

**IN THE LABOUR COURT OF SOUTH AFRICA
(HELD AT JOHANNESBURG)**

Case No: J3310 / 00

Before LANDMAN J

In the matter between:

Plaintiff

and

Defendant

JUDGMENT

LANDMAN J:

1. The main application in this matter is for a rescission of judgment. Mr Groot, appearing on behalf of the Applicant, is a candidate attorney and is in possession of a certificate issued by the Law Society of the Transvaal permitting him to appear in courts in terms of s 8 (1) of the Attorneys Act 53 of 1979. He submitted oral argument on the legality of permitting candidate attorneys to appear in the Labour Court.

2. Mr Groot relies heavily on s 8 (1) of the Attorneys Act, the relevant portion of which provides that "[a]ny candidate attorney . . . shall be entitled to appear in any court, other than any division of the Supreme Court, and before any board, tribunal or similar institution in or before which his or her principal is entitled to appear . . .". Arguing that the Labour Court is not a division of the Supreme Court, it was submitted that in terms of the Attorneys Act a candidate attorney has right of appearance in this court. Indeed, although s 151 of the Labour Relations Act 66 of 1995 (LRA) provides that the Labour Court is a superior court with authority, powers and standing equal to a provincial division of the Supreme Court, it is not a division of the latter court.

3. But the enquiry cannot end there. Section 161 of the LRA expressly and comprehensively provides that a person may be represented in the Labour Court only by-

"(a) a *legal practioner*;

(b) a *director* or *employee* of the party;

(c) any member, *office-bearer* or *official* of that party's registered *trade union* or registered *employers' organisation*;

(d) a designated agent of a *council*; or

(e) an official of the Department of Labour."

"Legal practioner" is defined in the LRA as "any person admitted to practise as an advocate or an attorney in the *Republic*".

4. The plain meaning of this definition makes it quite clear that candidate attorneys are excluded from the ambit of 'legal practioner'. It is therefore reasonable to infer that the legislature did not intend to permit candidate attorneys to appear in the Labour Court on behalf of others; a conclusion which is amplified by the detailed and considerably wide listing of those so permitted. For had the legislature wished to grant candidate attorneys right of appearance it could easily have said so.

5. Further, Mr Groot correctly pointed out that should a conflict arise between the LRA or the Attorneys Act, the provisions of the LRA will prevail (s210). But, in his opinion, no such conflict arises in this instant. I agree with him that there is no conflict but for different reasons. It seems to me that s 8 (1) of the Attorneys Act operates on the distinction between superior and inferior courts, allowing candidate attorneys right of appearance only in the latter courts. (It is worth noting that even in some inferior courts, like the Regional Magistrates Courts, restrictions on candidate attorneys' right of appearance are imposed). See s 8 (1) (i)-(iii). It is therefore not surprising that the Attorneys Act was not amended to regulate candidate attorneys right of appearance in the Labour Court, or even the Land Claims Court for that matter, as the legislature intended these courts to have the same status as the superior courts. This emerges strongly in s 151 of the LRA. As such, the Attorneys Act cannot be said to confer on candidate attorneys the right to appear in the Labour Court.

6. But even if my interpretation of s 8 (1) is incorrect, Mr Groot's argument cannot succeed. For then a conflict will exist between the Acts and s 161 of the LRA will prevail.

7. In the premises, the inevitable conclusion to be drawn is that candidate attorneys may not represent a party in any proceedings before the Labour Court.