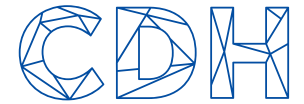


Employment Law

ALERT | 14 April 2025



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**EMPLOYMENT LAW
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Jurisdiction in cross-border employment disputes: A clarification by the Labour Court

With some businesses and entities moving towards an increasingly globalised workforce, questions surrounding jurisdiction in labour disputes involving employees working abroad for domestic employers have become both complex and critical. South African labour law has, until recently, grappled with the issue of whether domestic dispute resolution forums, such as bargaining councils or the Commission for Conciliation, Mediation and Arbitration (CCMA), retain jurisdiction where an employee is domiciled or performs their duties abroad, but remains employed by a South African entity or entered into an employment agreement in South Africa, or through, a South African entity. The Labour Court provides important clarification in the case of *Naidoo v Khosa NO and Others* (JR1346/22) [2025] ZALCJHB 131.

This decision underscores the principle that jurisdiction does not rest solely on the location in which an employee performs their duties, but rather on the legal character of the employment relationship and the applicable regulatory framework. It also serves as a reminder that the final authority to determine jurisdiction in such matters rests with the Labour Court.

Factual Background

Ms Reena Naidoo (Naidoo) had been in the employ of the Department of International Relations and Cooperation (DIRCO) for 26 years. She was assigned to the South African Permanent Mission to the United Nations in New York City (the Mission), where she fulfilled her contractual duties. Although a South African citizen at the time of her appointment, Naidoo became domiciled in the United States, which led DIRCO to categorise her as Locally Recruited Personnel (LCP).

Following her dismissal for operational reasons, Naidoo referred an unfair dismissal dispute to the General Public Service Sector Bargaining Council (the Bargaining Council) and sought reinstatement. Her application for referral was filed two days late, prompting an application for condonation.

DIRCO opposed both the condonation and the referral, arguing that as Naidoo was domiciled in the United States and designated as LCP, the Bargaining Council lacked jurisdiction. DIRCO further maintained that reinstatement was not possible, as the position had been abolished.

The commissioner upheld DIRCO's jurisdictional objection and declined to entertain Naidoo's condonation application. Naidoo subsequently approached the Labour Court to review the jurisdictional ruling.



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Legal Analysis and the Labour Court's Findings

The Labour Court approached the issue methodically, distinguishing between the location of service delivery and the locus of authority and employment. It found that Naidoo had never been employed by the Mission as an independent legal entity; rather, the Mission operated as a branch of DIRCO, a national government department subject to South African law.

The Court noted that although Naidoo discharged her duties in New York, her employment relationship was governed by DIRCO in South Africa. Of particular importance was the absence of any contractual reference to United States law.

The Court evaluated the statutory scope of the Bargaining Council, which applies nationally to all government departments. In applying the principles established in *SA Rugby Players Association & others v SA Rugby (Pty) Ltd & others* (2008) 29 ILJ 2218 (LAC), the Labour Court reiterated that the CCMA and bargaining councils, as statutory bodies, cannot independently determine their own jurisdiction with finality—that power is reserved for the Labour Court.

Critically, the Court relied on sections 3(1)(b), 3(3), and 5(2) of the Foreign Service Act 26 of 2019, which confirmed that the Mission operated under DIRCO's authority. The Head of Mission, and by extension all staff such as Naidoo, act under the direction and instruction of DIRCO's Director-General. This statutory chain of command further supported the conclusion that Naidoo's employer remained DIRCO.

In addressing the hypothetical scenario where Naidoo pursued relief through the United States federal courts, the Court observed that enforcement would be encumbered by the Foreign Sovereign Immunities Act of 1976, which limits the execution of foreign judgments against state entities.

Accordingly, the Labour Court held that the Bargaining Council does possess jurisdiction to adjudicate Naidoo's dispute. The matter was remitted to the Bargaining Council to be heard before a different commissioner for consideration of the condonation application.



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Significance of the Judgment

This judgment offers guidance on the jurisdiction of South African labour forums in cases involving employees working abroad. It confirms that the mere fact of international domicile or physical workplace location does not, in and of itself, oust the jurisdiction of South African labour institutions.

Where the employment relationship remains rooted in a South African public entity—and where South African law governs the contract—domestic dispute resolution mechanisms retain jurisdiction. However, given the statutory limitations of the CCMA and bargaining councils, it remains the Labour Court's prerogative to make a final ruling on jurisdiction.

Ultimately, this decision strengthens legal certainty for employees and employers engaged in cross-border public service roles, ensuring access to justice irrespective of geographic posting.

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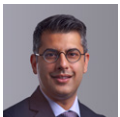
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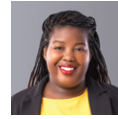
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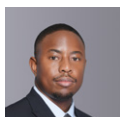
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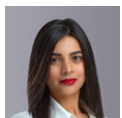
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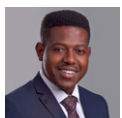
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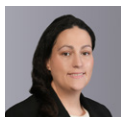
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Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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