

# EMPLOYMENT

LABOUR RELATIONS ACT:  
FIRST PORT OF CALL  
IN EMPLOYMENT  
RELATED DISPUTES

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**The Labour Appeal Court (LAC) decision in *ADT Security (Pty) Ltd v National Security & Unqualified Workers Union & Others 2011 32 ILJ 2112 LAC*, enforces the role and importance of the Labour Relations Act, No 66 of 1995 (LRA) in governing the relationship between employers and employees.**

The National Security and Unqualified Workers Union (union) sought to be granted organisational rights within ADT Security (employer). The employer refused to grant the union organisational rights as it did not consider the union sufficiently representative within its organisation. In response to this, the union organised a march to the employer's offices to hand over a memorandum relating to amongst other things the granting of organisational rights. The march was organised and authorised in accordance with the provisions of the Regulation Gathering Act, No 205 of 1993 (RGA). The union did not rely on the mechanisms provided to it by the LRA.

The employer approached the Labour Court seeking to interdict the march on the basis that:

- the planned march or picket circumvented the provisions of the LRA; and
- the march would constitute breach of the employee's employment contract.

The union contended that the employees who participated in the march were not obliged to tender their services to the employer. The protest was planned at a time when the employees would be off-duty. As such, the participation in the protest did not amount to breach of contract. The march was organised in compliance with and authorised by the RGA.

The two issues to be decided by the LAC were:

- Firstly, does the Labour Court have powers to adjudicate on compliance by the union and its members with the RGA or any other legislation in the context of an employment related matter?
- Secondly and in the event that the Labour Court has such powers, is the exercise of a constitutionally protected right as per the RGA, by a trade union and its members, conduct that is prohibited by or in conflict with the LRA or against public policy?

In answering these questions, the LAC referred to s157 and 158 of the LRA which empower the Labour Court to grant orders that give effect to the primary object of the LRA. The LAC emphasised provisions of s210 of the LRA which provide that "if any conflict relating to matters dealt with in this Act, arises between this Act and any Act, save for the Constitution any other Act expressly amending this Act, the provisions of this Act will prevail."

The LAC found that the LRA is the first point of reference in the event of any dispute that arises within the context of an employment relationship. The court stated further that the LRA provides appropriate mechanisms and one cannot allege a possible violation of a constitutional right and make use of solutions provided for in other legislation, as this would frustrate the primary objects of the LRA.

Employers and employees alike must therefore take precaution and ensure that the LRA is the first port of call for resolving any disputes that arise in their relationship.

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