

**IN THE COMMISSION FOR CONCILIATION MEDIATION AND ARBITRATION
HELD AT PRETORIA**

CASE NO.:GATW3508 -15

In the matter between:

ADRIAN MARK LACKAY

Applicant

and

SOUTH AFRICAN REVENUE SERVICE

Respondent

FILING SHEET

Document to be presented and filed: Respondent's Submissions Regarding Media Presence in Arbitration.

DATED AT SANDTON ON THIS THE 9TH DAY OF OCTOBER 2015


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Applicant's attorneys
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Ref: Mr. Modjadji/pm/SAR2-0029

TO:
THE COMMISSION FOR CONCILIATION MEDIATION & ARBITRATION
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Received a copy hereof on
this day of October 2015

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Received a copy hereof on
this 09 day of October 2015



For: Second Respondent

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MAG Centre for Investigative Journalism
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**RESPONDENT'S SUBMISSIONS REGARDING MEDIA PRESENCE IN
ARBITRATION**

INTRODUCTION

1. This is a dispute of constructive dismissal brought by Mr Adrian Mark Lackay (herein referred to as the Applicant) against South African Revenue Service (Herein referred to as the Respondent).
2. The Applicant is a former SARS spokesperson. On the 19th February 2015, the Applicant tendered a notice of resignation. The said resignation was warmly accepted by the Respondent which came into effect on 19 March 2015.
3. For strange reasons, the Applicant made referral to the CCMA alleging constructive dismissal. The matter was conciliated upon and there was no positive outcome as such it remained unresolved.
4. Now, the matter has been Set Down for arbitration by the CCMA. The Media has made a request to attend the said arbitration. The Respondent is diametrically opposed to the presence of the Media. The reasons thereof will be advanced herein below.

POINTS IN LIMINE

5. The following point *in limine* must dispose of this request/application. If it does not, the merits also do not sustain the relief sought. On all of the grounds set out herein, this application/request falls to be dismissed.

LACK OF JURISDICTION

- 5.1 Since there is a vast dispute regarding the presence of Media during arbitration proceedings, it is therefore submitted that the CCMA does not have jurisdiction to make determination whether Media can be allowed or not.
- 5.2 CCMA is an administrative tribunal created by statute with limited powers specified in the Labour Relation Act ("the Act"). It is not a court of law.
- 5.3 CCMA has no jurisdiction to enquire into matters not specified in the Act. It follows therefore that CCMA is not empowered to consider matters such as media presence in arbitration, which are non-labour related, unless expressly provided for in the Labour Relations Act.

GROUND FOR MEDIA REFUSAL

6. In the event that the Commissioner is not inclined towards the above point *in limine*, it is therefore submitted that the documentary evidence which has been exchanged to parties contains tax payers' information which is protected by Tax Administrative Act 28 of 2011 (TAA). Such information cannot land into the hands of the third party except the CCMA.
7. Secondly, the documentary evidence contains confidential information which is also protected by Tax Administration Act and oath of secrecy signed by SARS officials including Mr Lackay. Such information cannot land into the hands of the Media.

8. Thirdly, documentary evidence will unnecessarily resuscitate and resurrect dead media publications about former SARS officials which have nothing to do with the dispute at hand.
9. Fourthly, the dispute between the Applicant and Respondent does not fall within the category of public interests. There is no public interest about this matter and thus renders media presence irrelevant.
10. Fifthly, the Respondent, SARS, will not have a fair hearing since its witnesses will be testifying in presence of the media. They might not be at ease to give more information, which regarded to be confidential, as they could.

CONCLUSION

11. It is therefore submitted that the request/application be dismissed.

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