

SOUTH AFRICA / JUDGMENT

Lekalake v Eoh Mthombo (Pty) Ltd (JS895/19) [2025] ZALCJHB 62 (21 February 2025)

[2025] ZALCJHB 62

COURT

Labour Court Johannesburg

BEFORE

S Sethene

CASE / FILE NUMBER

JS895/19

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FLYNOTES:

LABOUR – Dismissal – Operational requirements –
Ultimate
reason for dismissal for operational reasons was serious
corruption allegations on senior persons – Resulted
in
respondent losing government contracts and closure of a division –
Retrenchment would not have occurred but for
allegations –
Reasons provided were not genuine operational requirements –
Dismissal substantively unfair –
Retrospective reinstatement
granted – Labour Relations Act 66 of 1995, s 189.
THE LABOUR COURT OF
SOUTH AFRICA, JOHANNESBURG
Not Reportable
case
no: JS
895/19
In

the matter between:

WATSON KELEMOGILE
LEKALAKE
Applicant
and
EOH
MTHOMBO (PTY) LTD
Respondent

Heard:	05 September 2022
Delivered:	21 February 2025. This judgment was handed down electronically by consent of the parties' representatives by circulation to them via email. The date for hand-down is deemed to be 21 February 2025.
Summary:	Serious allegations of corruption by senior executives of the respondent that resulted in the closure of the Public Sector Division of the employer cannot be fair reason(s) for dismissal due to operational requirements as per section 189 of the LRA. Held: (1) The applicant's dismissal due to operational requirements was substantively unfair. (2) The applicant is retrospectively reinstated effective from the date of his dismissal with all the benefits and emoluments. (3) Respondent is ordered to pay the applicant's costs on attorney-client scale. (4) The applicant is to report for duty on 1 March 2025.

JUDGMENT

SETHENE, AJ

Introduction

“An employer, who senses that it might have to retrench employees in order to meet operational objectives, must consult with employees likely to be affected (or their representatives) at the earliest opportunity in order to advise them of the possibility of retrenchment and the reasons for it. The employees or their representatives must then be invited to suggest ways of avoiding terminations of employment, and should be placed in a position in which they are able to participate meaningfully in such discussions. The employer should in all good faith keep an open mind throughout and seriously consider proposals put forward. The final decision will, however, remain with the employer.”[1]

- [1] I considered it apt to commence this judgment by citing the above decision as the essence of what this court is called upon to decide is premised on section 189 of the Labour Relations Act[2] (LRA).
- [2] Mr Watson Kelemogile Lekalake's (applicant/Mr Lekalake) principal reason for instituting these proceedings against EOH Mthombo (Pty) Ltd (respondent /EOH) is that EOH had no valid reason to dismiss him as contemplated in section 189 of the LRA. Mr Lekalake also pleads with this court to find that his dismissal by EOH was substantively unfair and reinstatement is the remedy he seeks from this court.

- [3] However, EOH contends otherwise. In the main, EOH's contention is that its continuation of keeping Mr Lekalake employed when it has nowhere to deploy him prompted its decision to dismiss Mr Lekalake due to operational reasons as contemplated in section 189 of the LRA.
- [4] The reasons tendered by EOH kept changing. Initially, EOH's reason was an alleged poor work performance as a reason to retrench Mr Lekalake. Another reason was that Mr Lekalake did not enjoy programming. The last reason was that the Department of Water and Sanitation (DWS) wanted Mr Lekalake to be replaced with a senior person. During evidence-in-chief, EOH's real reason was laid bare: serious allegations of corruption allegedly levelled against EOH's senior executives, led to the closure of its Public Sector Division resulting in Mr Lekalake having no work to perform.
- [5] Despite allegations of corruption as the real reason that resulted in the dismissal of Mr Lekalake, EOH contends that there is no reason for the court to grant Mr Lekalake the relief sought. In sum, EOH submits that this matter must be dismissed with costs.
- [6] It is EOH, being the employer who must prove that Mr Lekalake's dismissal in terms of section 189 of the LRA was procedurally and substantively fair.

EOH's case

- [7] To advance its case in support of its decision to dismiss Mr Lekalake in terms of section 189 of the LRA, EOH called three witnesses being Ms Chey-Anne Maher (Ms Maher), Mr Gavin Devereux (Mr Devereux) and Mr Carl Legodi (Mr Legodi). For the sake of brevity and to avoid prolixity, I shall summarise the evidence of each witness.

Evidence of Ms Maher

- [8] Ms Maher (neè Ho) was the first witness to be called by EOH. She testified that in 2019, she was employed by EOH as a Human Resources Manager. Previously, she occupied the position of Human Resources Consultant effective from 2014 within EOH.
- [9] Ms Maher testified that her duties in the main are to ensure that human resources operations, which included recruitment and retrenchments, amongst others, fell within her portfolio. She testified that she had meetings with the applicant on a few occasions. She testified that, in one of the meetings, Mr Lekalake voiced his unhappiness about his salary scale or level. In one meeting she had a discussion with Mr Lekalake regarding allegations of poor work performance.
- [10] Under cross examination, Ms Maher conceded that in 2019 she had only two and a half years' experience as a Human Resources Manager. She conceded that she was involved in the dispute that had to do with Mr Lekalake having been removed from the DWS at the Commission for Conciliation, Mediation and Arbitration (CCMA) whereat the settlement agreement was reached.

- [11] Ms Maher further conceded that she was not involved in the finalisation of Mr Lekalake's retrenchment. Ms Maher was not re-examined by EOH's Counsel after cross examination.

Evidence of Mr Devereux

- [12] Mr Devereux testified that he was employed by EOH as an SAP Contract Manager for DWS. He testified that he joined EOH in 2016 and he had about forty (40) consultants reporting to him, including Mr Lekalake. Mr Devereux was within EOH's Public Sector Division and dealt with the IT environment at the DWS.
- [13] Mr Devereux testified that in the main, programming, finance, business process controlling and statistics were services that the EOH rendered to the DWS.
- [14] Mr Devereux also testified that Mr Lekalake did not enjoy programming and requested that he (Mr Lekalake) be moved to business process controlling. Mr Devereux considered Mr Lekalake's request favourably as Mr Lekalake had a finance background. Mr Devereux also testified that Mr Lekalake struggled with his duties and the DWS needed someone senior.
- [15] Further, Mr Devereux testified that around 2018-2019, EOH was no longer receiving any contract from government due to serious allegations of corruption. As a result, he stated that there were no other positions available at the time to assign to Mr Lekalake. Mr Devereux stated that Mr Lekalake had no work to perform and would attend to EOH's premises to sit and do nothing.
- [16] Mr Devereux also stated that there were attempts to get Mr Lekalake to be placed on other sites (government departments) without success. He further testified that there were many other employees who were retrenched by EOH and attempts to find them alternative work within EOH proved futile. This was so as the Public Sector Division was phased out due to serious allegations of corruption and ultimately closed down at the end of 2022.
- [17] Under cross examination, Mr Devereux conceded that there was no performance appraisal conducted by him on Mr Lekalake. Mr Devereux further conceded that he could not recall or prove if ever there was any training provided to Mr Lekalake to ensure that his (Mr Lekalake) alleged poor performance is tackled.

Evidence of Mr Legodi

- [18] Mr Legodi, Senior Business Partner was the last witness for EOH. He testified that in 2019 he was with the SAP Division of EOH. He stated that he was a facilitator of the process in terms of section 189 of the LRA and was present at all consultations. He stated that Mr Lekalake made no proposal about where he could be placed. He testified that he tasked one Annemarie Reid-Gaertner to circulate Mr Lekalake's curriculum vitae (CV) across business units within EOH and to external recruiters in an effort to secure Mr Lekalake an alternative job. These attempts all proved fruitless.

- [19] Mr Legodi explained that the real reason that precipitated the closure of the Public Sector Division within EOH was that on or around 2018, EOH suffered a reputational dent both in public and private sectors. Mr Legodi stated that there were serious corruption allegations that involved certain persons who were at the helm of EOH.
- [20] Under cross examination, Mr Legodi testified that they tried to look for alternative employment for Mr Lekalake to no avail. He testified that he was the one handling wellness issues within EOH at the time and had a sense of the well-being of affected employees during the retrenchment process.
- [21] Mr Legodi conceded that once Mr Lekalake was removed from the DWS, no replacement was made to the position Mr Lekalake occupied and the duties he used to perform. In the process, EOH lost the contract to render services to the DWS to a competitor.
- [22] In re-examination, Mr Legodi testified that all the consultants or employees within the Public Sector Division of EOH were retrenched. Following Mr Legodi's re-examination, EOH closed its case.

Applicant' case

Mr Lekalake

- [23] Mr Lekalake testified that he obtained his Bachelor of Science in Computational and Applied Mathematics at the University of Witwatersrand. He went on to obtain a Diploma in Business Computing from College Campus. He also obtained a Certificate in IT from Tshwane University of Technology and a Certificate in Operations Research from the University of South Africa. In addition, he obtained a Microsoft Certificate in Data, focusing on programming and quantitative fields.
- [24] Mr Lekalake testified that he did his internship at Council for Scientific and Industrial Research (CSIR) under Meraka Institute and was involved in software development for a year. He served his second internship at Gijima (one of the leading ICT private company in the country) for SAP and completed the said internship and joined Business Technology as a SAP Consultant. He testified that his duties at Business Technology were amongst others, to implement SAP software and he worked mainly in municipalities and at the South African National Space Agency.
- [25] Mr Lekalake testified that initially, he was employed by MIIB Business Technology (Pty) Ltd (MIIB). On or around 2012, MIIB management informed Mr Lekalake that they have agreed to a deal to be acquired by EOH. Mr Lekalake stated that at the time, EOH was already listed on the Johannesburg Stock Exchange and recognised as an international company and the business was thriving. Mr Lekalake further stated that he was informed that salaries, benefits and emoluments were going to be increased.

- [26] On or around November 2012, Mr Lekalake testified, that he was formally onboarded as an EOH employee and duly received an employment contract stating that he is a permanent employee. It was his testimony that he observed salary increase thereafter.
- [27] He stated that he performed SAP ABAP programming and later, same was integrated into finance. Mr Lekalake testified that on or around 6 May 2019, he was furnished with a letter dated 2 May 2019, inviting him to a poor performance hearing to be held on 13 May 2019. According to Mr Lekalake's testimony, the focus of the said hearing was to assess his ability to perform his duties and suitability for continued employment.
- [28] On or around 6 May 2019, Mr Lekalake requested documentation from Mr Devereux to enable him to prepare for the scheduled hearing. In the main, Mr Lekalake requested that he be furnished with the following documents:
- 28.1 A statement of complaint made against him for alleged poor work performance;
 - 28.2 The investigation report conducted on his alleged poor work performance;
 - 28.3 All the documentary evidence submitted to EOH for alleged poor performance;
 - 28.4 A flowchart showing alleged drop in his work performance for the last five (5) years; and
 - 28.5 All performance appraisals conducted on him for the past five (5) years
- [29] On 10 May 2019, it was Mr Legodi who replied to Mr Lekalake's letter of 6 May 2019 and not Mr Devereux. In the said letter, instead of furnishing Mr Lekalake with documentary evidence he requested to prepare for the scheduled hearing of poor work performance, Mr Legodi postponed indefinitely the scheduled hearing of the 13 May 2019.
- [30] Mr Lekalake also testified that on 10 May 2019, he also received an email from Mr Devereux with a subject "Urgent Notice", informing him that the DSW has instructed Mr Devereux to remove Mr Lekalake from site with immediate effect. In the said email, Mr Lekalake was instructed to remain home and be contactable during office hours, not to contact any employee of DWS and not to discuss the contents of the email with any employee of EOH or DWS. Mr Lekalake obliged.
- [31] Mr Lekalake construed the contents of the email from Mr Devereux as an unfair suspension and he duly approached the CCMA. On 3 June 2019, the CCMA scheduled a conciliation which was attended by Ms Maher who represented EOH. According to Mr Lekalake, an agreement was reached at the CCMA that he should return to work on 18 June 2019.
- [32] On 18 June 2019, when Mr Lekalake returned to work he was invited by Mr Legodi to attend a section 189 consultation. Mr Lekalake stated that it was at 14:00 when he met Mr Legodi who furnished him with documents which he started to read as the consultation process commenced. After Mr Lekalake had the liberty to read the documents furnished by Mr Legodi, he was asked by Mr Legodi if he understood the contents of the document. Mr Lekalake stated that his response was in the negative as he needed time to understand the

process set out in the documents.

- [33] Mr Lekalake further testified that on 25 June 2019, he was again invited to another consultation meeting and confirmed that no alternative position was offered to him. In the said meeting, Mr Lekalake testified that Mr Legodi took minutes that he never shared with him. Further, in the said meeting, Mr Lekalake testified that Mr Legodi made an undertaking that he would look for an alternative position for him and never did.
- [34] Mr Lekalake stated that during the consultations with Mr Legodi, he was aware that there was a contract EOH had with the City of Joburg and there was another company that was acquired by EOH which was apparently led by a certain Mr Teko Mohapi. Mr Lekalake stated that Mr Legodi in further consultations presented him with voluntary retrenchment which he rejected.
- [35] In respect of the training that was offered by EOH, Mr Lekalake testified that he completed the following modules:

35.1 SAP-ABAP

35.2 SAP-Programming and

35.3 SAP- BPC (Budgeting)

- [36] Under cross examination, Mr Lekalake emphasised that there was a salary increase when he was formally transferred to EOH from MIIB.
- [37] He conceded that Ms Maher's evidence was never challenged. He further conceded that EOH had to instruct him to stay home instead of traveling from home to the premises only to sit idle as he had no work to perform once he was removed from DWS.
- [38] Mr Lekalake conceded that EOH never created any hostile environment towards him.
- [39] Under re-examination, Mr Lekalake testified that there was no performance appraisal ever conducted on him. He stated that all the SAP modules were paid for by EOH.

Evaluation, analysis and law

- [40] Dismissal for operational requirements as contemplated in section 189 of the LRA provides a safeguard to employers to engage in retrenchments of employees in instances of economic downturn, structural and technical reasons or any other reason prescribed in the LRA. In essence, section 189 of the LRA serves as a statutory provision that sets out commercial circumstances that warrant the dismissal of employees solely for operational requirements.
- [41] However, in the implementation of section 189 retrenchments, fairness to both the employers and employees is paramount as per the exposition of the Labour Appeal (LAC) Court decision in *SACTWU and Others v Discreto (A Division of Trump and Springbok Holdings)*[3] where it was held:

“As far as retrenchment is concerned, fairness to the employer is expressed by the recognition of the employer’s ultimate competence to make a final decision on whether to retrench or not...For the employee fairness is found in the requirement of consultation prior to a final decision on retrenchment. This requirement is essentially a formal or procedural one, but, as is the case in most requirements of this nature, it has a substantive purpose. That purpose is to ensure that the ultimate decision on retrenchment is properly and genuinely justifiable by operational requirements or, put another way, by a commercial or business rationale... It is important to note that when determining the rationality of the employer’s ultimate decision on retrenchment, it is not the court’s function to decide whether it was the best decision under the circumstances, but only whether it was a rational commercial or operational decision, properly taking into account what emerged during the consultation process.”

- [42] In this matter, the ultimate or genuine reason to dismiss Mr Lekalake for operational reason was that senior persons at the helm of EOH had serious corruption allegations hanging over them which resulted in EOH losing government contracts resulting in the closure of the Public Sector Division of EOH.
- [43] Had it not been for serious corruption allegations levelled against senior persons/executives at the helm of EOH, it stands to reason that retrenchment would not have occurred and the Public Sector Division of EOH would have enjoyed economic buoyance. This is so premised on the fact that none of the EOH witnesses could state with certainty that Mr Lekalake poorly performed his duties at any point during his employment period.
- [44] Mr Devereux, to whom Mr Lekalake reported, conceded under cross examination that he conducted no performance appraisal against Mr Lekalake to sustain alleged poor work performance. Further, Mr Devereux could not even recall if there was any training provided to Mr Lekalake to improve his alleged poor performance, as none was required or sanctioned by Mr Devereux as Mr Lekalake’s supervisor. Mr Devereux also did not substantiate or tender any documentary evidence to his assertion that Mr Lekalake struggled to perform his duties. In the premise, the claims of poor work performance and alleged struggle to perform duties attributed to

Mr Lekalake were a complete fabrication without any evidentiary support. In any case, it is trite that an employer cannot use alleged

poor performance as a reason to dismiss an employee for operational requirements.[4]

- [45] Undoubtedly, Mr Lekalake had impressive academic credentials and I found it rather untenable that Mr Devereux would even allege that Mr Lekalake did not enjoy programming but finance as “his background was in finance”. To the contrary, Mr Lekalake’s academic credentials do not include finance as a core speciality but IT. Considering Mr Lekalake’s academic credentials and the training modules he was offered by EOH, he was an employee who did not even require any training for any role as he was academically grounded and had the requisite skills and expertise to be assigned to any role that was IT related within EOH. I say so fortified by what was stated in *Oosthuizen v Telkom SA Ltd*[5]:

“In my view, an employer has an obligation not to dismiss an employee for operational requirements if that employer has work which such employee can perform either without any additional training or with minimal training. This is because that is a measure that can be employed to avoid the dismissal and the employer has an obligation to take appropriate measures to avoid an employee’s dismissal for operational requirements.”

- [46] Another contention highlighted as a reason for Mr Lekalake’s retrenchment was that the DWS required a senior person to replace Mr Lekalake. There was no evidence to corroborate this assertion and it is common cause that no senior person from EOH had replaced Mr Lekalake at the DWS until the Public Sector Division of EOH shut its doors. To crown it all, Mr Devereux could not provide any documentary evidence of who at DWS instructed him to immediately remove Mr Lekalake from site and the reasons thereof.
- [47] In respect of the evidence of Ms Maher, I cannot attach any credence or evidentiary weight to it as she conceded that she was not involved in the finalisation of Mr Lekalake’s ultimate retrenchment. The contention by EOH that Ms Maher’s evidence was not challenged is of no moment as she only attended the CCMA conciliation on behalf of EOH and was not involved in the retrenchment of Mr Lekalake.
- [48] Credence is however accorded to the evidence of two senior officials (Messrs Legodi and Devereux) of EOH who testified that serious allegations of corruption led to EOH to lose contracts to competitors and consequently, leading to the closure of the entire Public Sector Division. I need not take judicial notice of the evidence tendered by EOH at the State Capture Commission.
- [49] If the exposition set out in *Discreto* is the guiding principle, then the reasons for the dismissal of Mr Lekalake as advanced by EOH were not proper and genuinely unjustifiable by operational requirements. In essence, Mr Lekalake was a victim of the ripple effects of serious allegations levelled against senior executives who were at the helm of EOH at the time. The said executives or persons who were at the helm of EOH at the time, remained nameless throughout the hearing of this matter.
- [50] In respect of Mr Lekalake’s employment contract, EOH did not assert in its evidence that Mr Lekalake was employed for the sole purpose of being deployed to the DWS and never to any business unit where his skills would have been utilised. It was not even asserted by EOH that Mr Lekalake’s skills constrained him to work only within the now defunct Public Sector Division of EOH.
- [51] During the hearing of the matter, EOH did not lead any evidence to prove that it was generally facing economic downturn, let alone a parlous financial state that justified retrenchment of Mr Lekalake and others. However, serious allegations against senior executives within EOH were so topical that it had to take a commercial decision to close down its Public Sector Division as it was losing contracts to competitors and its reputation had suffered tremendously.

- [52] As highlighted above, the initial reasons advanced by EOH as reasons for Mr Lekalake were simply unsustainable fabrication calculated to justify a section 189 process. The only reason that enjoyed prominence and coming directly from EOH's witnesses during their evidence-in-chief, concerned serious allegations of corruption against certain unnamed senior executives of EOH.
- [53] If serious corruption allegations led to the downfall of the Public Sector Division of EOH which culminated in the retrenchment of Mr Lekalake, then did EOH have any justifiable reason in law or in the LRA to justify the dismissal of Mr Lekalake for operational requirements? A stern no is the answer to that question. As stated in Telkom[6], the moment the employer fails to prove and justify that it instituted the section 189 process for a fair reason, then re-instatement

becomes the prime remedy in the circumstances. In the conspectus of the facts of this matter, it is apt to find that the re-instatement

of Mr Lekalake becomes unavoidable like the air we breathe.

- [54] In Dunwell Property Services CC v Sibande[7], the LAC explained that in determining whether or not to reinstate an unfairly dismissed employee, 'the overriding considerations in the enquiry should be the underlying notion of fairness between the parties, rather than the legal onus.' In Equity Aviation Services (Pty) Ltd v CCMA and others[8], the apex court restated the issue of fairness and held that it 'ought to be assessed objectively on the facts of each case bearing in mind that the core value of the LRA is security of employment'.
- [55] Would it be fair, just and equitable to reinstate Mr Lekalake to EOH as he had nothing to do with serious allegations of corruption levelled against senior executives who were at the helm of EOH at the time? Granted Mr Lekalake's academic credentials and requisite skills and training EOH afforded him, I see no reason why not as it would not be practical or feasible[9] for EOH to reinstate Mr Lekalake. Were it not for serious allegations of corruption that vitiated EOH to shut down its Public Sector Division, I would surely find comfort or solace in Republican Press (Pty) Ltd v CEPPWAWU and Gumede and Others[10]. EOH continues to trade and can undoubtedly benefit from the skills of Mr Lekalake. Mr Lekalake had nothing to do with serious allegations of corruption levelled against senior executives that caused the closure of EOH's Public Sector Division. Mr Lekalake was merely a victim of circumstances. Then in the circumstances, justice must reign supreme.

Costs

- [56] Costs in this court are statutorily dealt with in section 162 (1) and
- (2) of the LRA. This court derives its powers to award costs from the LRA and if costs were to be awarded, same should be in accordance with the requirements of the law and fairness.

- [57] As serious allegations of corruption against senior executives at EOH that resulted in the ultimate retrenchment of Mr Lekalake were not of his own doing, I see no reason why he should not be entitled to costs. If any conduct of any litigant is laced with corruption, courts must not blink or turn a blind eye as doing so would be consorting with illegality to the detriment of the rule of law.
- [58] I must commend EOH's Counsel. In leading EOH's witnesses during the trial, he was brutally frank that serious allegations of corruption should be highlighted and not downplayed. Adv MA Lennox (Mr Lennox), demonstrated and epitomised how a member of this honourable profession should conduct himself when faced with an intricate matter such as this one. To me Mr Lennox was alive to the fiduciary duties he owed to this Court. Amandla!!!

Conclusion

- [59] Granted that at issue in this matter are serious allegations of corruption against senior executives of EOH, the gravity of the said allegations was such that they were detrimental to EOH itself. Consequently, the total closure of the Public Sector Division of EOH seemed inevitable. Perhaps, we need to be reminded of what was said in *S v Shaik and others*[11] by the Supreme Court of Appeal:

"The seriousness of the offence of corruption cannot be overemphasised. It offends against the rule of law and the principles of good governance. It lowers the moral tone of a nation and negatively affects development and the promotion of human rights. As a country we have travelled a long and tortuous road to achieve democracy. Corruption threatens our constitutional order. We must make every effort to ensure that corruption with its putrefying effects is halted. Courts must send out an unequivocal message that corruption will not be tolerated and that punishment will be appropriately severe."

- [60] With the unblemished exposition aptly set out in the preceding paragraph, I can only conclude with one of the pearls of wisdom. Understand:

"Corruption has spread on land and sea as a result of what people's hands have done, so that Allah may cause them to taste the consequences of some of their deeds and perhaps they might return to the right path."[12]

- [61] I profusely tender my sincere apology to the Judge President of this court, litigants and legal representatives for inordinate delay in handing down this judgment. Even though I firmly believe that haste is an enemy of art, however, it is unacceptable for whatever reason that handing down of judgments are delayed.

- [62] In the result the following order is made:

Order

1. The dismissal of Mr Watson Kelemogile Lekalake by EOH for operational requirements was substantively unfair;

2. Mr Watson Kelemogile Lekalake is retrospectively reinstated as EOH employee as of date of his dismissal with full benefits and emoluments;
3. Mr Watson Kelemogile Lekalake shall report for duty on 1 March 2025, at the headquarters of EOH; and
4. EOH is ordered to pay the costs of Mr Watson Kelemogile Lekalake on attorney-client basis including the costs of counsel.

S. Sethene

Acting Judge of the Labour Court of South Africa.

Appearances:

For the Applicant: Adv L Tshigomana

Instructed by: Dzudzani Sithole Attorney, Johannesburg

For the Respondent: Adv MA Lennox

Instructed by: Boutolas Krause & Da Silva Inc, Johannesburg

[1] National Union of Metalworkers of SA v Atlantis Diesel Engines (Pty) Ltd (1993) 14 ILJ 642 (LAC) at 649J-650C.

[2] No. 66 of 1995, as amended.

[3] [1998] 12 BLLR 1228 (LAC) at para 8.

[4] South African Airways v Bogopa and Others [2007] 11 BLLR 1065 (LAC);

(2007) 28 ILJ 2718 (LAC) at para 61

[5] [2007] 11 BLLR 1013 (LAC) at para 8.

[6] See: Telkom (Id fn 4).

[7] [2012] 2 BLLR 131 (LAC) at para 31.

[8] [2008] 12 BLLR 1129 (CC) at para 39. See also: Eskom Holdings Ltd v Fipaza and Others [2013] 4 BLLR 327 (LAC).

[9] Xstrata SA (Pty) Ltd (Lydenberg Alloy Works) v National Union of Mineworkers on behalf of Masha and Others (2016) 37 ILJ 2313 (LAC).

[10] [2007] 11 BLLR 1001 (SCA).

[11] S v Shaik [2006] ZASCA 105; 2007 (1) SA 240 (SCA) at para 223. See also: Passenger Rail Agency of South Africa v Swifambo Rail Agency (Pty) Ltd [2017] 2 All SA 971 (GJ); 2017 (6) SA 223 (GJ) at para 125; Sammy Aron Mofomme v S 2018 (1) SACR 213 (GP) at para 21; S v Boshoff 2014 (1) SACR 422 (ECG) at para 39.

[12] The Qur'an - Surah Ar Rum 30:41.

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