



EMPLOYMENT ALERT

WHICH LABOUR COURT HAS JURISDICTION? RECENT CASE LAW CLARIFIES THE ISSUE

The High Court and Magistrates Court are subject to strict prescripts concerning territorial jurisdiction. Litigants must 'seek out the defendant' and institute proceedings in the particular court with jurisdiction over, among other things, the area where the defendant resides, the area where the dispute arose, or the place where the parties entered into the contract. This means that a defendant who is sued in the wrong court (for example Durban instead of Cape Town) may successfully have a matter thrown out due to the court lacking territorial jurisdiction.

But what is the situation in the Labour Court? In *BP Southern Africa (Pty) Ltd v the National Bargaining Council for Chemical Industries and Others* (2010) 31 ILJ 1337 (LC) the Labour Court (Court) was called to consider the issue of territorial jurisdiction. The Court ruled that, when determining the issue of its territorial jurisdiction, one must have regard to the explicit provisions of s156 of the Labour Relations Act, which provides as follows:

- The Labour Court has jurisdiction in all the provinces of the Republic.
- The Minister of Justice, acting on the advice of NEDLAC, must determine the seat of the Labour Court.
- The functions of the Labour Court may be performed at any place in the Republic.

The Minister of Labour has determined that the seat of the Court is in Johannesburg. Furthermore, the Court ruled that the additional branches of the Court situated in Cape Town, Durban and Port Elizabeth have been set up as a matter of convenience, and not

on the basis of jurisdiction. Accordingly, a litigant may institute proceedings in any branch of the Court regardless of where the respondent resides or where the dispute arose.

The result of this judgment is that parties may not raise the issue of territorial jurisdiction as a technicality to avoid liability in that forum. Litigants in the Court are entitled to bring a claim in any of the four branches of the Court.

However, if holding the proceedings in any particular branch of the Court is significantly inconvenient for either of the parties, the aggrieved party may bring an application to have the matter heard in a more convenient location. If the aggrieved party is able to prove that, on a balance of probabilities, it would be more convenient for both parties to hold the hearings at a different branch of the Court, the Court is empowered to make such an order.

Litigants in the Court may thus institute disputes at any one of the Courts in South Africa. In considering the territory in which the claim is to be instituted, we recommend that parties consider the logistics involved in litigating. Costs and convenience associated with transport and accommodation for out-of-town witnesses, arranging records to be forwarded, uplifted and transcribed, and consulting with witnesses and parties are all factors that ought to be considered before deciding on the particular Court where the litigation should be launched.

Johan Botes and Mark Meyerowitz

CONTACT US

For more information about our Employment practice and services, please contact:



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



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



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



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



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



Mariam Jasset
Associate
T + 27 (0)11 562 1355
E mariam.jasset@dclacdh.com



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



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



Mark Meyerowitz
Associate
T + 27 (0)11 562 1125
E mark.meyerowitz@dclacdh.com



Melanie Hart
Director
T + 27 (0)11 562 1179
E melanie.hart@dclacdh.com



Pranisha Maharaj
Senior Associate
T + 27 (0)21 481 6460
E pranisha.maharaj@dclacdh.com



Lerato Phashe
Associate
T + 27 (0)11 562 1202
E lerato.phashe@dclacdh.com



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



Mabasa Sibanda
Senior Associate
T + 27 (0)11 562 1182
E mabasa.sibanda@dclacdh.com



Ndumiso Zwane
Associate
T + 27 (0)11 562 1231
E ndumiso.zwane@dclacdh.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 THREE 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@dclacdh.com

CAPETOWN

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@dclacdh.com