

# Employment Law and Immigration Law

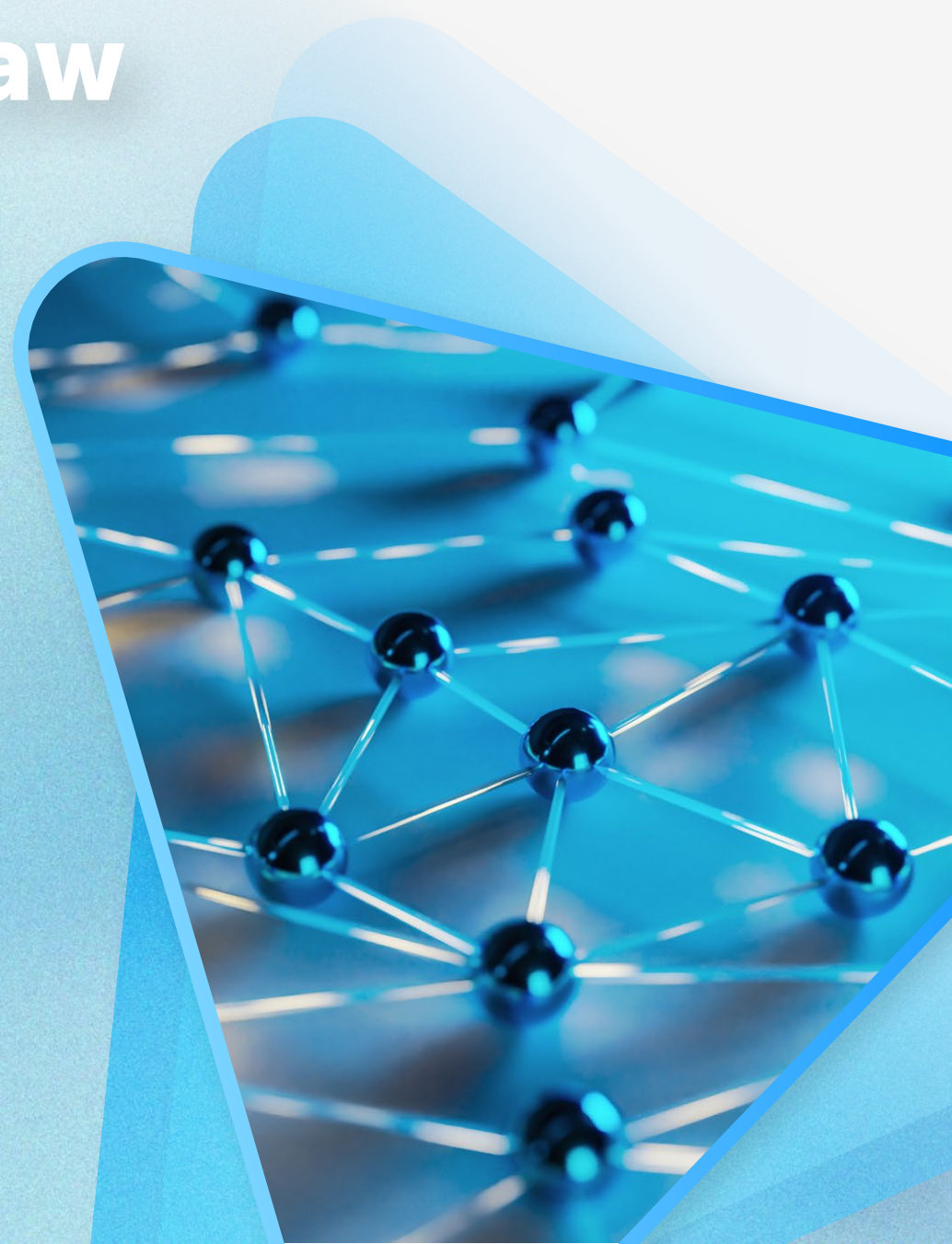


4 May 2026

## SOUTH AFRICA

- Labour Court confirms high threshold for the review of CCMA awards

For more insight into our  
expertise and services



## Labour Court confirms high threshold for the review of CCMA awards

**In the recent decision of *Erarite (Pty) Ltd t/a Khayelitsha Superspar v Commission for Conciliation Mediation and Arbitration and Others (C424/2022) [2026] ZALCCT 53 (23 March 2026)*, the Labour Court considered whether a foreign national employee's dismissal for posting allegedly provocative and harmful content was unfair in circumstances where employees, particularly foreign nationals, had been specifically instructed to avoid inflaming tensions.**

### Facts

Gogo was a Zimbabwean national employed as a bakery manager at Khayelitsha SuperSpar, which is part of the Erarite Group (Erarite). On 24 June 2022, Gogo posted a Bible verse on his personal WhatsApp status and on the management group's WhatsApp status. The verse quoted purported to suggest that foreigners were gaining power over local residents.

Gogo's statuses were posted subsequent to the commencement of a xenophobic Facebook campaign, naming 23 foreign nationals employed by the store where he worked, which called for protest action on 16 June 2022 to "shut down" the store. In response

to the campaign, Erarite, among others, met with its foreign national employees, specifically requesting that they not exacerbate the situation while it was being investigated.

Tensions in the store were extremely high, which led to Erarite requesting assistance from the South African Police Service ahead of the planned "shut down" due to concerns over safety. Following the Facebook campaign, the Department of Employment and Labour (DEL) and Department of Home Affairs (DHA) had also started scrutinising the store's records, specifically the work visas of its foreign national employees.

Employees involved in the Facebook campaign were either dismissed or transferred to other stores. As for Gogo, he explained that his management WhatsApp group status post was a mistake, blaming his phone for freezing occasionally. Gogo apologised for his post on the management WhatsApp group, which had been removed within 12 minutes. However, Gogo defended his personal WhatsApp status. Ultimately, Gogo was called to a disciplinary hearing, found guilty of misconduct and dismissed. Subsequent to his dismissal, Gogo referred an unfair dismissal dispute to the Commission for Conciliation, Mediation and Arbitration (CCMA), challenging only the substantive fairness of his dismissal.

During the arbitration proceedings, and while Gogo admitted his wrongdoing, he argued that a final written warning would have sufficed. The arbitrating commissioner found that Gogo had indeed committed misconduct and that his post was deliberate and ill-judged. However, the commissioner concluded that Gogo's dismissal was too harsh, particularly given that:

- the post did not amount to hate speech;
- it did not threaten or incite violence against local residents; and
- it was not comparable in severity to the Facebook campaign, which moved beyond speech and towards incitement.

Ultimately, the commissioner held that a final written warning would have been an appropriate sanction. As Gogo did not seek reinstatement, he was awarded compensation equivalent to three months' remuneration.

### Applicable law

- Unfair dismissals and the review of arbitration awards are governed by the Labour Relations Act 66 of 1995.
- The status of foreigners within South Africa's borders is regulated by the Immigration Act 13 of 2002 (Immigration Act).

### Application of the law to the facts

The employer's grounds of review were that:

- the commissioner failed to appreciate the gravity of xenophobia and the broader social context;
- the commissioner misunderstood the impact of Gogo's conduct on the trust relationship, operational stability and workplace safety; and
- dismissal was a justified operational response given the sensitivity of the situation and Gogo's managerial position.

The Labour Court found that the commissioner properly understood the employer's case and the nature of the misconduct. There were no material disputes of fact requiring resolution, and no indication that relevant evidence was ignored or irrelevant considerations relied upon.

The Labour Court further noted that while the commissioner accepted that Gogo had intentionally posted the WhatsApp status and exercised poor judgement, he was entitled to distinguish such conduct from that of the Facebook campaign. This distinction, the Labour Court held, fell within the range of reasonable conclusions.

The Labour Court further rejected the employer's attempt, on review, to characterise the conduct as equivalent to racism or gender-based violence. This was because a case for racism or gender-based violence had not been advanced at arbitration, and the parties are confined on review to the case presented before the commissioner at the CCMA.

With reference to various authorities, the Labour Court emphasised that commissioners do not defer to the employer's choice of sanction as their task is to determine whether a dismissal was fair, based on a value judgement.

Finally, the Labour Court stressed that, on review, the question it needed to answer was whether the commissioner's decision fell outside the bounds of reasonableness. On the facts, before the Labour Court it did not and as a result, the review application was dismissed.

### Key takeaways

- This judgment reinforces the importance of carefully calibrating disciplinary sanctions, particularly in cases involving hate speech, social media and broader societal tensions. However, even in highly volatile and sensitive environments, dismissal will not automatically be justified for social media-related misconduct.
- Employers cannot expand on or reframe their case on review and commissioners are entitled to substitute dismissal with progressive discipline if fairness so requires. The Labour Court will not interfere with a commissioner's decision on review simply because it may have taken a different view of the misconduct. Ultimately, the reasonableness of a commissioner's award is the determining factor.
- From an immigration compliance perspective, this matter also highlights the ongoing blitz inspections conducted by the DEL and DHA when allegations or disputes arise relating to the employment of foreign nationals. During these inspections, the DEL, and the DHA may request documentation relating to the employment and immigration status of foreign nationals in order to ensure an employer's compliance with the Immigration Act. While the inspection in this case was brought on by the Facebook campaign, it is not uncommon for the DHA or DEL to conduct random workplace inspections to test compliance. With this in mind, employers should ensure that:
  - they continuously monitor the status of their foreign employees and whether they can continue to be employed based on the expiry of their work visas or permits;
  - all foreign national employees have valid documentation authorising them to work in South Africa, including a work visa or permit and passport authorising their presence in South Africa;
  - all supporting documents (permits, passports, skills development plans, etc.) are readily available;
  - employment records are organised and compliant with DEL requirements; and
  - they can act quickly in response to any requests for documents by the DHA or DEL.

**Lee Masuku and Taryn York**

## OUR TEAM

For more information about our Employment Law practice and services in South Africa, Kenya and Namibia, please contact:



### Aadil Patel

Practice Head & Director:  
Employment Law  
Sector Head:  
Government & State-Owned Entities  
T +27 (0)11 562 1107  
E aadil.patel@cdhlegal.com



### Anli Bezuidenhout

Director:  
Employment Law  
T +27 (0)21 481 6351  
E anli.bezuidenhout@cdhlegal.com



### Frieda Kishi

Director | Namibia  
T +264 83 373 0100  
E frieda.kishi@cdhlegal.com



### Fiona Leppan

Director:  
Employment Law  
T +27 (0)11 562 1152  
E fiona.leppan@cdhlegal.com



### Imraan Mahomed

Director:  
Employment Law  
T +27 (0)11 562 1459  
E imraan.mahomed@cdhlegal.com



### Nadeem Mahomed

Director:  
Employment Law  
T +27 (0)11 562 1936  
E nadeem.mahomed@cdhlegal.com



### Yvonne Mkefa

Director:  
Employment Law  
T +27 (0)21 481 6315  
E yvonne.mkefa@cdhlegal.com



### Phetheni Nkuna

Chief Operating Officer  
Director: Employment Law  
T +27 (0)11 562 1478  
E phetheni.nkuna@cdhlegal.com



### Desmond Odhiambo

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



### Jean Ewang

Counsel:  
Employment Law  
T +27 (0)11 562 1499  
E jean.ewang@cdhlegal.com



### Thabang Rapuleng

Counsel:  
Employment Law  
T +27 (0)11 562 1759  
E thabang.rapuleng@cdhlegal.com



### JJ van der Walt

Counsel:  
Employment Law  
T +27 (0)11 562 1289  
E jj.vanderwalt@cdhlegal.com



### Ebrahim Patelia

Legal Consultant:  
Employment Law  
T +27 (0)11 562 1000  
E ebrahim.patel@cdhlegal.com



### Daniel Kiragu

Senior Associate | Kenya  
T +254 731 086 649  
+254 204 409 918  
+254 710 560 114  
E daniel.kiragu@cdhlegal.com



### Biron Madisa

Senior Associate:  
Employment Law  
T +27 (0)11 562 1031  
E biron.madisa@cdhlegal.com



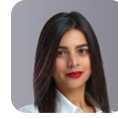
### Thato Maruapula

Senior Associate:  
Employment Law  
T +27 (0)11 562 1774  
E thato.maruapula@cdhlegal.com



### Lee Masuku

Senior Associate:  
Employment Law  
T +27 (0)11 562 1213  
E lee.masuku@cdhlegal.com



### Leila Moosa

Senior Associate:  
Employment Law  
T +27 (0)21 481 6318  
E leila.moosa@cdhlegal.com



### Christine Mugenyu

Senior Associate | Kenya  
T +254 731 086 649  
+254 204 409 918  
+254 710 560 114  
E christine.mugenyu@cdhlegal.com



### Kgodisho Phashe

Senior Associate:  
Employment Law  
T +27 (0)11 562 1086  
E kgodisho.phashe@cdhlegal.com



### Taryn York

Senior Associate:  
Employment Law  
T +27 (0)11 562 1732  
E taryn.york@cdhlegal.com

## OUR TEAM

For more information about our Employment Law practice and services in South Africa, Kenya and Namibia, please contact:



**Rashaad Dadoo**

Associate:  
Employment Law  
T +27 (0)21 481 6317  
E rashaad.dadoo@cdhlegal.com



**Chantell De Gouveia**

Associate:  
Employment Law  
T +27 (0)11 562 1343  
E chantell.degouveia@cdhlegal.com



**Ra'ees Ebrahim**

Associate:  
Employment Law  
T +27 (0)11 562 1735  
E raees.ebrahim@cdhlegal.com



**Lehan Goosen**

Associate:  
Employment Law  
T +27 (0)21 481 6319  
E lehan.goosen@cdhlegal.com



**Ayesha Karjieker**

Associate:  
Employment Law  
T +27 (0)11 562 1568  
E ayesha.karjieker@cdhlegal.com



**Kevin Kipchirchir**

Associate | Kenya  
T +254 731 086 649  
+254 204 409 918  
+254 710 560 114  
E kevin.kipchirchir@cdhlegal.com



**Thato Makoaba**

Associate:  
Employment Law  
T +27 (0)11 562 1659  
E thato.makoaba@cdhlegal.com



**Sheilla Mokaya**

Associate | Kenya  
T +254 731 086 649  
+254 204 409 918  
+254 710 560 114  
E sheilla.mokaya@cdhlegal.com



**Sashin Naidoo**

Associate:  
Employment Law  
T +27 (0)11 562 1482  
E sashin.naidoo@cdhlegal.com



**Billy Oloo**

Associate | Kenya  
T +254 731 086 649  
+254 204 409 918  
+254 710 560 114  
E billy.oloo@cdhlegal.com



**Melisa Wekesa**

Associate | Kenya  
T +254 731 086 649  
+254 204 409 918  
+254 710 560 114  
E melisa.wekesa@cdhlegal.com

## OUR TEAM

For more information about our Immigration sector and services in South Africa, Kenya and Namibia, please contact:



**Sammy Ndolo**

Managing Partner | Kenya

T +254 731 086 649

+254 204 409 918

+254 710 560 114

E [sammy.ndolo@cdhlegal.com](mailto:sammy.ndolo@cdhlegal.com)



**Alex Muchira**

Partner | Kenya

T +254 731 086 649

+254 204 409 918

+254 710 560 114

E [alex.muchira@cdhlegal.com](mailto:alex.muchira@cdhlegal.com)



**Frieda Kishi**

Director | Namibia

T +264 (0)83 373 0100

E [frieda.kishi@cdhlegal.com](mailto:frieda.kishi@cdhlegal.com)



**Imraan Mahomed**

Director:

Employment Law

T +27 (0)11 562 1459

E [imraan.mahomed@cdhlegal.com](mailto:imraan.mahomed@cdhlegal.com)



**Lee Masuku**

Senior Associate:

Employment Law

T +27 (0)11 562 1213

E [lee.masuku@cdhlegal.com](mailto:lee.masuku@cdhlegal.com)



**Abednego Mutie**

Senior Associate | Kenya

T +254 731 086 649

+254 204 409 918

+254 710 560 114

E [abednego.mutie@cdhlegal.com](mailto:abednego.mutie@cdhlegal.com)



**Taryn York**

Senior Associate:

Employment Law

T +27 (0)11 562 1732

E [taryn.york@cdhlegal.com](mailto:taryn.york@cdhlegal.com)



**Mapaseka Nketu**

Paralegal:

Employment Law

T +27 (0)11 562 1178

E [mapaseka.nketu@cdhlegal.com](mailto:mapaseka.nketu@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.

**PLEASE NOTE**

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

**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](mailto: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](mailto:ctn@cdhlegal.com)

**NAIROBI**

Merchant Square, 3<sup>rd</sup> 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](mailto:cdhkenya@cdhlegal.com)

**ONGWEDIVA**

Shop No A7, Oshana Regional Mall, Ongwediva, Namibia.  
T +264 (0) 81 287 8330 E [cdhnamibia@cdhlegal.com](mailto:cdhnamibia@cdhlegal.com)

**STELLENBOSCH**

14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.  
T +27 (0)21 481 6400 E [cdh Stellenbosch@cdhlegal.com](mailto:cdh Stellenbosch@cdhlegal.com)

**WINDHOEK**

2<sup>nd</sup> Floor, 4@Steps - East Tower, Hilltop Estate, Kleine Kuppe, Windhoek.  
PO Box 97115, Maerua Mall, Windhoek, Namibia, 10020  
T +264 833 730 100 E [cdhnamibia@cdhlegal.com](mailto:cdhnamibia@cdhlegal.com)

©2026 15755/MAY

