

SOUTH AFRICA / JUDGMENT

Tirisano Transport and Services Workers Union obo 53 Employees v Pindulo VDM (C487/2021) [2024] ZALCCT 50; (2025) 46 ILJ 1031 (LC) (31 October 2024)

[2024] ZALCCT 50

COURT

Labour Court Cape Town

BEFORE

Prinsloo

CASE / FILE NUMBER

C487/2021

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FLYNOTES:

LABOUR

– Dismissal – Date
and notice period –

Retrenchments and unfair dismissal dispute – Whether
referral to bargaining council outside 30-day time limit

–

Consulting parties can agree to vary the time periods for
consultation – Did not convert to request to extend
notice

period for termination of employees' contracts –

Contracts terminated upon expiry of notice period –

Company's point in limine upheld – Matter struck off
roll for lack of jurisdiction – Labour Relations Act 66 of
1995, ss 190 and 191(1)(b)(i).

THE LABOUR COURT OF

SOUTH AFRICA, CAPE TOWN

Reportable

Case no: C 487/2020

In the matter between: TIRISANO
TRANSPORT AND SERVICES
WORKERS
UNION obo 53 EMPLOYEES
Applicant
and
PINDULO
VDM (PTY) LTD
Respondent

Heard: 9 October 2024
Hears of argument
filed on: 24 October 2024
Delivered: 31
October 2024
This
judgment was handed down electronically by consent of the parties'
legal representatives by circulation to them via email.
The date for
hand-down is deemed to be 31 October 2024.

JUDGMENT

PRINSLOO, J

Background facts

- [1] The material facts are not in dispute.
- [2] On 17 January 2020, the Respondent issued a notice of contemplated restructuring, possible reduction of workforce and termination of employment contracts for operational reasons in terms of section 189(3) of the Labour Relations Act[1] (LRA). The Respondent anticipated to engage in a consultation process, as envisaged in sections 189 and 189A of the LRA.
- [3] On 31 March 2020, the Respondent issued a final notice of termination of employment to the individual applicants (the employees), confirming their retrenchment for operational reasons and wherein it was inter alia stated that:

‘This notification confirms that your post was one identified in the consultation process as likely to be affected if a decision to restructure and retrench was made. Given the outcome of consultation and the decisions arrived at, your post will conclude for operational requirements on 28 April 2020. This is accordingly notice of termination of services confirming that your employment will terminate on 28 April 2020.

Management is also prepared to extend the opportunity during the notice period for affected employees to reconsider accepting the alternative remuneration structure (the production scheme) which was offered as an alternative to curtail retrenchments. If you should decide to accept that as an alternative, then you will be required to inform management and to confirm your acceptance by signing the necessary agreement.’

- [4] On 20 April 2020 the Applicant’s former attorneys of record, Higgs Attorneys Inc, addressed a letter to the Respondent, requesting that the timeline for acceptance of the alternative to retrenchment be extended to 4 May 2020 to enable the Applicant union (TASWU) to consult with its members.
- [5] During the period from 20 to 30 April 2020, further correspondence was exchanged between Higgs Attorneys and the Respondent. In a letter dated 30 April 2020, the Respondent repeated that it was willing to engage with the Applicant and the Applicant was “again invited to make any relevant proposals in respect of the issues you mistakenly claim no meaningful consultation has taken place on”.
- [6] The Applicant made further proposals on 6 May 2020, to which the Respondent replied in a letter to Higgs Attorneys on 8 May 2020, indicating that the proposals did not add anything new or meaningful to the consultation process that had already taken place. The Respondent rejected the Applicant’s request for a further extension of the notice period until 15 May 2020 and concluded that:

‘In the circumstance your client’ member’s notice period will conclude today and their entitlements will be processed accordingly.’

- [7] On 13 May 2020, the Respondent addressed another letter to Higgs Attorneys, stating that it confirmed the communication of 8 May 2020 wherein it advised that no further extensions would be provided, with the severance pay packages for the respective employees “being paid on 12 May 2020”.
- [8] On 29 May 2020, the Applicant referred an automatic unfair dismissal dispute to the NBCRFLI and the referral form indicated that the date of dismissal was 12 May 2020. The Applicant explained that the date of dismissal was indicated as 12 May 2020 because it was the date on which the employees received the final payment related to their retrenchment.
- [9] The dispute was conciliated on 7 August 2020 and after conciliation failed, a certificate of outcome was issued. The Applicant subsequently filed a statement of case, claiming that the employees’ dismissal was automatically unfair. Their claim is premised on the provisions of section 187(1)(c) of the LRA.
- [10] The Respondent filed a statement of response wherein several issues were raised in limine. The Respondent disputed this Court’s jurisdiction to adjudicate the dispute and stated that the Applicant’s pleadings were vague and embarrassing and failed to disclose a cause of action. The attack on jurisdiction should have been raised as a special plea and the averment regarding vague and embarrassing pleadings as an exception. The Respondent did not file a

special plea or an exception and notwithstanding the fact that it averred that the statement of case was vague and embarrassing and did not disclose a cause of action, the Respondent pleaded over ad seriatim to the Applicant's case.

- [11] In the pre-trial minute, the Respondent repeated the aforesaid points in limine.
- [12] Notwithstanding the issues raised by the Respondent, the parties approached the Registrar to enrol the matter for trial and it was so enrolled for three days. Ordinarily, where a respondent raises a special plea regarding jurisdiction, it would be determined separately and on a more expeditious basis on this Court's interlocutory role.
- [13] The correct approach would have been for the Respondent to approach the Registrar to enrol the in limine issues on the interlocutory roll for determination prior to trial as a jurisdictional point, if upheld, could potentially dispose of the matter and could have a fatal effect on the Applicant's case and the proceeding of the trial.
- [14] At the commencement of the trial, the Respondent abandoned the second preliminary point namely that the pleadings were vague and embarrassing and failed to disclose a cause of action. There is no need to consider this point any further.
- [15] The Respondent persisted with the jurisdictional point, which I will deal with infra.

Jurisdiction

- [16] The Respondent contends that the referral of the Applicant's unfair dismissal dispute to the NBCRFLI was out of time, the late referral was not condoned and therefore the NBCRFLI did not have jurisdiction in the first place to conciliate the dispute. The Respondent's case is that as the Applicant's unfair dismissal dispute was not properly conciliated, the jurisdictional prerequisite for such a dispute to be adjudicated by the Labour Court was not met.
- [17] Put differently, the Respondent contends that this Court has no jurisdiction, because the Applicant's referral of the dispute to the NBCRFLI on 29 May 2020, was made outside of the 30-day time limit prescribed by section 191(1) (b)(i) of the LRA and the late referral was not condoned.
- [18] Section 191(1)(b)(i) of the LRA provides that a dispute about the fairness of a dismissal may be referred to the CCMA or relevant bargaining council within 30 days of the date of dismissal.
- [19] The calculation of the 30-day period must be done in accordance with the provisions of the Interpretation Act[2]. In *Hopkins v Man-Dirk (Pty) Ltd*[3], the Court held as follows:

'In *Latiff v Donro (Pty) Ltd*, [4] this Court clarified that the number of days required by a provision of the LRA is to be computed with reference to the definition

of day contained in the Interpretation Act. The Interpretation Act provides, in essence, that days for the

purposes of the LRA refers to calendar days rather than Court days as contemplated in the Rules for the Conduct of Proceedings before the Labour Court (Rules). The reckoning of the days is exclusively of the first day and inclusively of the last, unless the last day falls on a Sunday or a public holiday, in which case it shall be reckoned exclusively of the first day and exclusively also of every such Sunday or public holiday.’

[20] The parties are ad idem that if this Court were to find that the date of dismissal was 28 April 2020, the Applicant’s referral to the NBCRFLI was out of time and required condonation. It is common cause that there was no application for condonation.

[21] The legal position where a dispute was referred late and no condonation granted, has been set out in *Pick 'n Pay Supermarkets, Northern Transvaal (A Division of Pick 'n Pay Retailers (Pty) Ltd) v Commission for Conciliation, Mediation and Arbitration and others*[5] as follows:

‘In fact in an affidavit filed on behalf of third respondent it is common cause that there was a late referral. It follows therefore on the undisputed facts before this court that there was a late referral. It is now settled law that unless there was condonation

granted, any dispute referred out of time is invalid and renders subsequent proceedings invalid. The question which I need to decide

is whether there was an application for condonation and, if so, whether it was granted.’

[22] The 30-day time limit for referrals of disputes to the relevant statutory dispute resolution agency was also considered in *NTM and Others v Specialised Security Services*[6] (NTM) where the Court confirmed that a failure to comply with a time limit can only be cured by an application for condonation directed to the CCMA or bargaining council, in terms of section 191(2). In the absence of condonation for the late referral of any dispute, the CCMA or bargaining council was deprived of jurisdiction to conciliate the dispute, and so is the Labour Court, should the dispute be referred for adjudication. An objection to the court’s jurisdiction may be made at any time, given that a court is not entitled to exercise powers that are not conferred on it by law. The Court held that:

‘For the above reasons, the dispute is the subject of these proceedings was referred to the CCMA outside the prescribed time limit, without any application for condonation. The CCMA thus had no jurisdiction to entertain the dispute and it could not be validly referred to this court for adjudication. The applicants’ referral thus stands to be dismissed.’[7]

[23] The question is whether the Applicant referred the unfair dismissal dispute in time to the NBCRFLI and the starting point in deciding this issue, is determining the employees’ date of dismissal.

Date of dismissal

[24] This Court has to determine the employees' date of dismissal as that would determine whether the referral of the unfair dismissal dispute was made within the prescribed 30-day period.

[25] Section 190 of the LRA provides for the date of dismissal as follows:

'(1) The date of dismissal is the earlier of –

(a) the date on which the contract of employment terminated; or

(b) the date on which the employee left the service of the employer.

(2) Despite subsection (1) –

(a) if an employer has offered to renew on less favourable terms, or has failed to renew, a fixed-term contract of employment, the date of dismissal is the date on which the employer offered the less favourable terms or the date the employer notified the employee of the intention not to renew the contract;

(b) if the employer refused to allow an employee to resume work, the date of dismissal is the date on which the employer first refused to allow the employee to resume work;

(c) if an employer refused to reinstate or re-employ the employee, the date of dismissal is the date on which the employer first refused to reinstate or re-employ that employee;

(d) if an employer terminates an employee's employment on notice, the date of dismissal is the date on which the notice expires or, if it is an earlier date, the date on which the employee is paid all outstanding salary.'

[26] The date of dismissal for the purposes of the LRA is to be determined by reference to section 190. Since the employee party in any unfair dismissal dispute bears the onus to establish the existence of a dismissal (section 192(1)), it follows that the employee bears the onus to establish the date of dismissal, when that is in dispute. The date of dismissal is a matter to be objectively determined on a conspectus of all the evidence, and regardless of any assumptions made by any of the parties.[8]

[27] In casu, it is undisputed that the employees' services were terminated on notice. Section 190(2)(d) of the LRA provides that if employment is terminated on notice, the date of dismissal is the date on which the notice expires, or if it is an earlier date, the date on which the employee is paid all outstanding salary. For purposes of this judgment, the latter part of the said section is not relevant.

[28] The Respondent's case is that the notice period expired on 28 April 2020 and that is the date of dismissal, wherefore the referral to the NBCRFLI on 29 May 2020 was out of time and had to be condoned. The Applicant's case, on the other hand, is that the notice period was extended, and the referral of the unfair dismissal dispute was done in time.

[29] The Applicant's referral form to the NBCRFLI indicated that the date of dismissal was 12 May 2020. In argument, Mr Higgs for the Applicant submitted that the notice period was extended by agreement, that it finally terminated on 8 May 2020 and that the date of dismissal was 8 May 2020.

Was the notice period extended

[30] There is nothing in law that prohibits parties from extending a notice period.

[31] The Applicant and Respondent are parties to the NBCRFLI and the Main Collective Agreement that applied at the date of termination of the employees' contracts of employment, provided as follows in relation to the notice of termination:

'Clause 40(1)(c) – Subject to sub-clause (2), an employer or an employee, other than a relief employee or a temporary employee of a temporary employment service, may terminate the contract of employment on notice of not less than four weeks, if the employee has been employed for more than 52 weeks.

Clause 40(4)(b) – Nothing in this clause affects any agreement between an employer and an employee that provides for a longer period of notice than the periods stipulated in sub-clause (1), provided that (i) the notice required to be given by the employer and the employee must be of equal duration; (ii) payment in lieu of notice must be of equivalent value to the notice period stipulated in the agreement.'

[32] The position is thus that parties are free to agree on an extension of a notice period. The question is whether the notice period was extended in casu.

[33] On 20 April 2020, Mr Higgs addressed a letter to the Respondent, recording that the employees were to either accept the production scheme or be retrenched and that the Respondent indicated its willingness to extend the opportunity for acceptance of the production scheme during the notice period. Mr Higgs requested that the timeline for acceptance of the alternative to retrenchment be extended to 4 May 2020 to enable the Applicant Union (TASWU) to consult with its members. The request was made in view of the difficulties experienced in communicating with the employees during the Covid-19 national lockdown. In short, the request was for an extension of the consultation period to ensure a meaningful consultation process, as envisaged in section 189A(2)(d) of the LRA.

[34] During the period from 20 to 30 April 2020, further correspondence was exchanged between Higgs Attorneys and the Respondent, which I will refer to as far as it is relevant.

[35] The Respondent replied to the Applicants' attorney's letter, wherein he requested that the timeline for acceptance of the alternative to retrenchment be extended to 4 May 2020 to enable TASWU to consult with its members, on 21 April 2020 as follows:

‘The company is prepared, without prejudice, to afford your client until 27 April 2020 to do so. This does not amount to an extension of consultation or the notice period but rather an expression of good faith and willingness to consider proposals at this particularly difficult time in the history of the Country.’

[36] On 24 April 2020, the Respondent reiterated that it was still willing to consider proposals from the Applicant. Subsequent to the aforesaid correspondence, there was no further engagement or interaction between the Applicant’s attorney or any of the employees and the Respondent until 29 April 2020, the day after the expiry of the notice period.

[37] On 29 April 2020, Mr Higgs addressed a letter to the Respondent in which he stated that:

‘We therefore urge the Company to retract the notice of termination and enable the parties to properly consult over the outstanding issues when the lockdown has been uplifted or via conference call.’

[38] On 30 April 2020 and in responding to the Applicant’s legal representative, the Respondent repeated that it was willing to engage with the Applicant and the Applicant was “again invited to make any relevant proposals in respect of the issues you mistakenly claim no meaningful consultation has taken place on”. In respect of the retraction of the notice of termination, the Respondent replied as follows:

‘We cannot now retract notices properly issued. We are however prepared, without prejudice, to extend the notice period given to those of its members to 6 May 2020 as a further show of good faith to afford your client additional time to make the proposals it believes are relevant to the issues referred to in your letter.’

[39] Mr Aggenbach for the Respondent submitted that the employees’ services were terminated and that the agreement to extend the period was simply to afford the trade union an opportunity to reconsider the alternatives offered to the employees. He argued that it was not the notice period, which indeed expired on 28 April 2020, that was extended – it was merely an extension of time to consider and accept the alternative proposal.

[40] Section 189A(2)(c) of the LRA provides for the consulting parties to agree to vary the time periods for consultation.

[41] Section 190(2)(d) of the LRA provides that if employment is terminated on notice, the date of dismissal is the date on which the notice expires. The obligation to give notice of termination of employment arises as a result of a contractual agreement, a collective agreement or a statute and it has both legal meaning and legal consequence. It means, in express terms, that one party must give the other the prescribed or agreed period of notice and the contractual or statutory notice term remains binding on the parties.

[42] This was confirmed by the Labour Appeal Court (LAC) in *Standard Bank of SA v N C Chiloane*[9] where it was held that:

‘As a starting point, it again needs to be emphasised that employment relationships are governed by contract or statutes or, in most cases, both. So if an employer and its employee do not expressly agree for either of them to give the other notice to terminate their relationship, the Basic Conditions of Employment Act (BCEA) provides that they do so.’

- [43] The LAC confirmed too that when either employer or employee seeks to terminate, the Basic Conditions of Employment Act[10] requires that each give notice in terms of section 37. If either party does not, the contract of employment continues to subsist. The same principle applies where a collective agreement or contract of employment prescribes a notice period. In my view, the converse also applies – where proper notice was given, the contract of employment ceases to subsist on expiry of the notice period.
- [44] The determination of the date of dismissal is made as a matter of law. It is not an inquiry which has regard to the subjective views or assumptions of the parties, but it considers only the objective facts and principles of law.
- [45] It is evident from Mr Higgs’ letter of 20 April 2020 that he requested that the timeline for acceptance of the alternative to retrenchment be extended to 4 May 2020 to enable TASWU to consult with its members.
- [46] In casu, the employees did not dispute that their notice period expired on 28 April 2020, nor was the validity of the notice and the termination of their contracts on notice challenged. This Court has to accept that the notice given to the employees was valid and that their contracts of employment terminated when the notice period expired on 28 April 2020.
- [47] The Applicant’s attorney was alive to this as his letter of 29 April 2020 requested the Respondent to ‘retract’ the notices of termination, which took effect on 28 April 2020. The Respondent replied that it could not retract the notices, which were properly issued, but agreed to extend the notice period to afford the employees additional time to make proposals in the retrenchment process.
- [48] The high water mark in the Applicant’s case is that the Respondent agreed to extend the ‘notice period’ from 30 April 2020 until 6 May 2020. This cannot be.
- [49] As already alluded to, section 189A(2)(c) of the LRA provides for the consulting parties to agree to vary the time periods for consultation and in my view, Mr Higgs’ request and the Respondent’s subsequent agreement to extend the ‘notice’ period, fell within the ambit of section 189A(2)(c). This however did not convert to a request to extend the notice period for termination

of the employees' contract, nor did it convert to an agreement to extend the notice period and to postpone the termination date to 6 May 2020. It was clearly a request and an agreement to extend the period within which the employees could consider the alternative and make proposals in the section 189A process. By 28 April 2020, the employment contracts had terminated and there was no agreement to withdraw the notice of termination or extend the period prior to the said termination.

[50] The employees' contracts terminated on 28 April 2020, upon the expiry of the notice period. This is the position in law and had the consequence that there was no longer any subsisting contract of employment after 28 April 2020. There was no notice period that could have been extended in respect of a terminated contract and where the employer did not agree to withdraw the notice of termination.

[51] The employees' contracts of employment terminated at the end of the notice period.[11]

Conclusion

[52] It is common cause between the parties that if this Court were to find that the employees' date of dismissal was 28 April 2020, that the dispute was referred late to the NBCRFLI and that condonation had to be applied for.

[53] In *SA Municipal Workers Union on behalf of Manentza v Ngwathe Local Municipality and Others*[12], the LAC held that:

'Since the issue of a certificate of non-resolution by the CCMA or a bargaining council concerned is not a prerequisite for a referral to arbitration in terms of s 191(5)(a) of the LRA, it cannot, in my view, cure the lack of jurisdiction of the CCMA or a bargaining

council to arbitrate an unresolved unfair dismissal or unfair labour practice dispute, where such certificate is issued after the elapse of 30 days from the date on which the CCMA or bargaining council received the referral, and the employee has not sought condonation for his or her non-observance of that timeframe.'

[54] In *Mine Engineering And Distributors Workers and Others v Moria Old Home t/a Residentia*[13], the Court confirmed that:

'In *SA Municipal Workers Union on behalf of Manentza v Ngwathe Local Municipality and others*, the Labour Appeal Court (LAC) held that a certificate of non-resolution of the dispute was a nullity in circumstances where there was the late referral and a failure on the part of the employee [to apply for] condonation.'

[55] In *SA Transport and Allied Workers Union v Tokiso Dispute Settlement and others*[14], the LAC confirmed that where a party is out of time and has to take the jurisdictional step to apply for condonation but failed to do so, a court cannot come to the party's assistance.

- [56] A referral of an unfair dismissal dispute made outside the statutorily prescribed time periods must be condoned. When condonation is not applied for or not granted, the issuing of a certificate of outcome, stating that the dispute has been conciliated and may be referred for adjudication is of no consequence. The NBCRFLI did not have jurisdiction in the first place to conciliate or adjudicate the dispute and the certificate of outcome was not validly issued.
- [57] The reality is that the Applicant had to apply for condonation for its failure to comply with a statutory time period and it failed to do that. It follows that absent an application for condonation and same being granted, the referral of the dispute to this Court was invalid and this Court has no jurisdiction to adjudicate the matter.

Costs

- [58] In so far as costs are concerned, this Court has a broad discretion in terms of section 162 of the LRA to make orders for costs according to the requirements of the law and fairness.
- [59] The requirement of law has been interpreted to mean that the costs would follow the result. In considering fairness, the conduct of the parties should be taken into account and mala fides, unreasonableness and frivolousness are factors justifying the imposition of a costs order.
- [60] In *Zungu v Premier of the Province of KwaZulu-Natal and Others*[15], the Constitutional Court confirmed that the rule that costs follow the result does not apply in labour matters. The Court should seek to strike a fair balance between unduly discouraging parties from approaching the Labour Court to have their disputes dealt with and, on the other hand, allowing those parties to bring to this Court (or oppose) cases that should not have been brought to Court (or opposed) in the first place.
- [61] Mr Higgs submitted that costs should be awarded on an attorney and client scale because the preliminary point raised by the Respondent is frivolous and vexatious. He argued that the Respondent is fully aware of the fact that it extended the notice period and is trying to mislead the Court by relying on the criteria of “final payment” whilst it concedes that it has not made any payments in relation to the notice period.
- [62] Mr Higgs argued that persisting with the preliminary point had adverse effects in that the matter which has been ongoing for four years, had to be postponed and additional legal costs were incurred.
- [63] Mr Aggenbach on the other hand submitted that the issue raised by the Respondent is not frivolous or vexatious. The preliminary issue was raised nearly four years ago and Applicant had had ample opportunity to either seek clarity on the issue or to agree to the matter being determined outside the period allocated for the trial. The Respondent’s proposal to address the matter in the form of motion proceedings would have benefitted the Court and the Applicant’s unwillingness to follow this common sense approach must count against it and the Applicant must be ordered to pay the Respondent’s costs.

[64] This is a case where the Court has to strike a balance, considering the requirements of law and fairness. A cost order is a method of ensuring that decisions on how to conduct litigation in this Court are taken with due consideration of the law and the prospects of success.

[65] Something has to be said about the conduct of the litigation in this matter. It became clear to me that there was an acrimonious relationship between the attorneys representing the parties. So much so that they had filed a pre-trial minute without being able to discuss the possibility of a settlement, although it is an aspect to be discussed and recorded in the pre-trial minute. The strained relationship caused the legal representatives to ignore the Rules of this Court and disabled them from taking a common-sense

approach. As I already alluded to, the correct approach would have been for the Respondent to approach the Registrar to enrol the in limine issues on the interlocutory roll, for determination prior to the trial date. This could have and should have been done four years ago.

[66] Instead of enrolling the matter on the interlocutory roll, the Applicant was opposed to that and adopted the approach that the in limine issues be addressed at the commencement of the trial. This was an irresponsible approach to take as a jurisdictional point, if upheld,

would be the end of the matter. The effect of the approach taken by the parties is that, notwithstanding the fact that the matter was enrolled for a three-day trial and that a Court and resources were made available to deal with the merits of the trial, the matter only proceeded on what is no more than an opposed motion. This deprived other parties of the opportunity to have their trial enrolled and adjudicated when resources for trial were made available.

[67] This Court has to express its concern about the fact that points in limine were to be dealt with at such a late stage when it should have been dealt with and decided much earlier and before the matter was set down for a three-day trial. Worse is that on the day the trial was to commence, the Respondent abandoned the second point in limine.

[68] The resources of this Court are notoriously scarce and the conduct of the legal representatives in this matter disrespected the efforts made by this Court to deal with the merits of the Applicant's case and frustrated the proper operation of the Court, as those issues should have been dealt with on the interlocutory roll and not when the matter was to proceed on trial. Neither of the parties are entitled to costs.

[69] In the premises, I make the following order:

Order

- 1.The Respondent's point in limine is upheld;
- 2.The matter is struck off the roll for lack of jurisdiction;
- 3.There is no order as to costs.

Connie Prinsloo

Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Mr C Higgs Instructed by: SVN Inc Attorneys For the Respondent: Advocate M Aggenbach Instructed by: Grant Marinus Attorneys

[1] Act 66 of 1995, as amended.

[2] Act 33 of 1957.

[3] (JS871/19)

[2022] ZALCJHB 244 (25 August 2022) at para 19.

[4] [2004] 25 ILJ 2219 (LC).

[5] (2000) 21 ILJ 234 (LC) at para 30.

[6] (J329/2017)

[2022] ZALCJHB 96 (11 May 2022).

[7] Ibid at para 27.

[8] See: NTM supra at para 19.

[9] [2020] ZALAC 58; (2021) 42 ILJ 863 (LAC) at para 13.

[10] Act 75 of 1997.

[11] See: SA Medical Association Trade Union on behalf of Dr Rikhotso v Member of the Executive Council, Department Of Health, Limpopo Province and Others [2023] ZALCJHB 65; (2023) 44 ILJ 1779 (LC) at para 8.

[12] [2015] ZALAC 26; (2015) 36 ILJ 2581 (LAC) at para 45.

[13] (JS419-21) [2024] ZALCJHB 60 (26 January 2024) at par 12.

[14] [2015] ZALAC 12; (2015) 36 ILJ 1841 (LAC).

[15] [2018] ZACC 1; (2018) 39 ILJ 523 (CC) at para 24.

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