IN THE LABOUR COURT OF SOUTH AFRICA

HELD AND BRAAMFONTEIN CASE NO: J2283/07

DATE: 2008-11-13

REPORTABLE

In the matter between:

MOHLAKA, A K Applicant

and

MINISTER OF FINANCE 1st Respondent

SOUTH AFRICAN REVENUE SERVICES 2nd Respondent

THE COMMISSIONER, SOUTH AFRICAN REVENUE SERVICES 3rd Respondent

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J U D G M E N T

PILLAY D, J:

The facts

1. The second respondent employer, the South African Revenue Services, (SARS), employed the applicant employee on 1 May 2004 at its call centre. As the applicant was partially sighted, SARS trained him in the use of software programmes to aid his vision. SARS gave the applicant access to the ZoomText

software but not the Jaws software. As a result, he did not perform all the duties of sighted call centre operators.

2. SARS mistakenly sent him for training in October 2004. When he objected to being taken off the training, the facilitator informed him that SARS was still trying to place him suitably. The employee complained to his team leader and to the Human Resources Department. Neither responded to his satisfaction.

3. On 14 October 2004 he resigned. On 2 February 2005 he referred a dispute about his alleged constructive dismissal and discrimination to the CCMA. His referral was late. The CCMA dismissed his application for condonation about 21 April 2005. On 31 October 2007, more than two years later, the employee launched this application for damages, purportedly in terms of section 77 of the Basic Conditions of Employment Act 75 of 1997, for loss of earnings, loss of future earnings, relocation costs, legal costs associated with being blacklisted as a debtor and loss of dignity.

Jurisdiction: The scheme of Labour Laws

4. SARS excepted to the jurisdiction of the Labour Court. To respond to the exception, the Court takes it cue firstly, from the explanatory memorandum to the Labour Relations Act 66 of 1995 ILJ 278 at

279, 281 - 282 (LRA), and secondly, from *Chirwa v Transnet Ltd and Others* [2008] 2 BLLR 97 (CC).

5. In *Chirwa,* the contest was between Administrative Law and Labour Law, between PAJA and the LRA, and between the jurisdiction of the High Court and the Labour Court. The contest in this case is between the common law of the contract of employment and Labour Law, between the LRA and the BCEA, and between the jurisdiction of the CCMA and the Labour Court. Still, the opinions of Skweyiya J and Ngcobo J in *Chirwa* are pertinent to this case

6. The crux of the reasoning in *Chirwa* is that effect should be given to the primary objectives of the LRA. Skweyiya J stated at paragraph 41:

> "(T)he existence of a purpose-built employment framework in the form of the LRA and associated legislation infers that labour processes and forums should take precedence over non-purpose-built processes and forums in situations involving employment-related matters. At the least, litigation in terms of the LRA should be seen as the more appropriate route to pursue. Where an alternative cause of action can be sustained in matters arising out of an employment relationship, in which the employee

> alleges unfair dismissal or an unfair labour practice by the employer, it is, in the first instance, through the mechanisms established by the LRA that the employee should pursue her or his claims."

7. Ngcobo J fortified Skweyiya J's opinion. (*Chirwa* paragraph 103 and 104) Although the following comment of Ngcobo J (*Chirwa* para 112) is in the context of the contest for jurisdiction between the High Court and the Labour Court, it is also apposite to the contest between the common law, BCEA and LRA,:

> "When a proposed interpretation of the jurisdiction of the Labour Court and the High Court threatens to interfere with the clearly indicated policy of the LRA to set up specialised tribunals and forums to deal with labour and employment relations disputes, such a construction ought not to be preferred. Rather, the one that gives full effect to the policy and the objectives of the LRA must be preferred. The principle involved is that where Parliament, in the exercise of its legislative powers and in fulfilment of its constitutional obligation to give effect to a constitutional right, enacts the law, courts must give full effect to that law and its purpose. The provisions of the law should not be construed in a manner that undermines its primary objectives. The provisions of subsections (1) and (2) of section 157 must therefore be construed purposively in a manner that gives full effect to each

without undermining the purpose of each."

8. Skweyiya J also reflected on the Explanatory Memorandum to observe at paragraph 48:

> "One of the express aims of the Labour Relations Bill was to address the "lack of an overall and integrated legislative framework for regulating labour relations", which arose as a result of a multiplicity of laws governing different sectors, especially the private sector and the public sector. Therefore, the object of the Bill was to eradicate the "inconsistency, unnecessary complexity, duplication of resources and jurisdictional confusion" caused by the multiplicity of laws by proposing a single statute that was to apply to the whole economy whilst accommodating the special features of its different sectors."

9. Furthermore, Skweyiya J referred at paragraph 50 to section 210 of the LRA which provides:

> "If any conflict, relating to the matters dealt with in this Act, arises between this Act and the provisions of any other law save the Constitution or any Act expressly amending this Act, the provisions of this Act will prevail."

10. Unless the LRA and the BCEA are read consistently and as

legislation complementary to each other, the BCEA conflicts with the LRA if it duplicates processes and remedies already provided in the LRA because duplication is precisely what the legislature sought to avoid.

11. *Chirwa* strives principally to streamline the resolution of labour disputes under the LRA. The Constitutional Court made a similar effort to streamline Administrative Law in *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism and Others* [2004] 7 BCLR 687 (CC) para 22, when O'Regan J noted:

> "There are not two systems of law regulating administrative action — the common law and the Constitution — but only one system of law grounded in the Constitution. The courts' power to review administrative action no longer flows directly from the common law but from PAJA and the Constitution itself. The grundnorm of administrative law is now to be found in the first place not in the doctrine of *ultra vires*, nor in the doctrine of parliamentary sovereignty, nor in the common law itself, but in the principles of our Constitution. The common law informs the provisions of PAJA and the Constitution, and derives its force from the latter. The extent to which the common law remains relevant to administrative review will have to be developed on a case-by-case basis as the courts

interpret and apply the provisions of PAJA and the Constitution."

12. The purpose of administrative justice provisions is to bring about procedural fairness in dealings between the administration and members of the public. The purpose of Labour Law is to bring about fairness in employment. Skweyiya J is alive to a single dispute implicating several rights, Administrative Law and Labour Law rights, when he remarks at paragraph 47:

> "The purpose of labour law as embodied in the LRA is to provide a comprehensive system of dispute resolution mechanisms, forums and remedies that are tailored to deal with all aspects of employment. It was envisaged as a one-stop shop for all labour-related disputes. The LRA provides for matters such as discrimination in the workplace as well as procedural fairness; with the view that even if a labour dispute implicates other rights, a litigant will be able to approach the LRA structures to resolve the disputes."

13. The Constitutional Court (CC) reinforces this approach by holding as follows in *SANDU v Minister of Defence and Others* [2007] 9 BCLR 785 (CC):

> "[51] Where legislation is enacted to give effect to a

> constitutional right, a litigant may not bypass that legislation and rely directly on the Constitution without challenging that legislation as falling short of the constitutional standard."

14. Cheadle AJ in *Booysen v SAPS and Another* [2008] 10 BLLR 928 (LC) para 37 and 38 endorses this view:

> "The right to fair labour practices is given effect to by the LRA and other labour legislation. Apart from challenges to the constitutionality or interpretation of that legislation or the development of the common law where there is no legislation, the right plays no other role and does not constitute a separate source for a cause of action. That is clear from the recent decision in SANDU v Minister of Defence & others [2007] 9 BLLR 785 (CC)."

15. Although Cheadle AJ was referring there to the synergy between the Constitution of the Republic of South Africa Act No 108 of 1996 (The Constitution) and the LRA, his opinion applies equally to the synergy between the Constitution, the LRA and the BCEA. The LRA and the BCEA were a response to notorious problems plaguing Labour Law (*Chirwa* [para 48] *per* Skweyiya; [para 98] *per* Ngcobo J): uncertainty about the rights and obligations of workers and employers; contradictions in labour policy; the

expense of dispute resolution; inequality of treatment of workers arising from the application of differential laws by different institutions; and the disconnection between the LRA of 1956 and the BCEA of 1983.

16. The aims of the LRA were to remedy these problems. These aims are embodied in the primary objects of the LRA. When adjudicating labour disputes therefore, the Courts must give effect to the primary objects of the LRA and the BCEA. These objects are to give effect to and regulate the fundamental constitutional right to fair labour practices.

17. The Legislature carefully designed the LRA and the BCEA so that each gives effect to particular labour practices. More specifically, the Legislature carefully demarcated the LRA as the statute regulating collective bargaining, dismissal and unfair labour practices and the BCEA as a statute establishing, enforcing and regulating basic conditions of employment, such as leave and hours of work.

18. Initially, the legislative plan was to shift the unfair dismissal chapter from the LRA to the BCEA or other statute dedicated to individual employment law so that the LRA remained exclusively a collective bargaining statute. Although this has not occurred yet, the location of dismissal law in the LRA is merely a matter of

form. Substantively, the two statutes regulate discreet issues and prescribe particular processes. However, if dismissal law were located in the BCEA, this would minimise if not eliminate the scope for litigants shopping for a forum between the LRA and BCEA.

19. The codification of the law of dismissal also struck a new balance to the common law contract of employment. It added the notion of fairness to the limited concept of unlawfulness. The LRA imputes the right to fair labour practices as a term of every contract of employment. An unfair dismissal is therefore also an unlawful dismissal because it violates the LRA and is a breach of the contract of employment. The codification extended the compensation for breach of contract beyond the notice period prescribed under the common law to 12 or 24 months. It made reinstatement and reemployment primary remedies. It prescribed inexpensive dispute resolution processes to remedy breaches of contract. Most of all, by accomplishing all of this, the codification created certainty of the law of dismissal. The codification of terms and conditions of employment under the BCEA created certainty about leave, hours of work and the calculation of remuneration.

20. Section 77(3) of the BCEA provides that the Labour Court has concurrent jurisdiction with the civil courts to determine any matter concerning a contract of employment, irrespective of

whether any basic condition of employment constitutes a term of that contract; this section cannot be interpreted so widely as to include any matter concerning the contract of employment which is already regulated in the LRA. To allow concurrent jurisdiction between the Labour Court and the CCMA would resuscitate the problems identified above under the old labour laws. The Legislature could never have intended that.

21. Evidence that most employees embrace the scheme of our labour laws emerges from their preference to prosecute their claims as unfair and unlawful labour practices under the LRA and not under the common law, the BCEA or through the High Court.

Developing the common law to acquire jurisdiction

22. Does the common law contract of employment have a place in this scheme? For the answer to this question the Court turns to sections 173, 8(3) and 39(2) of the Constitution. Section 173 confirms the inherent power of the High Court and inferentially, the Labour Court to develop the common law. Section 8 (3) prescribes to courts to apply or "if necessary" develop the common law. However, courts may only develop the common law "to the extent that legislation does not give effect to" a right in the Bill of Right; furthermore when developing the common law the courts must take into account the interests of justice. (Section 173) Section 39 (2)

urges the Court when interpreting any legislation and when developing the common law to promote the spirit, purpose and objects of the Bill of Rights.

23. The last caveat emerges from the CC's decision in *Carmichele v Minister of Safety and Security* 2001 (4) SA 938 (CC) paragraph 36 in which Ackerman and Goldstone JJ caution that the Legislature remains the major engine for law reform. So did Cameron J in Fourie and Another v Minister of Home Affairs and Another 2005 (3) BCLR 241 (SCA) paragraph 22. The net effect of these provisions is to tightly constrain the courts' power to develop the common law within narrow limits. Courts may not embark on an "independent exercise" to develop the common law in every case where the common law is at issue. (Halton Cheadle *Current Labour Law* 2008 para 9-16)

24. The Court also looks to *Bato Star* above to deduce that it has an obligation to develop the common law consistently with the Constitution, the LRA and the BCEA. The obvious instance when the common law must be developed is when legislation does not regulate an issue. For instance, the LRA does not regulate the termination of employment by operation of law. Thus an employee has no remedy prescribed under the LRA and the BCEA to challenge the termination of her employment because her fixed-term contract expires, or when her employer cancels her

contract either because she does not meet statutorily prescribed qualification requirements or because she falls below the legal age for employment. The Labour Court has jurisdiction to determine the true reasons for the termination of employment. If it is by operation of law then the limited remedies for termination of a contract under the common law such as damages for misrepresentation and undue enrichment apply.

25. However, the LRA and BCEA must apply to interpret and apply the contract consistently with the right of “everyone” to fair labour practices (Section 23(1) of the Constitution) and with international law (Sections 232 and 233 of Constitution; *Discovery Health Ltd v Commission for Conciliation, Mediation and Arbitration and Others* [2008] 29 ILJ 1480 (LC) para 20-57). The Labour Court has had to apply the common law contract of employment consistently with the Constitution and the LRA in two matters in which the validity of the contracts were at issue, without recourse to the common law or its development.

26. In “*Kylie" v Commission for Conciliation Mediation and Arbitration and Others*, [2008] 29 ILJ 1918 (LC) the legal validity and enforceability of a sex worker's contract of employment was at issue. Cheadle AJ found that as the Sexual Offences Act No 23 of 1957 rendered the contract illegal and unenforceable, it was a justifiable limitation of the fair labour practice rights in section 23

of the Constitution ("*Kylie"* paragraph 74-88). He came to this conclusion by determining the scope of section 23 (1) to exclude the protection of prohibited work ("*Kylie"* paragraph 53-72).

27. In *Discovery Health Ltd v Commission for Conciliation, Mediation and Arbitration and Others* [2008] 29 ILJ 1480 (LC) the employee was a foreigner who did not have the statutorily prescribed permit to work in South Africa. Van Niekerk AJ (as he then was) found that section 38 (1) of the Immigration Act No 13 of 2002 did not render the contract invalid. If it did, that would defeat the primary purpose of section 23 (1) of the Constitution to give effect to fair labour practices. He came to this conclusion by giving "everyone" in section 23 (1) of the Constitution and the definition of employee wide interpretations. (*Discovery* paragraph 40-54)

28. The difference in outcomes between "*Kylie*" and *Discovery* is that In "*Kylie*" the prohibition was against illegal work. In *Discovery* the prohibition was against people employed illegally. Both judgments are correct in that the Labour Court cannot protect and promote illegal work, but it can protect vulnerable workers employed illegally.

29. An instance when the common law may be invoked is when a mechanical application of the text of legislation has the effect of denying or diminishing rights in conflict with the Constitution. A

purposive interpretation of both the Constitution and labour legislation ensures that the courts give effect to the primary intention of the Legislature.

30. The purpose of the LRA, the BCEA and the Constitution is to correct the structural inequality in employment by elevating the otherwise vulnerable position of employees under the common law. It follows therefore, that if an employee secures a contract of employment with superior terms and conditions, such a contract trumps the less favourable terms offered by the legislation. Neither the Constitution nor the Legislature takes away or diminishes rights, especially not of the weak and vulnerable. In relation to employers as the owners of the workplace and the means of production, employees are weak and vulnerable.

31. In this context, upholding a five year fixed term contract was manifestly more favourable to the employee than awarding him the maximum compensation of 12 or 24 months allowed under the LRA in *Fedlife Assurance Ltd v Wolfaardt*, 2002 (1) SA 49, paragraph 15 to 20. Nugent AJA (as he then was) emphasised that the constitutional disposition does not deprive employees of their common law rights to enforce fixed-term contracts.

32. Outside the constitutional and human rights setting, relying on the common law of contract can destroy labour rights. Not all

contracts of employment favour employees. For many security guards, cleaners and other low-skilled employees, fixed-term contracts of short duration are their only means of being employed. Most low-skilled workers must want security of tenure. However, their circumstances force them to agree to short terms of employment or to face unemployment and poverty. The common law test for duress is so high that such employees can seldom successfully avoid the limited duration clauses of their contracts to claim employment on indefinite terms.

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33. However, *Barkhuizen v Napier*, [2007] 7 BCLR 691 (CC) kindles the debate about whether fixed-term contracts of employment aimed at circumventing the LRA are consistent with constitutional values and whether upholding such contracts is compliant with ILO obligations. (See also PAK le Roux "*Individual Labour Law* in *Current Labour Law 2007* page 9.) This is a question for another time.

34. In contrast to *Fedlife,* the employees' reliance on the common law
20 was misplaced in two subsequent decisions of the Supreme Court of Appeal. The employee in *Old Mutual Life Assurance Company South Africa Ltd v Gumbi*, 2007 (5) SA 552 attacked not the substantive but only the procedural fairness of his dismissal. This cause of action fell squarely within the LRA, which codified the common law. The SCA should not have accepted jurisdiction.

Instead, Jafta JA "developed" the common law by referring to previous cases which applied the *audi alteram partem* principle and to the ILO Convention on Termination of Employment, Convention 158 of 1982.

35. This was quite unnecessary. In the LRA, the Legislature codified best practice and policy and took into account international standards of not only the ILO, but other international instruments such as the United Nations Declaration of Human Rights and the directives of the European Union. The codification of Labour Law under the LRA extended over more than a year. Consultation with experts from the ILO, with trade unions, employers organisations and other stakeholders chiselled numerous drafts of the LRA until it was whittled to a state what was acceptable to all stakeholders.

36. The richness of the process of legislative law making therefore far outweighs judicial law making. Judicial law making arises when the law does not regulate a situation, not when the Legislature exercises its prerogative to legislate, as it did for Labour Law.

37. Why the employee did not proceed under the LRA is not apparent from the judgment. Perhaps he missed the time limits under the LRA as the employee in the next case did.

38. The second dismissal case brought under the common law before the Supreme Court of Appeal was *Boxer Superstores Mthatha and Another v Mbenya*, 2007 (5) SA 450. In this case, the employee missed the CCMA time limits by seven months. She asked the High Court to set aside her pre-dismissal hearing and dismissal as being unlawful and to reinstate her – all the relief that the LRA offers, and at no cost, through the CCMA and bargaining councils.

39. Cameron J, writing for a unanimous bench, accepted jurisdiction because the claim was formulated in terms of contractual unlawfulness not unfairness. He applied the earlier unanimous decision of the SCA in *Old Mutual* (above) to reiterate that the common law of contract now includes the right to a pre dismissal hearing (*Boxer Superstores* para 6).

40. *Old Mutual* and *Boxer Superstores* together resuscitated all the problems that the LRA and the BCEA sought to avoid: competing jurisdiction, multiplicity of forums, high costs of protracted litigation, uncertainty about process, its costs, timing and outcome.

41. Referring to *United National Public Servants Association of South Africa v Digomo NO and Others*, [2005] 26 ILJ 1957 (SCA) on which Cameron J based his decision in *Boxer*, Ngcobo J in

Chirwa (para 92) observed the following:

> "By characterising the manner in which the disciplinary hearing was conducted as unfair dismissal, the employee could have the dispute heard in the Labour Court. Yet by characterising the same dispute as constituting a violation of a constitutional right to just administrative action, the employee could have the same dispute heard in the High Court. It could not have been the intention of the legislature to bring about this consequence."

42. Referring to Boxer Superstores Ngcobo J got to the heart of the controversy in the following extract where he exposes the difficulties of preferring form over substance as the SCA did in *Boxer Superstores* at paragraph 12 (*Chirwa* paragraph 95):

> "However, in Boxer Superstores, the Supreme Court of Appeal expressed a different view. There it was contended that what matters is not the form of the employee's complaint but the substance of the complaint. The Supreme Court of Appeal held that the focus on the substance of the dispute leaves out of account the fact that jurisdictional limitations often involve questions of form. It noted that the employee in that case "formulated her claim carefully to exclude any recourse to fairness, relying solely on contractual unlawfulness". This illustrates the difficulty of relying

> on form rather than substance to which I alluded earlier. This would enable an astute litigant simply to by-pass the whole conciliation and dispute resolution machinery created by the LRA and rob the Labour Courts of their need to exist. But is this what the legislature intended when it enacted the provisions of section 157(2)?"

43. To this rhetorical question, the learned judge nevertheless proffers an answer by tracking the primary purpose of the LRA and the problems it sought to remedy to conclude that the Court must give effect to the primary objects of the LRA.

44. In view of the opinions of Skweyiya and Ngcobo JJ in *Chirwa,* this Court is not bound to follow the SCA in *Old Mutual* and *Boxer Superstores*. Further support for this view emerges from the judgment of Nugent JA in *Makambi v MEC for Education Eastern Cape*, 2008 (5) SA 449. Nugent JA confirmed that lower courts may deviate from the “schizophrenic” decisions of higher courts.

45. In this case, the employee initiated proceedings under the LRA for unfair dismissal and discrimination. He knew and understood his claim to be founded in Labour Law. He approached the Labour Court only because the CCMA barred him from prosecuting his claim. He delayed referring his dispute for conciliation. No matter the merits of his claim, empathy for his

predicament cannot found the jurisdiction of the Labour Court. (*Chirwa* per Langa paragraph 155) His attempt to introduce a claim for compensation based on the common law contract of employment through section 77 of the BCEA must fail.

46. Likewise, his delictual claim for loss of dignity must also fail for reasons which Cheadle AJ advanced in *Booysen* para 34-35: there is no independent right to dignity for the purposes of section 157(2). Such a right is embraced in the right to fair labour practices. Furthermore, nothing in section 157 confers jurisdiction on the Labour Court to try a claim for delict.

Act 40 of 2002 and Prescription

47. SARS contested the jurisdiction of the Court on two further grounds: Firstly, the employee failed to comply with section 3 and 4 of the Institution of Legal Proceedings Act Against Certain Organisations of State Act, (Act 40 of 2002). Secondly, the claim prescribed. (*Benson and Another v Walters and Others* 1984 (1) SA 283 (A).

Section 3(1) of Act 40 of 2002 provides as follows:

> "Notice of intended legal proceedings to be given to organ of state
>
> 3.(1) No legal proceedings for the recovery of

a debt may be instituted against an organ of state unless—

(a) the creditor has given the organ of state in question notice in writing of his or her or its intention to institute the legal proceedings in question."

10SARS is an organ of State (section 2(39) of the Constitution read with section 2 of the South African Revenue Services Act) Section 3(2) of Act 40 of 2002 states:

"(2) A notice must—

(a) within six months from the date on which the debt became due, be served on the organ of state in accordance with section 4(1)."

48. Act 40 of 2002 defines debt as follows:

20 "'debt' means any debt arising from any cause of action:—

(a) which arises from delictual, contractual or any other liability, including a cause of action which relates to or arises from any —

(i) act performed under or in terms of any law; or

(ii) omission to do anything which

should have been done or in terms of any law; and

(b) for which an organ of state is liable for payment of damages, whether such debt became due before or after the fixed date."

(HMP Properties (Pty) Ltd v King, 1981 (1) SA 906 (N))

49. As the claim is for a breach of contract and delict, section 3(1) applies. It would not have applied if the employee's claim was founded under the LRA firstly because section 210 of the LRA trumps section 3(1). Secondly, section 3(1) would render nonsensical the 30-day referral provision and the expedited dispute resolution conceived under the LRA.

50. The debt became due on 14 October 2004 when the employee resigned. The employee served the Statement of Case on 11 November 2007 and filed it on 31 October 2007.

51. Section 5(2) of Act 40 of 2002 states:

"No process referred to in subsection (1) may be served as contemplated in that subsection before the expiry of a period of 30 days after the notice, where applicable, has been served on the organ of state in terms of section 3(2)(a)."

Subsection 5(3) states:

"If any process referred to in subsection (1) has been served as contemplated in that subsection before the expiry of the period referred to in subsection (2), such process must be regarded as having been served on the first day after the expiry of the said period."

52. By applying the provisions of section 5(2) and (3), the Statement of Case is deemed to have been served on 11 November 2007, almost a month after the debt prescribed on 14 October 2007.

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53. Counsel for the employee, Ms du Toit, urged the Court to hold that the CCMA proceedings interrupted prescription; insofar as it did not, the Court should give her leave to apply for condonation.

54. To this submission section 15 of the Prescription Act 68 of 1969 proffers a response:

"15. Judicial interruption of prescription

(1) The running of prescription shall, subject to the provisions of

20 subsection (2), be interrupted by the service on the debtor of any process whereby the creditor claims payment of the debt.

(2) Unless the debtor acknowledges liability, the interruption of prescription in terms of subsection

> (1) shall lapse, and the running of prescription shall not be deemed to have been interrupted, if the creditor does not successfully prosecute his claim under the process in question to final judgment or if he does so prosecute his claim but abandons the judgment or the judgment is set aside."

55. The employee abandoned the CCMA proceedings when he failed in his bid for condonation. In *Legal Aid Board and Others v Viven Singh*, case 14939/05, appeal AR99/07, unreported decision of the NPD dated 25 August 2008, Theron J refused to condone noncompliance with section 3(1)(a) of Act 40 of 2002 because the application for condonation was made after the claim had prescribed.

In the circumstances the applicant's claim prescribed and leave to apply for condonation fails.

The order that the Court makes is the following:

1. The claim is dismissed with costs.

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PILLAY D, J

Judge of the Labour Court

Date of Hearing: 10 November 2008

Date of Judgment: 10 November 2008

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APPEARANCES

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