

EMPLOYMENT

A SETBACK FOR THE OPPONENTS OF BARGAINING COUNCILS?

The legal onslaught in the court room battle against bargaining councils and their collective agreements received a temporary setback in *MISA v IA Macun and Others* (case 12758/2014 delivered on 06 November 2014).

The applicant union wanted the High Court in Pretoria to declare the Minister's decision to extend the periods of operation of the MIBCO Main Collective Agreement and Administrative Collective Agreement to specific dates unlawful and invalid. The union contended that the two agreements were not in force when the minister extended them and did not, as is, raise any constitutional issue.

On behalf of the respondents opposing the application it was argued that the issues of bargaining council collective agreements and their extension fall within the function expressly provided for in the Labour Relations Act, No 66 of 1995 (LRA), which falls exclusively within the jurisdiction of the Labour Court. The applicant contended that the High Court who heard this matter had concurrent jurisdiction by virtue of the provisions of s157(1) and (2) of the LRA.

The Labour Court had to consider the previous conflicting decisions in in the High Court. In *Valuline v Minister of Labour* [2013] (4) 326 (KZP) it was held that the High Court had concurrent jurisdiction in a similar matter. In the recent decision in *O'Thorpe Construction and Others v The Minister of Labour and Others* (case 9380/2013 in Cape Town) the High Court declined to hear the matter for lack of jurisdiction saying it belonged in the Labour Court.

The Court in the MISA matter analysed the two conflicting decisions against the background of the previous relevant Constitutional Court decisions in *Chirwa v Transnet Limited and Others* [2008] (4) SA 367 (CC) and *Gcaba v Minister of Safety and Security and Others* [2010] (1) SA 238 (CC).

The judgment in the MISA matter emphasized that the LRA created a specialist court in labour matters with similar status to the High Court with exclusive jurisdiction to decide matters arising from the LRA. The Labour Court has been created to deal with causes of action that are founded on the provisions of the Bill of Rights that arise from employment and labour relations. The Court concluded that this particular matter of the extension of agreements falls exclusively within the jurisdiction of the Labour Court. It is a matter founded in the LRA. The union's application was dismissed without the Court considering the merits of the union's complaint as the High Court did not have jurisdiction to entertain the dispute.

Faan Coetzee

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