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EMPLOYMENT LAW ALERT

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Getting in with the wrong crowd: A further look at Common Purpose

Strike action in South Africa must be in line with the requirements laid down by the Labour Relations Act 66 of 1995 (LRA) in order to be protected. Importantly, conduct during strike action should not be unlawful or violent, and the LRA specifically stipulates that picketing has to be peaceful. Having said that, the nature of a strike is often emotionally charged and this results in some employees committing misconduct.

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Getting in with the wrong crowd: A further look at Common Purpose

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The question that arises in these cases is whether the misconduct of some can implicate other individuals if they associate themselves as members of a group acting towards a common purpose.

The principle of common purpose has received much criticism and has even been termed by courts as a violation of the fundamental idea that a person is presumed to be innocent until proven guilty.

The Labour Appeal Court (LAC) judgment of *NUMSA obo Aubrey Dhludhlu and 147 others v Marley Pipe Systems SA (Pty) Ltd* looked, once again, at the issue of common purpose.

In this case, employees embarked on an unprotected strike due to dissatisfaction with the employer's stance on wages. During the strike, the head of human resources attempted to engage the striking employees but was seriously assaulted.

He was pushed out of a glass window, had rocks thrown at him and was punched and kicked while he lay on the ground.

The Labour Court found that all 148 employees who were identified as being on site had acted with common purpose in associating themselves with the events on the day. It noted that it was unnecessary to place each employee at the scene to prove common purpose, which could be established by inferential reasoning regarding the conduct of the workers before, during and after the incident of violence.

This case was appealed by 41 of the employees who were not identified through direct evidence as having been part of the group that assaulted the head of human resources. The employer relied on the fact that the 41 employees had been placed on the scene of the assault through clocking in records and were absent from their workstations, and that it had video footage which showed the entire crowd moving to the offices where the assault took place.

The LAC held that if an employee knows or foresees that misconduct will ensue but still actively associates themselves with it, the requisite intention exists, and they should be held to have committed the misconduct. The 41 appellant employees were proven to have held such intent, and the initial judgment was upheld.

Hugo Pienaar and Asma Cachalia

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Cliffe Dekker Hofmeyr

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2020 Catalyst Private Equity Deal of the Year.



2021

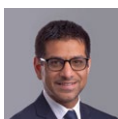
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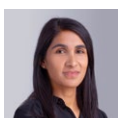
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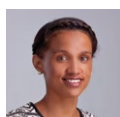
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BBBEE STATUS: LEVEL ONE CONTRIBUTOR

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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