

IMPORTANT NEWS

REGULATIONS FOR B-BBEE COMMISSION IN FORCE

Regulations on the functions of the Broad-Based Black Economic Empowerment (B-BBEE) Commission in administering and implementing the Act were gazetted and are now in effect, notes Pam Saxby for Legalbrief Policy Watch.

Among other things, they spell out the process for registering a major B-BBEE transaction that is above the threshold determined by the Minister – and the requirements of compliance reports submitted annually by JSE-listed public companies, organs of state, state-owned entities and the three spheres of government. Also addressed are procedures to be followed by organs of state and public entities wishing to: exceed the qualification criteria for the purpose of ‘accelerating transformation’; and apply for exemptions or deviations. Complaints procedures are included.

Source: www.legalbrief.co.za, 7 June 2016

AEMFC SEEKS B-BBEE FACILITATOR STATUS

Comment is sought within 30 days on the possible designation of the African Exploration Mining and Finance Corporation (AEMFC) as a broad-based black economic empowerment (B-BBEE) facilitator, reports Pam Saxby for Legalbrief Policy Watch.

Among other things, this is with the aim of optimising the B-BBEE-related benefits to black-owned mining sector entities with which it partners in support of government’s local beneficiation strategy and as a supplier.

According to a notice gazetted, such partnerships would enable the AEMFC to pursue its mandate as a state-owned mining company in a way that will enhance ‘the B-BBEE shareholding status’ of local and international companies with which it forms joint ventures or conducts business. As a facilitator, the AEMFC would also be able to access the development finance necessary to increase its business activities. B-BBEE facilitator shareholdings in private or listed companies are allocated entirely to black people – 40% of whom should be women and 20% ‘black designated groups’.

Source: www.legalbrief.co.za, 2 June 2016

STIFFER COLLUSION PENALTIES IN FORCE FOR DIRECTORS

Directors causing or permitting their firms to engage in collusive practices now fall under section 73A of the Competition Act (penalties), prescribing R500 000 and 10 years respectively as the maximum fine and term of imprisonment to be imposed on conviction. This was announced in a presidential proclamation making section 13 of the 2009 Amendment Act immediately effective. Prior to the announcement, it would appear that sub-section 74(b) of the principal statute applied to these activities – imposing a fine not exceeding R2 000 and a maximum of six months in prison, notes Pam Saxby for Legalbrief Policy Watch.

The pronouncement follows April’s proclamation, bringing section 12 of the Amendment Act into force on 1 May 2016. Together, they give credence to Economic Development Minister Ebrahim Patel’s reference in his 2016/17 budget vote speech to the imminent introduction of measures penalising ‘directors or managers’ found to have colluded ‘with their competitors’ in tenders, price fixing or dividing markets ‘among themselves’ – or to have acquiesced in collusion.

Source: www.legalbrief.co.za, 10 June 2016

CHALLENGING SALES IN EXECUTION

Lawyers for Human Rights (LHR), representing a defaulter, has taken up the battle against the practice of selling homes in execution for a fraction of their real worth. The market value of the home in question was R380 000, but it was sold in execution for R40 000, according to Mbalenhle Budaza, a candidate attorney at LHR, in an article on the Mail &

Guardian site. LHR, together with many legal NGOs, has noted 'with growing concern' the manner in which repossessed houses are sold at public auctions. The fact that a reserve price is not mandatory for sales in execution as well as the lack of judicial oversight over these processes has led to substantial consequences for the debtor, including those with constitutional implications, writes Budaza. In an application before the Gauteng High Court (Pretoria), Budaza notes the LHR, on its client's behalf, is challenging the constitutionality of the Uniform Rules of Court insofar as they require the sale of a home to be conducted without a reserve price. The client argues that his constitutional rights to property and adequate housing are unjustifiably infringed by the arbitrary consequences of selling a property for far less than it's worth. 'There is no rational connection between the purpose behind the repossession of the property, the subsequent sale thereof and the outcome of the sale. It can scarcely be submitted that the R40 000 did more than merely satisfy the bank's legal and/or transfer costs – there was no beneficial outcome gained or recovery of debt by Standard Bank in selling the home,' says Budaza. In comparison with other jurisdictions, SA has one of the highest percentages of defaulters losing their homes each year. 'It would therefore be a travesty should the current laws and procedures relating to sales in execution remain unaltered, in particular when with effect they unduly harm judgment debtors and arbitrarily deprive them of their constitutional rights and protections,' Budaza adds.

Source: www.legalbrief.co.za, 8 June 2016

RECOMMENDED READING

How far are unanimous resolution of a sectional title general meeting, in actual fact, unanimous? A critical analysis of the provisions of the Sectional Titles Act with regard to unanimous resolutions, by CG van der Merwe, THRHR, Band 79, Nr. 2, May 2016

Data protection in South Africa: The Protection of Personal Information Act 4 of 2013 in light of recent international developments (2), by A Naude & S Papadopoulos, THRHR, Band 79, Nr. 2, May 2016

The validity of a customary marriage under the Recognition of Customary Marriages Act 120 of 1998 with reference to section 3(1)(b) and 7(6) – Part 1, by P Bakker, THRHR, Band 79, Nr. 2, May 2016

The subdivision of Agricultural Land Act 70 of 1970, options to purchase and related matters, by CJ Nagel, THRHR, Band 79, Nr. 2, May 2016

The legal status of registered home owners' association conditions – Willow Water Homeowners Association (Pty) Ltd v Koka, by MD Tuba, THRHR, Band 79, Nr. 2, May 2016

RECENT CONSTITUTIONAL COURT

SHARK CAGE APPEAL DISMISSED BY CONCOURT

The Constitutional Court has ruled against a US widow who lodged a R24m damages claim against owners of a shark cage diving operation after her husband drowned when the diving boat he was on capsized off Kleinbaai in 2008. Sarah Tallman's application for leave to appeal a SCA decision exonerating a shark cage diving operation of negligence, resulting in her husband's death, has been dismissed with costs, says a Cape Times report. Her husband Chris was one of three tourists who drowned after a White Shark Projects catamaran-hull ski boat, Shark Team, capsized after being hit by a wave off Kleinbaai on 13 April, 2008. Tallman instituted a R24m claim against skipper Grant Tuckett and White Shark Projects. In 2014, Western Cape High Court Judge Alec Freud found Tuckett and White Shark Projects to be liable on the basis that they were negligent, but the SCA overturned the ruling, deciding the experienced Tuckett could not have anticipated the 'freak wave' that did the damage.

Source: www.legalbrief.co.za, 6 June 2016

RECENT SUPREME COURT OF APPEAL JUDGMENTS

HEWITT v THE STATE (637/2015) [2016] ZASCA 100 (9 JUNE 2016)

Sentence – appeal against imposition of effective sentence of six years' imprisonment upon 75 years old offender for rape and indecent assault of young girls - crimes committed three decades ago — appeal dismissed

GOWAR v GOWAR (149/2015) [2016] ZASCA 101 (9 JUNE 2016)

Trust and trustee – removal from office on grounds of misconduct – power of the high court to remove trustee under the common law not abrogated by s 20(1) of the Trust Property Control Act 57 of 1988. Trust – termination of – power of the court in terms of s 13 of the Trust Property Control Act to terminate a trust circumscribed.

Source: http://www.justice.gov.za/sca/judgments/judgem_sca_2016.html

RECENT HIGH COURT JUDGMENTS

COURT BLOCKS TRESPASS LAW LOOPHOLE FOR EVICTIONS

Landlords cannot get round the law on evictions by prosecuting illegal occupants for trespassing, the Western Cape High Court has ruled, notes a TimesLIVE report. The ruling came after a Worcester woman appealed against her conviction and sentencing in the Boland town's Magistrate's Court for housebreaking with intent to trespass. Sophia du Plessis (40) broke into the house, owned by the Western Cape government, in February 2014, and took up occupation illegally with her 15-year-old son and refused to leave. The two judges who heard her appeal upheld her conviction but amended her sentence of a R3 000 fine or nine months' imprisonment, removing the condition that she should not contravene the Trespass Act during the five years for which the jail term was suspended. Du Plessis' lawyer argued that the condition was indirectly aimed at eviction, which ought to be dealt with under the Prevention of Illegal Eviction Act. The judges said: 'The Director of Public Prosecutions should not allow prosecutions for trespass to be used as a means to procure a person's eviction without compliance with the onerous but salutary provisions of the PIE Act.'

Source: www.legalbrief.co.za, 9 June 2016

UNPAID LOBOLA DOESN'T MEAN THERE'S NO MARRIAGE – RULING

Customary law had evolved over the years and lobola did not have to be paid in full before a valid customary marriage could be entered into. The Mercury reports this was according to a judge in the Gauteng High Court (Pretoria) when he declared an Mpumalanga man officially married to a woman who had since died. Ntombi Mbungela died in 2014 and now her daughter, Tubile Mkhonza – executor of her estate – is disputing that Madala Mkabe was her mother's husband. Mkabe is not her biological father. Mkhonza said the fact that Mkabe still owed R3 000 of the R12 000 lobola negotiated for her mother's hand in marriage meant that they were not legally married in terms of customary law. She argued her mother had not yet been officially handed over to the man. But Acting Judge Mpostoli Twala said there was no need for lobola to be paid in full. 'Suitable arrangements can be made for payment of lobola. If the other requirements of customary marriage have been met, a valid customary marriage can be entered into.' The judge confirmed that the pair had entered into a customary marriage in 2010 and ordered Home Affairs to register the marriage.

Source: www.legalbrief.co.za, 10 June 2016

RATES CASE RULING REJECTS 'CUT-OFF' POLICY

The Gauteng High Court (Johannesburg) ruled last week that the Ekurhuleni Metropolitan Municipality could not cut off power to a tenant with a utility bill in its own name to force the landlord to pay outstanding rates, says a report in The Mercury. The court was ruling on an appeal in a dispute between the Ekurhuleni Municipality and Anzotrax, which trades as Topbet Germiston. The court was so annoyed by the metro's litigation that it awarded a punitive costs order against it. Local legal experts said, however, this did not mean that the decision was binding on other provincial High Courts. They said it could only have a national implication once it went to the SCA or the Constitutional Court. In the case, the municipality had claimed it was allowed to disconnect in accordance with its credit and debit control policies, which allowed it to consolidate separate accounts on the basis of the owner and tenant being jointly and severally liable for payment of all debts owing in respect of the property. The judges felt that this could 'lead to manifest absurdities and could never have been the intention of the lawgivers'. They found there was 'no legal basis' for holding an owner or landlord and a tenant liable in regard to the owner's rates and taxes. A punitive costs order was imposed on Ekurhuleni.

Source: www.legalbrief.co.za, 6 June 2016

COURT RELIES ON 'POSTING RULE' TO DISMISS CLAIM

An offer to deliver 30 tons of scaffolding was as good as delivery of the goods, the Gauteng High Court (Pretoria) held in dismissing a contractual damages claim from a scaffolding company who initially sent away the delivery vehicle.

According to a report in Die Burger, Pretoria-based company Layher (Pty) Ltd sued Siyakhona Scaffolding (Pty) Ltd for the non-return of scaffolding. Siyakhona hired the scaffolding from Layher to complete a project at PetroSA in Mossel Bay. The scaffolding was returned to Layher with a delivery truck, but Layher's MD told the delivery driver to return the next day as it was late in the afternoon and the company did not immediately have space to off-load its returned scaffolding. The 30 tons of steel disappeared thereafter and Layher sued Siyakhona for R1m. Siyakhona submitted a signed delivery note as proof of delivery, but Layher said the signature on the delivery note was unknown to them and the person who signed for the delivery was not working for them. Siyakhona then relied on the English contract law principle – the so-called 'posting rule' – to argue that it offered return of the scaffolding and was therefore absolved. The court agreed and dismissed Layher's claim with costs.

Source: www.legalbrief.co.za, 7 June 2016

WHEN A CELL PHOTO IS ADMISSIBLE AS EVIDENCE

The Gauteng High Court (Johannesburg), in a matter involving an appeal by a repeat offender against his conviction and sentence for housebreaking and theft, has set clear guidelines for the admissibility of a cell phone photo as evidence. This photo in question was taken by a security guard on his cell phone prior to the arrest. The fact was not challenged in the court a quo, but was challenged in the High Court. The High Court made it clear that in order for a cell phone photo to become relevant, it should have bearing on issues to be decided by the court; it should be verified as being a true image of what was captured by the person who took it; it should be clear and not edited; it should be presented in court to be viewed; and the device on which the photo was captured, should be reliable. If all these factors are present, as was the case in this instance, the court can take judicial notice of it and admit it, the court noted.

Source: www.legalbrief.co.za, 9 June 2016

JUDGE SLATES MOTHER WHO TRIED TO KEEP DAUGHTER

A Durban mother who fought an extended court battle to stop her young daughter from being forced to return to her father in Northern Ireland has come under fire from three appeal judges for adopting 'delaying tactics' and 'holding the court to ransom', with the result that they had little option but to allow the child to remain here. But The Mercury reports to show their displeasure, they ordered that the mother – although ultimately a victor in the court battle – pay the legal costs of the respondent, the Family Advocates office. 'Her conduct disinclines me from being sympathetic towards her on the costs issue,' KZN High Court Judge Graham Lopes said, with Judge Piet Bezuidenhout and Judge Shyam Gyanda concurring. He said while the mother was not financially well off, she had displayed a contemptuous attitude to previous court rulings in both countries. 'That her daughter is not to be returned to Northern Ireland is in no part due to any action of hers, other than her unconscionable behaviour in failing to take into account the best interests of her child and pursuing instead her own selfish and misguided beliefs,' Lopes said in the judgment. The matter before the judges was an appeal by the mother against a ruling by Judge Yvonne Mbatha in 2014 providing for the return of the child to Ireland.

Source: www.legalbrief.co.za, 30 May 2016

CHILD GETS CITIZENSHIP BECAUSE DAD IS SOUTH AFRICAN

The Centre for Child Law in Pretoria has assisted a teenager in forcing the Department of Home Affairs to register him as a South African citizen. The centre, together with an advocate who was appointed as a curator to act on behalf of the teenager, went to the Gauteng High Court (Pretoria) to have the boy declared a citizen, notes a report in The Mercury. He was, until now, stateless as his mother comes from Zambia. His father, who is not involved in his upbringing, is a South African. Centre head Professor Ann Skelton said the case once again highlighted that the right to citizenship stemmed from the fact that one of the parents had to be a South African – whether the child was born in this country or not. Skelton said the law was clear – if one parent was a citizen, the child was also a citizen. The nationality of the other parent was irrelevant.

Source: www.legalbrief.co.za, 3 June 2016

DAD TAKES ON BANK OVER DAUGHTER'S HOME LOAN

An interdict obtained by Standard Bank against a disgruntled family member of a client didn't stop him from erecting a banner next to a busy road informing the public of the criminal charges he has laid against bank officials and lawyers. According to Rapport, Standard Bank obtained an interdict against Mike Monthe prohibiting him from erecting a banner containing 'false and defamatory' allegations against the bank. The Gauteng High Court (Johannesburg) granted the

interdict. Monthe (65) made changes to his banner, but continued to erect it next to the R28 highway outside Randfontein. The banner lists the criminal charges of forgery, fraud and perjury laid against employees, attorneys and advocates. Rapport says his gripe with Standard Bank was born when his daughter and her then-husband obtained a home loan in 2004. The couple apparently applied for the home loan together, but the bond was registered only against his daughter. Monthe alleges irregularities with the bond registration process, which led to this unusual situation. He offered to pay the bank R775 000, more than the outstanding bond of R762 000, if the bank was willing to admit the irregularities during the bond registration process, but the bank refused. Monthe lost his court battle on this issue and his daughter was held solely responsible for the bond. He re-bought the house on auction. The NPA confirmed a criminal investigation was under way into the initial bond process. Standard Bank spokesperson Ross Linstrom denied any wrong-doing on the side of the bank and said they haven't yet been approached by the police.

Source: www.legalbrief.co.za, 6 June 2016

ASYLUM SEEKERS WIN RIGHT TO RENEW PERMITS

The Western Cape High Court has ordered the Department of Home Affairs to renew asylum seeker permits of refugees whose applications it had refused because they initially applied at another refugee reception office, says a TimesLIVE report. This confirmed an order given previously in this matter, and extended the relief to all persons similarly situated. 'The respondents are directed to extend/renew forthwith at the Cape Town Temporary Refugee Facility, the asylum seeker permits of the individual asylum seekers listed... and of all similarly situated asylum seekers living in the Western Cape whose asylum seeker permits were originally obtained... for a period of no less than three months,' the order states. In April 2015, Lawyers for Human Rights went to court on behalf of 450 people who had been refused renewals at the Cape Town Refugee Reception Office. An initial order was granted by the court in August, allowing for the renewal of the asylum seeker permits at that office.

Source: www.legalbrief.co.za, 6 June 2016

FAMILIES BATTLE OVER TEENAGERS' BABY

The teenage father of a baby born last week has launched an urgent High Court application to stop his former girlfriend from putting the child up for adoption. But the mother, who is 16, has claimed that the 17-year-old raped her by forcing himself on her and, in those circumstances, had no rights to the child, says a report in The Mercury. The application, which came before KZN High Court (Durban) Judge Mahendra Chetty, is being largely handled by their respective parents because of their ages. It was adjourned for a paternity test to be conducted. In her affidavit, the boy's mother says they were involved in a relationship for 11 months and the girlfriend became part of their family and her son wanted to be involved with bringing up the child. The girl's mother, in her affidavit, questioned whether the father really wanted to be involved, because he had initially wanted her to have an abortion, had later agreed that the child should be given up for adoption, 'and even sent messages that keeping the baby was unaffordable'. She alleges that it is the boy's mother who wants the baby.

Source: www.legalbrief.co.za, 8 June 2016

LIBRARIAN FIGHTS COSTS ORDER AFTER RAPE CASE

A librarian – raped while on duty at a community library – not only received the cold shoulder from her employer but was also left out of pocket, says a Pretoria News report. Norman Davis SC told the Gauteng High Court (Pretoria) that the victim's bid to sue her employer for damages merely resulted in her being saddled with a costs order against her. The victim sued the City of Matlosana (formerly Klerksdorp) for damages after she was raped in July 2008 at the library. She instituted a damages claim against her employer, arguing the incident was caused by the gross negligence of the city. Davis told the court the city continued to deny liability until just a few days before the matter was due to go to trial, when it admitted the rape. But in a bid to escape liability, it said it had instituted an occupational injury claim at the Compensation Commissioner. The city described the rape as 'an injury on duty'. The result of this was that the court case had to be delayed, pending the outcome of that hearing. Nothing came of this and by the time the case was due back in court, the victim was out of money and, on the 'wrong' advice of her former lawyer, she withdrew the claim. Her employer obtained an order in terms of which she was liable for all the legal costs incurred over the years – hers and that of the city. Davis turned to a full Bench to appeal against the costs order. It was not the victim's fault that she did not go ahead with proceedings, he said, also cited case law stating that rape was not an 'accident' in the Compensation Act. The report adds judgment was reserved.

Source: www.legalbrief.co.za, 10 June 2016

BUTTERWORTHS ARBITRATION LAW REPORTS – JUNE 2016

EKSTEEN v MARKETECH HOLDINGS (PTY) LTD (IN LIQUIDATION) AND ANOTHER [2016] 6 BALR 608 (CCMA)

Practice and procedure – Joinder – Employee seeking joinder of liquidated company and major shareholder as respondents in dismissal dispute – No basis for piercing corporate veil and joinder not permitted.

GOVINDSAMY v SISHEN IRON ORE (PTY) LTD – KUMBA IRON ORE [2016] 6 BALR 622 (CCMA)

Dismissal – Proof of – Non-renewal of fixed-term contract – Exploration geologist claiming that she was unfairly dismissed because employer declined to renew final project related contract, but failing to prove reasonable expectation of renewal – Dismissal not proved.

HEALTH & OTHER SERVICES PERSONNEL TRADE UNION OF SOUTH AFRICA OBO RAYNERS v UITENHAGE HOSPITAL (DEPARTMENT OF HEALTH) [2016] 6 BALR 630 (CCMA)

Commission for Conciliation, Mediation and Arbitration – Jurisdiction – Commission lacking jurisdiction to entertain discrimination claims by employees earning above statutory threshold set by EEA.

HLUTHA AND OTHERS v TSEBO OUTSOURCING GROUP (PTY) LTD T/A FEDICS (GAUTENG) AND ANOTHER [2016] 6 BALR [2016] 6 BALR 634 (CCMA)

Outsourcing – Rights of employees – Employees performing work at service provider's client deemed permanent employee of client after three months, and entitled to same benefits as client's employees performing same or similar work.

KGOAHLA v DEPARTMENT OF EDUCATION: NORTH WEST [2016] 6 BALR 565 (ELRC)

Unfair labour practice – Suspension – School principal placed on “special leave” pending inquiry into competence – Suspension fair as employee frustrated attempts to find him alternative employment.

KHUMALO AND OTHERS v HELEN JOSEPH HOSPITAL AND ANOTHER [2016] 6 BALR 643 (CCMA)

Dismissal – Proof of – Labour broker terminating services of employees after client cancelled service agreement and employees claiming they had been deemed permanent employees of client – Dismissal not proved because “triangular relationship” between broker and client no longer existing.

Labour brokers – Dismissal by – Labour broker terminating services of employees after client terminated service agreement and employees claiming they had been deemed permanent employees of client – Dismissal not proved because “triangular relationship” between broker and client no longer existing.

MAGOPANE AND OTHERS v MM & G MINING & ENGINEERING AND ANOTHER [2016] 6 BALR 572 (MEIBC)

Dismissal – Proof of – Labour broker and client colluding to evade provisions of section 198A of LRA by terminating services of broker's employee – Termination constituting dismissal.

Labour brokers – Dismissal by – Labour broker and client colluding to evade provisions of section 198A of LRA by terminating services of broker's employee – Termination constituting dismissal.

MAKHISA AND ANOTHER v CAPACITY OUTSOURCING (PTY) LTD AND ANOTHER [2016] 6 BALR 647 (CCMA)

Unfair labour practices – Promotion – Labour brokers' employees applying for permanent positions with client and appointed, but client later changing its mind – Unfair labour practice proved.

MAPENGO v BLACK LAWYERS ASSOCIATION (BLA) – LEGAL EDUCATION CENTRE (LEC) [2016] 6 BALR 654 (CCMA)

Dismissal – Constructive – Executive director resigning after his academic qualifications unfairly questioned – Resignation constituting unfair constructive dismissal.

NATIONAL UNION OF METALWORKERS OF SOUTH AFRICA OBO HOMAN v LIFE WISE CC T/A ELDAN AUTO BODY [2016] 6 BALR 583 (MIBC)

Dismissal – Procedural fairness – Charges – Employee accused of breaching trust relationship and bringing employer's name into disrepute – Charges unacceptably vague as no mention made of conduct allegedly giving rise to consequences.

Dismissal – Substantive fairness – Proof of misconduct – Employee accused of breaching trust relationship and bringing employer's name into disrepute faced only with email containing allegation authored by party who did not testify – Since email constituting inadmissible hearsay evidence, charges not proved – Dismissal unfair.

SOUTH AFRICAN MUNICIPAL WORKERS' UNION OBO VETYEKA v NELSON MANDELA BAY MUNICIPALITY [2016] 6 BALR 595 (SALGBC)

Collective agreements – Interpretation – Provision in agreement using word “should” indicating that provision not peremptory and that substantial compliance sufficient – Employer not breaching agreement by appointing initiator on grade equivalent to accused employee, even though code states that initiator should be on higher grade.

Disciplinary procedure – Employer appointing initiator on same grade as accused employee even though disciplinary code stated that initiators should be on higher grade – Departure not breaching code because provision merely permissive.

TRANSPORT AND ALLIED WORKERS UNION OBO MEMBERS v ALGOA BUS [2016] 6 BALR 660 (CCMA)

Discrimination – Arbitrary grounds – Employees relying on “arbitrary grounds” in unfair discrimination claim but failing to identify ground and connection between ground and discrimination – Application defective because employer having no case to answer.

UNITED ASSOCIATION OF SOUTH AFRICA OBO KUNDAI v JIP TRANSPORT [2016] 6 BALR 602 (NBCRFLI)

Severance pay – When due – Employee retrenched without severance pay after refusing to participate in “owner driver” scheme – Severance pay payable because scheme not offer of alternative employment.

WESSELS AND OTHERS v MTAWELANGA TRADING [2016] 6 BALR 667 (CCMA)

Dismissal – Proof of – Employer terminating project based fixed-term contract before completion of project – Termination constituting dismissal.

Source: <http://legalbrief.co.za>

BUTTERWORTHS LABOUR LAW REPORTS – JUNE 2016

BROADCASTING, ELECTRONIC, MEDIA & ALLIED WORKERS UNION AND OTHERS v SOUTH AFRICAN BROADCASTING CORPORATION AND OTHERS [2016] 6 BLLR 595 (LC)

Disciplinary code – Departures from – Employer convening mass hearing for 100 employees involved in same misconduct – Although employer's code providing for individual hearings in cases of serious misconduct, departure justified in circumstances.

Disciplinary procedure – Truncated proceedings – Employer convening mass hearing for 100 employees involved in same misconduct and inviting employees to make written submissions – Although employer's code providing for individual hearings in cases of serious misconduct, departure justified in circumstances.

CITY OF CAPE TOWN v FREDDIE AND OTHERS [2016] 6 BLLR 568 (LAC)

Dismissal – Misconduct – Racist conduct – Employee accusing coloured manager of being “worse than Verwoerd” and of victimising him because of his race – Unjustified accusation tantamount to racism for which dismissal justified.

DUMA v MINISTER OF CORRECTIONAL SERVICES AND OTHERS [2016] 6 BLLR 601 (LC)

Discrimination – Prohibited grounds – Employee complaining that she was paid less than colleagues in similar positions simply because she was located in a different province, and employer failing to justify difference – Discrimination arbitrary and unfair.

MCHUBA v PASSENGER RAIL AGENCY OF SOUTH AFRICA [2016] 6 BLLR 612 (LC)

Pre-dismissal inquiry – Employer abandoning pre-dismissal inquiry and conducting internal disciplinary hearing after agreeing with accused employee to conduct proceedings in terms of section 188A of LRA – Change constituting breach of agreement and ensuing dismissal null and void.

MEMBER OF THE EXECUTIVE COUNCIL: DEPARTMENT OF HEALTH, EASTERN CAPE PROVINCE v PUBLIC HEALTH AND SOCIAL DEVELOPMENT SECTORAL BARGAINING COUNCIL AND OTHERS [2016] 6 BLLR 621 (LC)

Bargaining council – Arbitration award – Review – Arbitrator misapplying law regarding consistency in application for discipline by choosing inappropriate comparators – Award set aside.

Disciplinary procedure – Plea bargains – Employer selecting one of group employees to offer “plea bargain” in return for evidence against others – Plea bargain not rendering dismissal of other employees inconsistent and unfair.

Dismissal – Consistency – Inconsistency not arising if employer chooses one of group of employees who committed same misconduct to conclude plea bargain to solicit evidence against others.

Dismissal – Misconduct – Dishonesty – Employees using emergency medical aircraft to attend soccer match and falsely claiming to have been on official business – Dismissal fair.

MINISTER OF CORRECTIONAL SERVICES v POLICE AND PRISONS CIVIL RIGHTS UNION OBO MMOLEDI AND OTHERS [2016] 6 BLLR 637 (LC)

Dismissal – Proof of – “Deemed dismissal” – Collective agreement providing that employees will be “summary dismissed” after being absent without leave for specified period not resulting in dismissal by operation of law.

NATIONAL UNION OF MINeworkERS OBO MILISA AND OTHERS v WBHO CONSTRUCTION (PTY) LTD [2016] 6 BLLR 642 (LC)

Contract of employment – Lawfulness – Contract providing that construction workers’ services would terminate automatically when their skills no longer required for project unlawful because employees deprived of protection against unfair dismissal.

Dismissal – Proof of – Employees on fixed-term contracts prematurely dismissed because employer decided their services were no longer required – Dismissal proved, because employer not permitted to rely on “automatic termination” clauses in contracts.

Dismissal – Operational requirements – Building contractor relying on clause in employees’ fixed-term contracts providing for “automatic termination” when employees’ skills no longer required for project – Termination constituting dismissal for operational requirements and unfair because employer failed to consult.

NELSON MANDELA METROPOLITAN MUNICIPALITY (NMMM) v MKUMATELA AND OTHERS [2016] 6 BLLR 585 (LAC)

Bargaining councils – Arbitration awards – Review – Arbitrator’s decision on whether unfair labour practice committed a moral or value judgment with which reviewing court may interfere only if unreasonable.

Unfair labour practices – Promotion – Panel departing from employer’s selection policy when deadlocked on best candidate – Departure from policy not constituting unfair labour practice in circumstances.

SOUTH AFRICAN MUNICIPAL WORKERS' UNION AND OTHERS v MOKGATLA AND OTHERS [2016] 6 BLLR 560 (SCA)

High Court – Jurisdiction in labour matters – Court lacking jurisdiction to deal with disputes between trade unions and their members concerning alleged breaches of unions' constitutions.

Labour Court – Jurisdiction – Court having exclusive jurisdiction to deal with disputes between trade unions and their members concerning alleged breaches of unions' constitutions.

TRANSPORT AND ALLIED WORKERS UNION OF SOUTH AFRICA v PUBLIC UTILITY TRANSPORT CORPORATION LTD [2016] 6 BLLR 537 (CC)

Collective agreements – Extension to non-parties by Minister – That bargaining council agreement may be extended by Minister to non-parties not implying that employers may lock out members of non-party unions after deadlock in council.

Lockouts – Procedure – Lockout protected only if dispute previously referred for conciliation – Wage dispute conciliated by bargaining council, but only in respect of parties to council – Lockout of non-parties to council unlawful for want of compliance with procedural requirements of LRA.

Lockouts – Purpose – Purpose of lockout is for employer to bring pressure on union parties to dispute – Employer not entitled to lock out members of unions not party to dispute.

Lockouts – Scope – Employer locking out members of union not party to bargaining council after deadlock reached in negotiations with other unions in council – Lockout unlawful because employees of non-member union not in dispute with employer.

Source: <http://legalbrief.co.za>

PROCLAMATIONS AND NOTICES

DEPARTMENT OF HIGHER EDUCATION AND TRAINING	Draft Policy: Building an effective and integrated career development services system for South Africa published for comment	GG 40041 (03.06.16)
MAGISTRATES' COURTS ACT 32 OF 1944	Annexation of the Vuwani sub-district to the Thulamela magisterial district published	GG 40044 (02.06.16)
INCOME TAX ACT 58 OF 1962	Notice to furnish returns for the 2016 year of assessment published	GG 40041 (03.06.16)
CUSTOMS AND EXCISE ACT 91 OF 1964	Schedule 6 amended with effect from 1 April 2015	GG 40044 (02.06.16)
MEDICINES AND RELATED SUBSTANCES ACT 101 OF 1965	Schedules amended	GG 40041 (03.06.16)
PETROLEUM PRODUCTS ACT 120 OF 1977	Regulations in respect of the maximum retail price of Liquefied Petroleum Gas supplied to residential customers published with effect from 1 June 2016	GG 40027 (31.05.16)
	Amendment of regulations in respect of petroleum products published with effect from 1 June 2016	GG 40027 (31.05.16)
	Regulations in respect of the single maximum national retail price for illuminating paraffin published with effect from 1 June 2016	GG 40027 (31.05.16)

	Draft amendment of regulations regarding petroleum products specification and standards published for comment	GG 40047 (03.06.16)
RULES BOARD FOR COURTS OF LAW ACT 107 OF 1985	Rules Regulating the Conduct of the Proceedings of the Several Provincial and Local Divisions of the High Court of South Africa amended with effect from 4 July 2016	GG 40044 (02.06.16)
FINANCIAL SERVICES BOARD ACT 97 OF 1990	Levies for Financial Institutions Notice, 2016 published	GG 40032 (01.06.16)
AGRICULTURAL PRODUCT STANDARDS ACT 119 OF 1990	Proposed amendments to the regulations relating to the grading, packing and marking of wheat products intended for sale in the Republic of South Africa published for comment	GG 40041 (03.06.16)
NATIONAL EDUCATION POLICY ACT 27 OF 1996	Notice of publication for comment of proposed amendments to the policy documents National Policy pertaining to the Programme and Promotion Requirements of the National Curriculum Statement Grades R-12 and National Policy pertaining to the Conduct, Administration and Management of the National Senior Certificate Examination published	GG 40046 (03.06.16)
MARKETING OF AGRICULTURAL PRODUCTS ACT 47 OF 1996	Request for the continuation of statutory measures related to levies, records and returns and registration in respect of table grapes produced, inspected and passed for export published for comment by directly affected groups	GG 40041 (03.06.16)
SOUTH AFRICAN SCHOOLS ACT 84 OF 1996	Proposed amendments to the Regulations Pertaining to the National Curriculum Statement Grades R-12 and the Regulations Pertaining to the Conduct, Administration and Management of the National Senior Certificate examination published	GG 40046 (03.06.16)
BASIC CONDITIONS OF EMPLOYMENT ACT 75 OF 1997	Determinations in terms of s. 50 published	GG 40041 (03.06.16)
COMPETITION ACT 89 OF 1998	Competition Commission: Guidelines on the Assessment of Public Interest: Provisions in Merger Regulation published	GG 40039 (02.06.16)
	Competition Tribunal: Notifications of decisions to approve mergers published	GG 40041 (03.06.16)
NATIONAL ENVIRONMENTAL MANAGEMENT ACT 107 OF 1998	Notice regarding references to 'minimum information requirements' in the Regulations for Petroleum Exploration and Production, 2015 published	GG 40041 (03.06.16)
NATIONAL HERITAGE RESOURCES ACT 25 OF 1999	Notice of provisional protection of the Lutheran Church, Gold Museum and the Dutch Embassy building, Erf 9245, published	GG 40041 (03.06.16)
DIPLOMATIC IMMUNITIES AND PRIVILEGES ACT 37	Notice of the recognition of the Centre National d'Etudes Spatiales (CNES) as a representative of the French	GG 40041 (03.06.16)

OF 2001	Republic published	
SOUTH AFRICAN MARITIME AND AERONAUTICAL SEARCH AND RESCUE ACT 44 OF 2002	South African Maritime and Aeronautical Search and Regulations, 2016 [sic] published	GG 40025 (30.05.16)
BROAD-BASED BLACK ECONOMIC EMPOWERMENT ACT 53 OF 2003	Proposed African Exploration Mining and Finance Corporation (AEMFC) Broad-based Black Economic Empowerment Facilitator Status published for comment	GG 40031 (01.06.16)
ELECTRONIC COMMUNICATIONS ACT 36 OF 2005	Independent Communications Authority of South Africa (ICASA): Notice of availability of reasons for decisions in respect of applications for individual commercial free-to-air television broadcasting licences published	GG 40042 (02.06.16)
NATIONAL QUALIFICATIONS FRAMEWORK ACT 67 OF 2008	Notice of publication for comment of qualification documents for proposed occupational qualifications for registration on the qualifications sub-framework for trades and occupations published	GG 40034 (01.06.16)
CIVIL AVIATION ACT 13 OF 2009	Notice of publication for comment of proposed amendment to the Civil Aviation Regulations, 2011 published	GG 40049 (03.06.16)
DIVISION OF REVENUE ACT 3 OF 2016	First transfer of equitable share and conditional grant allocations for pre-election municipalities, 2016 and Explanatory Memorandum published	GG 40035 (02.06.16)

PROVINCIAL LEGISLATION

Eastern Cape

Problem Animal Control Ordinance 26 of 1957 and Nature and Environmental Conservation Ordinance 19 of 1974	Hunting Season and daily bag limits and hunting by the use of prohibited hunting methods, 2016 published	PG 3676 (30.05.16)
Nature Conservation Act 10 of 1987 (Ciskei)	Hunting Season: Former Ciskei published	PG 3676 (30.05.16)
Spatial Planning and Land Use Management Act 16 of 2013	Hunting Season and daily bag limits and Nelson Mandela Bay Metropolitan Municipality: Notice of establishment and commencement of a Municipal Planning Tribunal published	PG 3676 (30.05.16)
Constitution of the Republic of South Africa, 1996 and Local Government: Municipal Systems Act 32 of 2000	Intsika Yethu Local Municipality: Building Regulations and Building Standard Bylaw, 2015 published and previous by-laws repealed	PG 3676 (30.05.16)
Disaster Management Act 57 of 2002	Joe Gqabi District Municipality: Extension of the Declaration of Local State of Organic Pollution Disaster: Ugie Town in the Elundini Local Municipality area	PG 3677 (03.06.16)

published

Kwazulu-Natal

Disaster Management Act 57 of 2002	Extension of the declaration of a KwaZulu-Natal Provincial State of Drought Disaster for a period of one month from 11 June 2016 to 10 July 2016 published	PG 1680 (01.06.16)
KwaZulu-Natal Traditional Leadership and Governance Act 5 of 2005	Withdrawal of recognition of Mkhululeki Cyvion Dlomo as iNkosi of the Gcothoyi Traditional Community in the District of uMzinyathi published with effect from 14 March 2016	PG 1680 (01.06.16)
Promotion of Access to Information Act 2 of 2000	Manual of the uMlalazi Local Municipality published	PG 1681 (02.06.16)
Local Government: Municipal Finance Management Act 56 of 2003 and Local Government: Municipal Property Rates Act 6 of 2004	uMlalazi Local Municipality: Levying of rates for the 2016/2017 financial year published	PG 1681 (02.06.16)
Division of Revenue Act 3 of 2016	Notice of transfers to hospitals budget for the 2016/2017 financial year published	PG 1681 (02.06.16)

Limpopo

National Road Traffic Act 93 of 1996	Registration of Franco Bulk Test Station as Grade 'A' Vehicle Testing Station (Roadworthy Centre) published	PG 2711 (30.05.16)
Local Government: Municipal Systems Act 32 of 2000	Makhado Local Municipality: Draft Swimming Pools By-law and Pound of Animals By-laws published	PG 2713 (03.06.16)
	Makhado Local Municipality: Draft Street Trading By-laws and Public Nuisance By-law published ² and previous by-laws repealed	PG 2713 (03.06.16)
	Ephraim Mogale Local Municipality: Tariffs By-laws published	PG 2713 (03.06.16)

Northern Cape

Karoo Hoogland Municipality	Notice of approval of rates tariffs for the financial year 1 July 2016 to 30 June 2017 published	PG 2016 (30.05.16)
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North West

National Environmental Management: Protected Areas Act 57 of 2003	Correction notice: Notice of intention to declare the establishment of new Nature Reserves: Rietspruit Rusoord Nature Reserve, and Molopo Oog Nature Reserve; and a new protected environment: Marico Protected Environment as published under GenNs 36-38 in PG 7624 of 11 March 2016 withdrawn and replaced	PG 7652 (31.05.16)
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Western Cape

Western Cape Land Use Planning Act 3 of 2014	Date of commencement for Cederberg and Knysna Local Municipalities: 1 June 2016	PG 7622 (01.06.16)
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SEMINARS

NAME OF SEMINAR	DATES	PRESENTER
MEDICAL MALPRACTICE LITIGATION	Polokwane: 24-25 June 2016 Bloemfontein: 29-30 July 2016 Midrand: 26-27 August 2016	Dr Henry Lerm & R du Plessis
COMMERCIAL DRAFTING COURSE	Cape Town: 26 & 27 July 2016	Adv Ismail Hussain SC
EVICTIONS AND LANDLORD-TENANT DISPUTE	Midrand: 21 June 2016 Durban: 19 July 2016	Cilna Steyn
MARRIAGES AND INTESTATE SUCCESSION OF INDIGENOUS PEOPLE OF SOUTH AFRICA	East London: 13 June 2016 Cape Town: 24 June 2016 Midrand: 27 June 2016	Allen West
UNDERSTANDING THE RISKS OF EXPOSURE FOR AN ATTORNEY IN THE INVESTMENT ENVIRONMENT	Cape Town: 30 June 2016 Durban: 1 July 2016 Bloemfontein: 4 July 2016 East London: 7 July 2016 Midrand: 8 July 2016	Adv Ismail Hussain SC
CCMA UPDATE	East London: 25 July 2016 Midrand: 26 July 2016 Cape Town: 28 July 2016 Durban: 29 July 2016	
2016 SEMINARS EVICTION & RENTAL CLAIMS	George: 5 July 2016 East London: 8 July 2016 Bloemfontein: 11 July 2016	Christo Smith

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