



# EMPLOYMENT ALERT

## INTRODUCING APPEALS (AS OPPOSED TO REVIEWS) IN THE CCMA?

In the recent judgment of *Heroldt v Nedbank Limited* (unreported judgment case no. DA 20/2010 dated 4 May 2012) the Labour Appeal Court (LAC) has criticised the provisions of the Labour Relations Act (LRA) that deny litigants the right to appeal an arbitration award granted by the CCMA. As the law currently stands, the only recourse available to an aggrieved party is to take the arbitrator's award on review in the Labour Court (Court).

The legislature's rationale for denying litigants the right to appeal is set out in the LRA's Explanatory Memorandum, which states that:

The absence of an appeal from the arbitrator's award speeds up the process and frees it from the legalism that accompanies appeal proceedings. It is tempting to provide for appeals because dismissal is a very serious matter... However, this temptation must be resisted as appeals lead to records, lengthy proceedings, lawyers, legalism, inordinate delays and high costs.

In the *Heroldt* case, Murphy AJA (with Mlambo JP & Mocumie AJA concurring) questioned the legislature's reasons for denying litigants the right to appeal against awards of the CCMA. The LAC held that, far from reducing legalism, delays, costs and reviews are no less burdensome than appeals and, in fact, may well be more legally onerous. It is not uncommon for litigants to spend several years in the Court waiting for the outcome of a review, let alone an appeal of a review in the LAC.

Murphy AJA also stated that "it seems a far easier exercise to determine whether a commissioner's [arbitrator's] decision is right or wrong on the facts or the law than it is to ferret out and measure latent irregularities, or to make a value based assessment of whether an arbitrator acted reasonably in making a value based assessment of an employer's fairness."

The LAC went further by saying that "[perhaps] the time has come for the social partners and the legislature to think again. Justice for all concerned might be better served were the relief against awards to take the form of an appeal rather than a review."

We believe that the views expressed in this judgment have considerable merit.

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