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EMPLOYMENT ALERT

Our programme on Conducting a Disciplinary Enquiry has been accredited by the Services SETA.

IN THIS ISSUE

WHO DECIDES WHETHER AN EMPLOYER HAS PUT UP SECURITY "TO THE SATISFACTION OF THE COURT"?

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The Labour Court found that, because a certified award is also deemed to be an order of the Labour Court in respect of which a writ has been issued, it is completely unnecessary and redundant for the registrar of the Labour Court to formally issue a writ in circumstances where one is already deemed to have been issued by law.



In *Moqhaka Local Municipality v Motloutng and others* (JS 1505/16, 14 October 2016) the Commission for Conciliation, Mediation and Arbitration (CCMA) found that the employee was unfairly dismissed and awarded him 6 months' compensation. The employer took the award on review. The employer put up security in order to stay the enforcement of the award pending the finalisation of the review. The employer provided security in the form of a deposit of the requisite amount into the trust bank account of its attorneys. The employee contended that he did not receive proof of such payment into the trust bank account of the employer's attorneys and issued a writ of execution. The employer brought this application to interdict the execution of the writ.

The questions before the court were:

1. whether the registrar of the Labour Court had the power to issue a writ for the enforcement of an award sounding in money, because the amended LRA states that a certified award can be enforced as if it was an order of court; and
2. who decides whether an applicant in a review application has furnished security “to the satisfaction of the Court” in order to stay the enforcement of the award.

In response to the first question, the Labour Court found that, because a certified award is also deemed to be an order of the Labour Court in respect of which a writ has been issued, it is completely unnecessary and redundant for the registrar of the Labour Court to formally issue a writ in circumstances where one is already deemed to have been issued by law. For the registrar to issue a writ in those circumstances has the effect that a second writ is issued where one is already deemed to exist. Accordingly, the writ issued by the registrar would be redundant and of no legal effect and the sheriff then has no authority to attempt to execute that writ. The employee

must simply act on the strength of the certified award. On this basis, the Labour Court reviewed and set aside the writ of execution.

In response to the second question, the Labour Court held that the registrar or deputy registrar do not have the power to decide if security in terms of s145(8) of the LRA has been provided “to the satisfaction of the court”. Only the Labour Court can make that determination, usually in circumstances where the employer brings an application to interdict the employee from enforcing the award on the basis that it, the employer, has put up the requisite security. The solution is for the employer to obtain undertaking from the employee that no further steps will be taken to enforce the award in light of the security provided. If no such undertaking is forthcoming from the employee, the employer has no guarantee that the sheriff will not arrive at its premises to execute the deemed writ. It will then be necessary for the employer to institute proceedings to interdict the execution of the writ and the court will, at that stage, decide upon the sufficiency of the security.

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Aadil Patel and Kirsten Caddy

Employment STRIKE GUIDELINE

Our Employment practice's new
EMPLOYMENT STRIKE GUIDELINE
answers our clients' FAQs.

Topics discussed include strikes, lock-outs and picketing.

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Aadil Patel ranked by CHAMBERS GLOBAL 2015 - 2016 in Band 2: Employment.

Hugo Pienaar ranked by CHAMBERS GLOBAL 2014 - 2016 in Band 2: Employment.

Fiona Leppan ranked by CHAMBERS GLOBAL 2016 in Band 3: Employment.



Michael Yeates named winner in the **2015** and **2016 ILO Client Choice International Awards** in the category 'Employment and Benefits, South Africa'.



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FOR M&A DEAL FLOW
7 YEARS IN A ROW
1st by General Corporate
Finance Deal Flow

2014 1st by M&A Deal Flow
1st by M&A Deal Value
1st by General Corporate Finance
Deal Flow

2013 1st by M&A Deal Flow
1st by M&A Deal Value
1st by Unlisted Deals - Deal Flow

2012 1st by M&A Deal Flow
1st by General Corporate Finance
Deal Flow
1st by General Corporate Finance
Deal Value
1st by Unlisted Deals - Deal Flow

DealMakers

2015
1ST

South African law firm and
12th internationally for Africa
& Middle East by deal value

2ND

South African law firm and
2nd internationally for Africa
& Middle East by deal count

1ST

South African law firm and
15th internationally for Europe
buyouts by deal value



NO.1

6

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for client service excellence

#6YearsInARow



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BBBEE STATUS: LEVEL THREE CONTRIBUTOR

Cliffe Dekker Hofmeyr is very pleased to have achieved a Level 3 BBBEE verification under the new BBBEE Codes of Good Practice. Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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