ASSOCIATION OF ARBITRATORS (SOUTHERN AFRICA) NPC

Arbitrarily Speaking

Issue 10 of 2026

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MESSAGE FROM THE EDITOR

Welcome to the October 2026 edition of *Arbitrarily Speaking*. This month we dissect critical developments shaping South African arbitration and construction law.

We analyse the unyielding autonomy of on-demand guarantees, following the recent *Set Square* and *Imvula Roads* judgments, and the procedural risks the *Dutco* principle poses in multi-party FIDIC and NEC disputes.

Finally, Uncle Oswald tackles the high evidentiary threshold for early dismissal applications under Article 25. Dive in for essential jurisprudence and practical insights to bulletproof your arbitral strategies.

Questions or comments? Let us know **here**.

A CASE IN POINT

UNDERSTANDING ON-DEMAND GUARANTEES IN LIGHT OF THE *SET SQUARE* AND *IMVULA ROADS* JUDGMENTS

In the construction industry, few instruments are more powerful and more misunderstood than the on-demand guarantee (ODG). Two recent judgements, one by the Supreme Court of Appeal - *Set Square Developments (Pty) Ltd v Power*

Guarantees (Pty) Ltd 2025 (6) SA 552 (SCA) - and the other by the Johannesburg High Court - *Imvula Roads and Civils (Pty) Ltd v The Hollard Insurance Co Ltd* (2024/104602) [2025] ZAGPJHC 12 (14 January 2025) - remind us of a principle that is as commercially important as it is legally settled.

> ***When an on-demand guarantee is called up, it must be paid. No "ifs" or "buts", and virtually no exceptions.***
> **Adv Simphiwe Madima**

Adv Simphiwe Madima breaks down these judgments and on-demand guarantees:

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ANALYSIS OF AN ARBITRATOR'S AWARD

THE *DUTCO* PRINCIPLE IN SOUTH AFRICAN CONSTRUCTION ARBITRATION – WHY FIDIC AND NEC PRACTITIONERS SHOULD PAY ATTENTION

Chris Binnington, Director and Chair of the Rules Committee, discusses the importance of the consideration of the *Dutco* principle in drafting the Association's Expedited Rules for the Conduct of Arbitrations.

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THE ASSOCIATION'S EVENTS



OUTER SPACE LAW RELATING TO SATELLITES AND DEBRIS

Who owns the debris? Who bears the risk? What happens when satellites collide?

A outer space becomes increasingly crowded with satellites, commercial ventures and future lunar activities, these questions are becoming some of the most important legal and commercial challenges of our time.

Join us for a fascinating webinar presented by Prof Christopher Newman, an internationally recognised authority on space law, governance and, as he explores the legal, regulatory and commercial issues, and alternative dispute resolution (ADR) shaping the future of space activities.

Date: **29 October 2026**

Click HERE for More Information and to Register

EDUCATION STATION



2027 ONLINE ARBITRATION TRAINING – APPLICATIONS OPEN

The Association is excited to announce that applications are open for the 2027 arbitration courses.

We encourage prospective students to submit your applications early.

Closing date: **28 February 2027**

Click HERE for More Information and to Apply

UNCLE OSWALD'S Q&A FORUM

EARLY DISMISSAL APPLICATIONS

Uncle Oswald deals with the applications in terms of article 25 of the Association's Rules for the Conduct of Arbitrations.

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Arbitrarily Speaking **is the official newsletter of the Association of Arbitrators (Southern Africa) NPC.**

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