

Immigration Law

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SOUTH AFRICA

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Dismissal on expiry of “refugee status” ruled fair

In Muyulenu v Global Telesales t/a Lufthansa Intouch and Others (C342/2024) [2025] ZALCCT 68 (4 September 2025), the Labour Court had to decide on the fairness of a dismissal on the expiry of a refugee permit.

Facts

This was a review of an arbitration award delivered by the Commission for Conciliation, Mediation and Arbitration (CCMA) where the commissioner found the dismissal of the applicant (Muyulenu) to be both procedurally and substantively fair.

Muyulenu is a citizen of the Democratic Republic of Congo but had refugee status in South Africa. He had commenced employment with the first respondent (Lufthansa) in August 2009.

Muyulenu’s refugee status expired on 5 July 2023 and was not renewed. As a result, Lufthansa called Muyulenu to a hearing, following which he was dismissed for incapacity. However, he was afforded an opportunity to “*reapply for any available positions once he is in possession of a document that allows him to take up employment within South Africa*”.

Applicable law

- Unfair dismissals are governed by the Labour Relations Act 66 of 1995.
- The status of foreigners in South Africa’s borders is governed by the Immigration Act 13 of 2002 (Immigration Act) and, in this particular instance, the Refugees Act 130 of 1998 too.

Application of the law to the facts

Insofar as the substantive fairness of the dismissal was concerned, the Labour Court noted that the central issue was whether Lufthansa could continue to lawfully employ Muyulenu after his refugee status expired. The court found that Muyulenu’s continued employment would have been unlawful under section 38(1) of the Immigration Act. This section prohibits employers from employing illegal foreigners, foreigners whose status does not authorise them to be employed in South Africa, and foreigners on any terms and conditions not provided contrary to those provided on their status. The court upheld the dismissal as it related to Muyulenu’s status as an illegal foreigner.

Despite these findings, the court held that the commissioner’s conduct during the arbitration was unreasonable in relation to the following:

- she intervened persistently during Muyulenu’s cross-examination of Lufthansa’s witness, as well as intervening in Lufthansa’s examination of Muyulenu;
- she informed Muyulenu that French was not a critical skill and suggested that every South African could speak French and argued with Muyulenu about the fact that French was not stated on his visa as a critical skill;
- she told Muyulenu that he could not tell her to ask immigration any questions as it was not her job; and
- during a long debate about the status and standing of a letter that Muyulenu wished to rely on, the commissioner stated “*well, maybe you shouldn’t be so flippant with me, because you need to prove your case*”.



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As a result of its findings on the commissioner’s conduct (as opposed to the substantive issues), the Labour Court went on to find gross irregularity in the conduct of the arbitration proceedings and that Muyulenu was denied a fair hearing by the CCMA.

This then resulted in the Labour Court ordering that the award be reviewed and set aside and substituted by an award that Muyulenu’s dismissal was both substantively and procedurally unfair.

Key takeaways

- While foreigners who are granted refugee status have an automatic right to work in South Africa, refugee permits are granted for four-year periods and are required to be renewed timeously.
- While the Labour Court did not rule on the issue, there is no legal provision that allows an individual to continue to work once their refugee permit expires and is not renewed.
- This judgment serves as a reminder to employees and employers alike of the prohibition against employing foreign nationals without a valid work visa/permit or on an expired permit.

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Update on the Employment Services Amendment Bill

South Africa's immigration framework is undergoing significant reform, with the Employment Services Amendment Bill (ESAB) and the National Labour Migration Policy (NLMP) currently at the forefront. These initiatives aim to further regulate the employment of foreign nationals within certain sectors, while balancing the evolving needs of the South African workforce and economy.

On 4 September 2025, Parliament's Portfolio Committee on Employment and Labour (EL Committee) held a workshop to discuss the ESAB and the NLMP in the context of South Africa's socio-economic framework, as well as the way forward on their potential implementation.

What are the ESAB and NLMP?

The NLMP is South Africa's first comprehensive framework for managing the movement of workers into and out of South Africa. Rooted in human rights principles and national development priorities, it aims to make labour migration fair, orderly and predictable, while safeguarding the rights of every worker – South African and foreigner alike. The ESAB gives effect to the NLMP by providing mechanisms to implement the NLMP and by amending the Employment Services Act 4 of 2014. Our previous alert on the ESAB and NLMP can be found [here](#) and our guideline on the topic can be found [here](#).

What key issues were discussed during the EL Committee meeting in relation to migration and immigration laws?

The Deputy Director for the Public Services Employment Branch, Mr Sam Morotoba, mentioned that the Minister of Employment and Labour (Minister) will determine specific sectors for "*migrant worker inclusion*". What this can be understood to mean is that a determination will be made by the Minister regarding the economic sectors in which quotas for the employment of foreigners will be imposed. Sectors like construction, hospitality and domestic work were identified as having "*permanent migrant worker occupations*" and evidence is being gathered to set quotas for these sectors, similar to what has been put in place by the Employment Equity Regulations, 2025.

It was further mentioned that several court cases have analysed the interplay between the Immigration Act 13 of 2002, the Citizenship Act 88 of 1995 and the Refugees Act 130 of 1998, which has culminated in a need to review these laws. It was further stated that a white paper is being developed to address the gaps in the legislation and that the aim is for proper legislation to be in place to deal with the complexity at hand.

In addition, technological solutions are being considered to assist with managing migration and identifying individuals who overstay their visas/permits.



Update on the Employment Services Amendment Bill

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Finally, it was reiterated that there will be more enforcement of immigration legislation through workplace inspections (including arrests) in order to improve enhanced departmental co-ordination, delegation and further empowerment in enforcement. Therefore, it has never been more crucial for employers to ensure that they are cognisant of the foreign nationals that they employ, and that such foreign nationals are in possession of valid passports and work permits/visas.

What are the next steps?

During the workshop, the Department of Employment and Labour and the Office of the Chief State Law Adviser advised that the ESAB ought to be dealt with in accordance with the legislative procedures outlined in section 75 of the Constitution.

Therefore, the next stage in the process would be the public participation stage, where the public will be invited to comment on the ESAB.

We will continue to monitor developments on the progress of the ESAB as and when they arise.

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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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