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# EMPLOYMENT LAW ALERT

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### A tale of two courts: Jurisdiction in claims for damages arising from the alleged malicious prosecution of a disciplinary hearing by an employer

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### Employees affected by the civil unrest: Temporary relief scheme

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## A tale of two courts: Jurisdiction in claims for damages arising from the alleged malicious prosecution of a disciplinary hearing by an employer

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*In Kutu v The Minister, Department of Justice and Correctional Services [2021] JDR 1452 (MN), the Mpumalanga Division of the High Court had to decide whether the High Court had the necessary jurisdiction to entertain an action or claim for damages brought by a reinstated employee against their employer by reason of the alleged malicious prosecution of a disciplinary hearing, which resulted in the employee's dismissal.*

The employee was subjected to a disciplinary hearing, and later dismissed. The employee then referred his dismissal dispute to arbitration in terms of the Labour Relations Act 66 of 1995 (LRA). In terms of the ensuing arbitration award, the employee's dismissal was found to be unfair and, as relief, the employee was granted reinstatement with full retrospective effect, including back pay amounting to 24 months' remuneration (this was equal to the period the employee was unemployed due to the unfair dismissal).

After his reinstatement, the employee instituted a claim for damages before the High Court, seeking R1 million in general damages and R500,000 in special damages.

Counsel for the employee argued that the damages claim was not based on the LRA but rather on the malicious prosecution of the disciplinary hearing by the employer.

The High Court considered the employee's contentions in light of section 158 of the LRA and the powers conferred on the Labour Court to make awards of compensation and damages in the

circumstances contemplated in that section. In dismissing the claim for damages, the High Court considered that the employee's disciplinary hearing and subsequent dismissal was one of the "circumstances" contemplated in the LRA. Accordingly, and in light of the fact that this is not one of the disputes over which the High Court has concurrent jurisdiction with the Labour Court in terms of section 157 of the LRA, it found that it lacked the necessary jurisdiction to entertain the damages claim. The High Court also found, in any event, that the claim for damages lacked merit as it was not properly quantified in the papers before it. For these reasons, the damages claim was struck from the court's roll.

The judgment raises an important question relating to which matters the High Court and the Labour Courts have concurrent jurisdiction over. With regard to the merits of the damages claim, the judgment reinforces the trite principle of practice and procedure requiring parties to plead all damages claims with sufficient particularity and to quantify the monetary claim being brought before High Court with specificity. This was also confronted by the Constitutional Court in *Baloyi v Public Protector and Others* [2021] 2 BCLR 101 (CC), where the Constitutional Court reiterated that the Labour Court and other specialist tribunals established under the LRA are uniquely qualified to handle labour-related disputes and that litigants must, therefore, exercise caution when approaching the High Court for labour-related disputes.

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**Bongani Masuku and  
Thato Maruapula**

## Employees affected by the civil unrest: Temporary relief scheme

Where a worker who is receiving part or no remuneration because of the civil unrest (experienced between 9 to 18 July 2021), such persons are entitled to an income replacement, calculated on a sliding scale of 38% to 60% based on remuneration.

Following the civil unrest in Gauteng and KwaZulu-Natal in July, many businesses were forced to close or reduce their levels of operation. This obviously negatively impacted employees.

On 11 August 2021, the Minister of Employment and Labour gazetted the Temporary Financial Relief Scheme known as the: *"Destroyed, Affected or Looted Workplaces: Temporary Financial Relief Scheme, 2021"*. The scheme has been created under the Unemployment Insurance Act 63 of 2001 and will be reviewed bi-weekly by the Minister on the advice of the Unemployment Insurance Commissioner in respect of its continued operation. The scheme is not linked to normal unemployment insurance benefits.

Building upon the lessons of 2020, the scheme applies not only to employees but also to workers. Where a worker who is receiving part or no remuneration because of the civil unrest (experienced between 9 to 18 July 2021), such persons are entitled to an income replacement, calculated on a sliding scale of 38% to 60% based on remuneration.

The remuneration taken into account in calculating the relief cannot exceed R17,712 per month. However, if the income replacement is below R3,500 then the worker must be paid a replacement income equal to this amount. Accordingly, the payment will not exceed R6,700 and shall not be less than R3,500 per month. A flat rate may also be determined by the Minister if financial considerations dictate. An employee/worker may only receive the relief if *"the total of the relief together with any additional payment towards relief or salary in any period is not more than the remuneration that the employee would ordinarily have received for working during that period"*.

Payments under the scheme will be made directly into the worker's bank account unless the commissioner allows payment directly to the employer. However, an employer is required to apply for the temporary financial relief on behalf of its affected employees and must satisfy the following conditions (an application cannot be made by the employee):

- It must register and be registered with the Unemployment Insurance Fund (UIF).
- The closure of the employer's business must be directly linked to the destruction or damage of its workplace.
- The employer must confirm in writing or electronically that the terms of the scheme or the procedure document issued by the UIF are accepted.
- Details of the destruction, damage, theft or closure of the workplace must be provided. Additionally, proof of a report to the South African Police Service (case number issued) must be provided and, if the business is insured, proof of submission and acknowledgement of receipt of the insurance claim must be submitted.
- Any other information the commissioner may require.

The scheme should provide some measure of relief to employees not receiving their full or any remuneration because of the unrest. The UIF will announce the platforms to be used, claim process and dates for submission. These details have not been released as yet.

Affected businesses should be aware of the scheme and be on the lookout for when applications open up with the UIF.

**Imraan Mahomed and Storm Arends**

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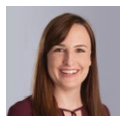
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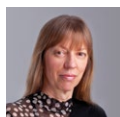
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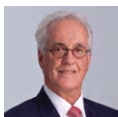
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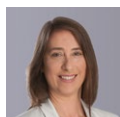
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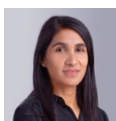
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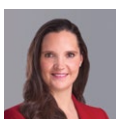
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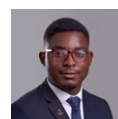
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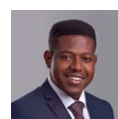
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### BBBEE STATUS: LEVEL ONE CONTRIBUTOR

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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