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Dispute Resolution ALERT

IN THIS ISSUE

Law and disorder: Sense check on litigation

Voltaire famously said that "*Common sense is not so common*" and there are some court stories that support that. Like the infamous McDonald's coffee matter in 1994 where Stella Liebeck, having been burned by a cup of spilled coffee, claimed that McDonald's coffee was defective and more likely to cause serious injury than coffee served at any other establishment. She was awarded \$2,9 million in a jury trial.



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CLIFFE DEKKER HOFMEYR

INCORPORATING
KIETI LAW LLP, KENYA

Law and disorder: Sense check on litigation


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Then there are other court stories which restore our faith, such as the 2018 petition of a 69-year-old man to the courts in Holland to change his age legally because he suffered discrimination, claiming that his real age was affecting his job and dating prospects. That petition was rejected, as was the suit brought by a kidnapper against his victims for breach of contract when they escaped his capture.

Mootness is another common-sense concept which arose again recently before the Supreme Court of Appeal when a third party tried to intervene in a dispute which dispute had already been resolved between the primary litigants. The Court looked for an existing or live controversy which would permit it to exercise its discretion in hearing an appeal, even if the appeal were moot. It applied as the two determining factors, whether there remains a discrete legal issue of public importance that will affect matters in future, and whether the interests of justice require the matter

to be heard. The interests of justice are the figurative floodgates that stop would-be litigants from wasting the courts’ already constrained resources.

In 2013, an attorney brought proceedings against St Charles College in Pietermaritzburg on behalf of his son claiming severe prejudice to the son’s prospects as a professional cricketer because of his removal as first team captain (*Indrajith v St Charles College, Pietermaritzburg and Another* (5167/2013) [2014] ZAKZPHC 3). He asked the court to reinstate his son pending an internal enquiry. When the matter was heard, the school was due to begin its fourth term which, for a matric student, is devoted to academic pursuits. The court noted that even if the order of reinstatement were granted, it would not be effective. This case was less about mootness and more an example of the interests of justice in the particular circumstances being insufficient to trigger the exercise of the courts’ discretion.



The graphic features a gold diagonal stripe across a light blue background. At the top left, it displays 'The LEGAL 500 EMEA' logo. Below this, the text reads: 'Dispute Resolution 2023 Rankings', 'Dispute Resolution practice is ranked in Tier 1.', 'Leading Individuals: Tim Fletcher', 'Recommended Lawyers: Jackwell Feris | Anja Hofmeyr | Corné Lewis | Rishaban Moodley | Mongezi Mpahlwa | Kgosi Nkaiseng Lucinde Rhoodie | Clive Rumsey | Tim Smit', and 'Next Generation Lawyers: Kgosi Nkaiseng | Tim Smit'.

Law and disorder: Sense check on litigation

CONTINUED

The infamous *Pridwin* case (*AB and Another v Pridwin Preparatory School and Others* 2020 (5) SA 327 (CC)) had a similar factual matrix, but a very different outcome. Two boys were expelled from Pridwin Preparatory School because of their parents' conduct, the school relying on the "Parent Contract" which entitled Pridwin to cancel at any time and for any reason. The parents challenged the constitutionality of the Parent Contract, failing in the High Court and in the Supreme Court of Appeal, the latter holding that no constitutional rights were implicated.

By the time this matter reached the Constitutional Court, the boys had left Pridwin for a new school, and the Constitutional Court held on the facts that the matter was moot but given

the importance of the legal principles in issue, the Constitutional Court would exercise its discretion to hear the matter in the interests of justice. Ultimately Pridwin was found to have breached its duty not to interfere with the students' right to basic education without fair process and had denied the boys their right to be heard, an affront to the right to dignity in section 10 of the Constitution.

A proper sense check is a must before proceedings are instituted, particularly where there is a fine line between prudence and imprudence, knowing that a court will not entertain inappropriate or moot proceedings in the absence of a sound reason.

**Tim Fletcher, Paige Winfield,
Lisa de Waal and Kerah Hamilton**



Cliffe Dekker Hofmeyr

2023 RESULTS

Chambers Global 2022 - 2023 ranked our Dispute Resolution practice in **Band 2: Dispute Resolution**.

Chambers Global 2018–2023 ranked us in **Band 2** for Restructuring/Insolvency.

Tim Fletcher ranked by **Chambers Global 2022 - 2023** in **Band 2: Dispute Resolution**.

Clive Rumsey ranked by **Chambers Global 2019 - 2023** in **Band 4: Dispute Resolution**.

Tobie Jordaan ranked by **Chambers Global 2022 - 2023** in **Band 4: Restructuring/Insolvency**.

Lucinde Rhodie ranked by **Chambers Global 2023** in **Band 4: Dispute Resolution**.

Jackwell Feris ranked by **Chambers Global 2023** as an upcoming dispute resolution lawyer.

Kylene Weyers ranked by **Chambers Global 2023** as an upcoming restructuring/insolvency lawyer.

OUR TEAM

For more information about our Dispute Resolution practice and services in South Africa and Kenya, please contact:



Rishaban Moodley

Practice Head & Director:
Dispute Resolution
Sector Head:
Gambling & Regulatory Compliance
T +27 (0)11 562 1666
E rishaban.moodley@cdhlegal.com



Tim Fletcher

Chairperson
Director: Dispute Resolution
T +27 (0)11 562 1061
E tim.fletcher@cdhlegal.com

Timothy Baker

Director:
Dispute Resolution
T +27 (0)21 481 6308
E timothy.baker@cdhlegal.com

Eugene Bester

Director:
Dispute Resolution
T +27 (0)11 562 1173
E eugene.bester@cdhlegal.com

Neha Dhana

Director:
Dispute Resolution
T +27 (0)11 562 1267
E neha.dhana@cdhlegal.com

Claudette Dutilleux

Director:
Dispute Resolution
T +27 (0)11 562 1073
E claudette.dutilleux@cdhlegal.com

Jackwell Feris

Sector Head:
Industrials, Manufacturing & Trade
Director: Dispute Resolution
T +27 (0)11 562 1825
E jackwell.feris@cdhlegal.com

Thabile Fuhrmann

Joint Sector Head:
Government & State-Owned Entities
Director: Dispute Resolution
T +27 (0)11 562 1331
E thabile.fuhrmann@cdhlegal.com

Anja Hofmeyr

Director:
Dispute Resolution
T +27 (0)11 562 1129
E anja.hofmeyr@cdhlegal.com

Tendai Jangara

Director:
Dispute Resolution
T +27 (0)11 562 1136
E tendai.jangara@cdhlegal.com

Tiffany Jegels

Director:
Dispute Resolution
T +27 (0)11 562 1388
E tiffany.jegels@cdhlegal.com

Tobie Jordaan

Sector Head:
Business Rescue, Restructuring & Insolvency
Director: Dispute Resolution
T +27 (0)11 562 1356
E tobie.jordaan@cdhlegal.com

Corné Lewis

Director:
Dispute Resolution
T +27 (0)11 562 1042
E corne.lewis@cdhlegal.com

Vincent Manko

Director:
Dispute Resolution
T +27 (0)11 562 1660
E vincent.manko@cdhlegal.com

Richard Marcus

Director:
Dispute Resolution
T +27 (0)21 481 6396
E richard.marcus@cdhlegal.com

Burton Meyer

Director:
Dispute Resolution
T +27 (0)11 562 1056
E burton.meyer@cdhlegal.com

Mongezi Mpahlwa

Director:
Dispute Resolution
T +27 (0)11 562 1476
E mongezi.mpahlwa@cdhlegal.com

Kgosi Nkaiseng

Director:
Dispute Resolution
T +27 (0)11 562 1864
E kgosi.nkaiseng@cdhlegal.com

Desmond Odhiambo

Partner | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E desmond.odhiambo@cdhlegal.com

Lucinde Rhoodie

Director:
Dispute Resolution
T +27 (0)21 405 6080
E lucinde.rhodie@cdhlegal.com

Clive Rumsey

Sector Head: Construction & Engineering
Director: Dispute Resolution
T +27 (0)11 562 1924
E clive.rumsey@cdhlegal.com

Belinda Scriba

Director:
Dispute Resolution
T +27 (0)21 405 6139
E belinda.scriba@cdhlegal.com

Tim Smit

Director:
Dispute Resolution
T +27 (0)11 562 1085
E tim.smit@cdhlegal.com

Roxanne Webster

Director:
Dispute Resolution
T +27 (0)11 562 1867
E roxanne.webster@cdhlegal.com

Kylene Weyers

Director:
Dispute Resolution
T +27 (0)11 562 1118
E kylene.weyers@cdhlegal.com

Joe Whittle

Director:
Dispute Resolution
T +27 (0)11 562 1138
E joe.whittle@cdhlegal.com

Roy Barendse

Executive Consultant:
Dispute Resolution
T +27 (0)21 405 6177
E roy.barendse@cdhlegal.com

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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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@cdhlegal.com

CAPE TOWN

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@cdhlegal.com

NAIROBI

Merchant Square, 3rd floor, Block D, Riverside Drive, Nairobi, Kenya. P.O. Box 22602-00505, Nairobi, Kenya.

T +254 731 086 649 | +254 204 409 918 | +254 710 560 114

E cdhkenya@cdhlegal.com

STELLENBOSCH

14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.

T +27 (0)21 481 6400 E cdhstellenbosch@cdhlegal.com

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