

# EMPLOYMENT

BACK TO BASICS:  
READ BEFORE SIGNING

## BACK TO BASICS: READ BEFORE SIGNING

**The case of *Kaltwasser v Isambulela Group Administrator (Pty) Ltd* (unreported Labour Court case, case number: JS 635/10 & JS 359/11) illustrates why contracts of employment should always be given meticulous consideration.**

The employee was employed by a risk management company, Isambulela Group Administrator (Pty) Ltd (Company), which was owned by two of the employee's good friends. The parties had such a close relationship, that one of the employer's directors, Mr Holtzhausen (Holtzhausen), told the employee to "draft the contract and bring it back" for their signature. Despite this show of good faith, what ultimately transpired was that one of the directors sent the employee one of the Company's pro forma contracts for him to consider.

The employee amended the remuneration clause and deleted the restraint of trade and then returned the contract to the employer. The employee did not, however, disclose that he had made material changes to the contract. Accordingly, Holtzhausen signed the contract of employment on the incorrect understanding that the employee had merely inserted his personal details and other minor particulars relating to the commission formula.

The working and personal relationship between the parties eventually broke down. Following this degeneration, the employee instituted unfair labour practice proceedings against the Company, which proceedings are unrelated to the contractual claim that forms the basis of this article. It was only during these separate proceedings in the CCMA, that the employee's unilateral amendments to the contract of employment came to light. These amendments had the effect of entitling the employee to annual salary increases.

The employee then instituted further proceedings in the Labour Court claiming this entitlement, which entitlement was disputed by the Company. In defending the employee's claim, the Company relied on the contractual defence of *justus error* (a reasonable mistake), arguing that the employee unilaterally altered terms of the contract of employment without the Company's knowledge.

To be successful in raising the defence of *justus error*, a party has to prove that:

- The mistake was material and renders the contract void. In order to prove this, the party seeking to avoid liability under the contract must show that it would not have entered into the contract if it had realised the mistake; and
- The mistake was reasonable.

In this instance, the employee relied on the maxim of *caveat subscriptor* (let the signatory beware), arguing that the Company cannot escape the consequences of its negligence. The Company argued that Holtzhausen would never have signed the contract had he been aware of the amendments to the standard form contract.

The Labour Court held that the employee knew that Holtzhausen, acting on behalf of the company, would never have signed the contract had it known about the amendments. Thus, the Court found in favour of the employer. However, the Court cautioned that the outcome could have been different if the employee had drawn up his own contract instead of using the Company's standard form of contract.

The vital lesson employers should take from this case, is to ensure that they draft and finalise contract of employments. In the event that the employee wishes to raise comments in respect of the contract, such variations should still be reviewed by the employer. By exercising this caution, employers will eliminate the risk of an employee unilaterally varying the material terms of their employment contract.

*Katlego Letlonkane and Mari Bester*



PUTTING THE PIECES TOGETHER:  
**LABOUR LAW AMENDMENTS**  
CLICK HERE TO FIND OUT MORE.



# THE XXI WORLD CONGRESS OF THE INTERNATIONAL SOCIETY FOR LABOUR AND SOCIAL SECURITY LAW IS TAKING PLACE IN CAPE TOWN FROM 15 TO 18 SEPTEMBER 2015, HOSTED BY THE SOUTH AFRICAN SOCIETY FOR LABOUR LAW (SASLAW) AND PROUDLY SPONSORED BY CLIFFE DEKKER HOFMEYR AND DLA PIPER AFRICA.

The 21st World Congress promises to provide a platform for a stimulating discussion on labour and social security law in a global environment where sustained economic and social uncertainty appears to have become the norm.

How do we continue to give effect to the basic objectives of labour and social security law under these conditions, and how best might those objectives be secured?

These and other questions will inform our order of business.



[CLICK HERE FOR MORE INFORMATION.](#)



**2014**  
RANKED #1 BY DEALMAKERS FOR DEAL FLOW 6 YEARS IN A ROW  
1st in M&A Deal Flow, 1st in M&A Deal Value, 1st in General Corporate Finance Deal Flow.

**2013**  
1st in M&A Deal Flow, 1st in M&A Deal Value, 1st in Unlisted Deals - Deal Flow.

**2012**  
1st in M&A Deal Flow, 1st in General Corporate Finance Deal Flow, 1st in General Corporate Finance Deal Value, 1st in Unlisted Deals - Deal Flow.

**2011**  
1st in M&A Deal Flow, 1st in M&A Deal Value, 1st in General Corporate Finance Deal Flow, 1st in General Corporate Finance Deal Value, 1st in Unlisted Deals - Deal Flow.

**DealMakers**

**HIGHEST RANKING OF CLIENT SATISFACTION AMONGST AFRICAN FIRMS 2013**

**Legal Week**

WE SECURED THE BIG

**5**

WE ARE THE NO.1 LAW FIRM FOR CLIENT SERVICE EXCELLENCE FIVE YEARS IN A ROW.

**pmi**  
Africa

**2014**  
#No1DealPartner

**NO 1 LAW FIRM** BY M&A DEAL COUNT IN AFRICA AND THE MIDDLE EAST

**NO 1 AFRICAN LAW FIRM** BY M&A DEAL VALUE WITH 9.2 BILLION USD WORTH OF DEALS

**MERGERMARKET**

CHAMBERS GLOBAL 2014 - 2015 ranks our Employment practice in Band 2: Employment.

Aadil Patel ranked by CHAMBERS GLOBAL 2015 in Band 2: Employment.

Hugo Pienaar ranked by CHAMBERS GLOBAL 2014 - 2015 in Band 2: Employment.

Fiona Leppan ranked by CHAMBERS GLOBAL 2015 in Band 4: Employment.



## CONTACT US



**Aadil Patel**  
National Practice Head  
Director  
T +27 (0)11 562 1107  
E aadil.patel@dlacdh.com



**Gillian Lumb**  
Regional Practice Head  
Director  
T +27 (0)21 481 6315  
E gillian.lumb@dlacdh.com



**Johan Botes**  
Director  
T +27 (0)11 562 1124  
E johan.botes@dlacdh.com



**Mohsina Chenia**  
Director  
T +27 (0)11 562 1299  
E mohsina.chenia@dlacdh.com



**Fiona Leppan**  
Director  
T +27 (0)11 562 1152  
E fiona.leppan@dlacdh.com



**Hugo Pienaar**  
Director  
T +27 (0)11 562 1350  
E hugo.pienaar@dlacdh.com



**Gavin Stansfield**  
Director  
T +27 (0)21 481 6314  
E gavin.stansfield@dlacdh.com



**Michael Yeates**  
Director  
T +27 (0)11 562 1184  
E michael.yeates@dlacdh.com



**Faan Coetzee**  
Executive Consultant  
T +27 (0)11 562 1600  
E faan.coetzee@dlacdh.com

**Kirsten Caddy**  
Senior Associate  
T +27 (0)11 562 1412  
E kirsten.caddy@dlacdh.com

**Nicholas Preston**  
Senior Associate  
T +27 (0)11 562 1788  
E nicholas.preston@dlacdh.com

**Lauren Salt**  
Senior Associate  
T +27 (0)11 562 1378  
E lauren.salt@dlacdh.com

**Ndumiso Zwane**  
Senior Associate  
T +27 (0)11 562 1231  
E ndumiso.zwane@dlacdh.com

**Anli Bezuidenhout**  
Associate  
T +27 (0)21 481 6351  
E anli.bezuidenhout@dlacdh.com

**Katlego Letlonkane**  
Associate  
T +27 (0)21 481 6319  
E katlego.letlonkane@dlacdh.com

**Inez Moosa**  
Associate  
T +27 (0)11 562 1420  
E inez.moosa@dlacdh.com

**Thandeka Nhleko**  
Associate  
T +27 (0)11 562 1280  
E thandeka.nhleko@dlacdh.com

**Sihle Tshetlo**  
Associate  
T +27 (0)11 562 1196  
E sihle.tshetlo@dlacdh.com

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

## BBBEE STATUS: LEVEL TWO CONTRIBUTOR

## JOHANNESBURG

1 Protea Place Sandton Johannesburg 2196, Private Bag X40 Benmore 2010 South Africa  
Dx 154 Randburg and Dx 42 Johannesburg  
T +27 (0)11 562 1000 F +27 (0)11 562 1111 E jhb@dlacdh.com

## CAPE TOWN

11 Buitengracht Street Cape Town 8001, PO Box 695 Cape Town 8000 South Africa  
Dx 5 Cape Town  
T +27 (0)21 481 6300 F +27 (0)21 481 6388 E ctn@dlacdh.com

[cliffedekkerhofmeyr.com](http://cliffedekkerhofmeyr.com)

Cliffe Dekker Hofmeyr is a member of DLA Piper Group, an alliance of legal practices.

©2015 0427/APR