Africa*, 43(1): 46-67.
- Tilly, C. (1991). Reasons for the Continuing Growth of Part-Time Employment. *Monthly Labour Review*, 1991: 10-18.
- Tshoose, C & Kgaphola, JM (2023). The Prons and Cons of a side hussle in an employment relationship. *Obiter* (2023): 447-458
- University of Limpopo. (2006). University of Limpopo Human Resources Manual and Procedure. Sovenga: University of Limpopo
- Van der Bank, C.M. (2013). A Case Study in Determining Fairness of Dismissal as a Sanction for Misconduct in South African Labour Law. *African Journal of Political Science*, 7(1):001-007.
- Wells, T.R. (2013). Adam Smith on Morality and Self Interest. *Handbook of the Philosophical Foundations of Business Ethics* (pp.281-296).

- Whitear, N & Kruuse, H. (2019) The ethics of legal practitioners in resource scarce institutions. *Obiter*, (2019):383-398
- Zhang, Z., & Lynne, G.D. (2016). Is Social Capital Motivated by Self-Interest Only? A Case Study on a Well-Developed U.S Rural Community. *Universal Journal of Agricultural Research*, 4(1):25-31.