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ATTORNEYS

LABOUR LAW UPDATE

Herewith a brief update with regards to judgments and awards handed down and now reported:

1.

PIET WES CIVILS CC AND ANOTHER v ASSOCIATION OF MINEWORKERS AND CONSTRUCTION UNION AND OTHRES (LAC)

Dismissal (fixed term contracts-operational requirements) – The appellants employed employees on fixed-term contracts for purposes of fulfilling service contracts with clients. The written contract provided that employees will last for as long as the appellants were supplied with work by the client. When the client terminated the service contracts, the appellants gave notice to the employees that their contracts would end. The respondent union was of the view that the employees had become permanent employees by virtue of section 198B of the LRA and obtained an order under section 198A(13) of the LRA reinstating the employees pending the appellants' compliance with the section.

The court accepted that section 198B applied. Offers to employees' to renew or extend fixed-term contracts must be reduced to writing and required to state expressly that it is to terminate on the occurrence of a specified event, on the completion of a specified task or a fixed date. Since all the employment

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contracts entered into were of an indefinite period, such contracts could not be terminated on notice by the appellants. The cancellation of a service contract is merely an operational risk and the employers were obliged to consult employees before dismissing them for operational reasons. The appeal was dismissed.

2.

BOTES v LONMIN PLATINUM (CCMA)

Dismissal (Misconduct) – The applicant was dismissed for disorderly conduct and unacceptable behaviour after he suggested that two subordinates should "ask Mandela" or go to his statue in Sandton for permission to draw new overalls from the store. The applicant contended that he did not see anything wrong with the remark he made and claimed that his dismissal was procedurally unfair because the two complainants had not testified and he had not been charged with uttering a racist comment. The Commissioner found that the words were racist in connotation and intent, and warranted disciplinary action. The test was not whether the complainants viewed the remark as offensive but whether they were reasonably capable of conveying a racist meaning to the reasonable person.

The applicant maintained that he had not uttered a racist comment hence not showing any remorse or willingness to change. The employee having been dismissed for a reason not contained in the charge sheet did not render the procedure unfair because it was plain from the outset what the applicant had to answer to. The dismissal was held to be fair.

3.

MOTSOENENG v SABC SOC LTD (CCMA)

Dismissal (Misconduct) – While being on suspension, the applicant called a media conference where he made several derogatory remarks about the SABC board, a parliamentary committee which had been investigating the affairs of the SABC and a Judge of the Labour Court. The applicant claimed

that he was responding to unjustified comments because he had been refused permission to confront his accusers during an *ad hoc* parliamentary committee.

The applicant further claimed that he had been authorised to attend the conference and was exercising his right to freedom of speech.

The Commissioner found that the reasons provided by the applicant for attending the media conference were improbable. A new interim board had been appointed. The SABC's media policy provided that any employee who brought the corporation into disrepute by media statements would face disciplinary action. The applicant's statements were calculated to advance his own personal interests and had destroyed the trust relationship between him and his former employer. The dismissal was held to be fair.

4.

DUNCANMEC (PTY) LTD v GAYLARD NO AND OTHERS (CC)

Dismissal (misconduct) – During an unprotected strike at the applicant's premises the strikers danced and sang a song with the phrase in isiZulu: "*Climb on top of the roof and tell them my mother is rejoicing when we hit the boer.*" Workers were issued with Final Written Warnings for engaging in the strike but eight of them were dismissed for singing and dancing to the song which the external presiding officer found to amount to hate speech and racist conduct.

The arbitrator agreed that the song was inappropriate but found that it did not amount to racism and noted that the strike was peaceful and relatively brief. The employees were reinstated on a final warning. The Labour Court dismissed the company's application for leave to appeal and petition application.

The appeal was accordingly granted by the Constitutional Court because the matter was found to raise issues of a constitutional nature. The CC noted that

the company's objections to the lyrics of the song centred on the word "boer" , which depending on the context means "farmer " or "white person". The test used was whether the decision reached was one which no other reasonable decision maker would reach. The CC could find no basis for finding that the arbitrator had failed the reasonable test when finding that the dismissal of strikers for singing a struggle song was substantively unfair. Dismissal is not the default sanction for racist conduct. The arbitrator had taken into account the context in which the song was sung, the absence of evidence that the employment relationship had been destroyed and the employees' clean disciplinary record. Leave to appeal was granted but the appeal was dismissed.

5.

SOLIDARITY OBO NERO v KUMBA IRON ORE (SISHEN MINE) (CCMA)

Dismissal (Misconduct) – The applicant employee was dismissed for using the *"k-word"* in the workplace. The employee admitted that he used the word but claimed that he was exhausted at the time and responded to the complainant's remark that "you coloureds are always stealing things". The applicant union also claimed that the employee was dismissed on a charge that differed from that which he originally faced. The complainant had been dismissed and the supervisor whom the employee reported the conduct of complainant to, had resigned for fear of also being charged.

The only issue for determination was whether the use of the word justified the circumstances. It was common cause that the complainant racially abused the employee but the employee had not laid a formal grievance/complaint against the complainant. Even though the employee was provoked at the time he uttered the word, it was not justified having him take the law into his own hands. The Commissioner noted that the employee was charged with breaches of the disciplinary code dealing with unfair discrimination and harassment however this did not serve to condone the use by the employee of the *"k-word"*, which warranted dismissal. The employee's dismissal was confirmed.

6.

KLINGHART v BIDVEST PANALPINA LOGISTICS (CCMA)

Dismissal (misconduct) – Whilst on a business trip with colleagues, the applicant exclaimed *"der blode k*ffer"*. She denied that she had used a racist expression and claimed that the phrase meant "you stupid jerk" in German, her home language and that she was merely describing the conduct of a driver who swerved in front of her.

The issue in dispute was whether the applicant had used the German expression or the "K-word". The Commissioner found on the probabilities the applicant used the "K-word"; the applicant at the same time referred to "these people". The applicant had not mentioned the German equivalents of the expression when confronted by the allegation but had apologised. The applicant conceded that she was aware of the respondent's zero-tolerance approach to racist conduct. Dismissal was found to be fair.

7.

TMT SERVICES AND SUPPLIES (PTY) LTD v CCMA (LAC)

Dismissal (Misconduct) – The respondent employee was dismissed for gross insubordination after failing to attend a meeting to discuss an audit report of her performance. The LAC noted that the only issue in dispute on the charge of insubordination was whether the employee had deliberately defied the instruction. A debate took place about the number of times the instruction was given by the respondent's supervisor. The LAC held that the mere repetition of an instruction does not affect the true issue and that defiance of authority can be proven by a single act of defiance. The appeal was upheld; consequently the dismissal was found to be fair.

8.

UNIVERSITY OF KWAZULU-NATAL v PILLAY AND OTHERS (LAC)

Dismissal (Misconduct) – The respondent employee was employed as Chief Financial Officer at the university. A tribunal had been convened to establish the employee's role in a complaint of sexual harassment and the improper awarding of a degree. The employee was dismissed after the disciplinary inquiry in which he was found to have lied under oath to the tribunal.

The Commissioner upheld the dismissal and the respondent took the award on review. The Labour Court found that the dismissal was substantively unfair and remitted the matter back to the CCMA for the Commissioner to consider whether the matter was procedurally fair. The Commissioner found that the matter was procedurally fair but that award was set aside in a review by a different judge. In the further review, the Labour Court ruled that the dismissal was procedurally unfair and awarded the employee 10 months' salary.

The Labour Appeal Court noted that the court below based its finding on the view that the employee had not had a proper opportunity to plead in mitigation. The Commissioner had given clear reasons for rejecting that argument because the main issue in the inquiry was whether the employment relationship had broken down. The lies of the employee, which he had eventually admitted, had self-evidently destroyed the trust relationship. No point would have been served by holding two separate inquiries into guilt and sanction. The appeal was upheld and the employee was directed to pay the costs of the review and appeal.

9.

SACCAWU AND OTHERS v JDG TRADING (PTY) LTD (LAC)

Dismissal (Operational requirements) – After the respondent notified the appellant union that it intended consulting on possible retrenchment in terms of a collective agreement, the union responded by claiming that the letter of notification did not indicate a genuine commitment by the company to the

consultation process. After the first consultation meeting the union requested further information after the company provided copious information. At the next meeting, after the company provided the resolution of the board, the union claimed that this referred to the need to reduce the number of stores and because the company was bound to the resolutions, the consultations would be superficial because the resolution said that staff "must" be reduced. The company referred a dispute to the CCMA for the appointment of a facilitator and the union in turn launched an application in terms of section 198A(13) of the LRA for an order compelling the company to comply with fair procedure. The Labour Court dismissed the application.

The Labour Appeal Court noted that the issue on appeal was whether the company had taken a final decision to retrench prior to issuing the section 198A (13) notice. The LAC rejected the union's argument that surrounding circumstances should not be taken into account when interpreting the resolution of the board. Pre-retrenchment consultation is aimed at enabling the employer to weigh up alternatives. The company consulted in good faith for three months and its attempts to comply with the requests by the union disproved any suggestion that the consultations were held against the backdrop of a *fait accompli*. An employer in the position of the respondent will invariably form a *prima facie* view on the need for retrenchments. The LAC held that to take the word "must" in the resolution as an indication that the ensuing consultations were a *fait accompli* and to divorce it from the context was technical and formalistic in the extreme. The company's subsequent conduct, properly interpreted, made it clear that management did not make a final decision and regard the resolution as an instruction to retrench. The appeal was dismissed.

10.

BRIAN JOFFE t/a J AIR v CCMA AND OTHERS [2019] 1 BLLR 1 (LAC)

Dismissal (Operational requirements) – The appellant employed two pilots who both turned 60 in the same year. The appellant informed the respondent employee that he was being replaced and was given 3 months' notice. The

respondent employee referred a dispute to the CCMA claiming that he had been unfairly dismissed for operational requirements. The appellant contended that the respondent's employment had been terminated because he had reached the normal retirement age. The Commissioner ruled the dismissal procedurally and substantively unfair and ordered that the appellant pay compensation and severance pay.

The appellant did not have an agreed retirement age for its pilots and relied exclusively on the regulations. The regulations do not prohibit a pilot who has attained the age of 60 from flying on international commercial fights, but merely attach conditions to them doing so. The argument by the appellant that the regulations set a normal retirement age was found to be absurd. The appeal was dismissed with costs.

11.

TDF NETWORK AFRICA (PTY) LTD v FARIS (LAC)

Dismissal (Automatically unfair) – The respondent was employed as part of the appellant's graduate management training programme. The appellant conducts business as a logistics and transport service provider and offers a warehousing and distribution services. The warehouse holds considerable stock and stock taking is required over weekends on a monthly basis.

The respondent was dismissed for incapacity after declining to take part in the stock takes because she a Seventh Day Adventist, a religion which forbids believers to work on Saturdays except during emergencies or to perform humanitarian work. The Labour Court found the dismissal automatically unfair as well as substantively and procedurally unfair and awarded the respondent 12 months' remuneration for her unfair dismissal and R60 000 for her unfair discrimination. The appellant contended that the main reason for the respondent's dismissal was not because of her religion but because of her refusal to work on Saturdays and denied that the tenets of the respondent's religion forbade all work on Saturdays.

The LAC held that the Labour Court erred by enquiring into the fairness of the dismissal for incapacity because it lacked jurisdiction. The appeal was according limited to the finding that the dismissal was automatically unfair. The respondent's claim was founded on discrimination on the basis of her religion. The LRA places an evidentiary burden on a claimant to raise a credible possibility that an automatically unfair dismissal has taken place. The LAC found that the employee's adherence to her faith was the proximate cause of dismissal and that the appellant had failed to take reasonable steps to accommodate her. But for her religion, the respondent would not have been dismissed. The LAC rejected the appellant's argument that attending stocktakes were an inherent requirement of the job. A defence of an inherent requirement of a job must be strictly construed; the discrimination must fulfil a legitimate work related purpose and must be reasonably necessary to accomplish that purpose. The company had not proved that that purpose could not be achieved without accommodating the respondent. The truth was that the appellant adopted a rigid policy from which it did not wish to depart for fear of creating a precedent. The respondent however was the only member of staff who regarded Saturdays as the Sabbath. The LAC upheld the finding that the employee's dismissal was automatically unfair but reduced her compensation to 12 months' salary.

12.

NOKENG TSA TAEMANE LOCAL MUNICIPALITY v LOUW N.O. AND OTHERS (LAC)

Dismissal (Constructive) – The respondent employee was charged with various counts of misconduct. Before the hearing, the respondent employee's attorney informed the appellant municipality that their client was willing to resign if he was paid two or three months' salary. The municipality replied that it was willing to accept the resignation but would not undertake the financial settlement and that it intended instituting action for the recovery of the amount lost due to the respondent employee's actions as well as lay criminal charges against him. The respondent employee in turn replied that in light of the threats made he had no option but to resign. The employee did not attend the

hearing and referred a constructive dismissal dispute to the bargaining council. The Arbitrator found that the employee failed to prove that he had been constructively dismissed.

On review, the Labour Court found that the threat of civil and criminal charges were enough to induce any reasonable employee to resign and set aside the award and granted the employee three months' compensation.

The LAC held that the test for constructive dismissal does not require that the employee had no choice but to resign, but only that that the employer rendered continued employment intolerable. The issue for decision was whether the municipality's reply to the employee's proposal was enough to render continued employment intolerable. The LAC held that the municipality had merely reserved its right to take action it might have been legally obliged to take and the employee could have avoided further action by proving his innocence at the hearing. The employee accordingly failed to prove that he was constructively dismissed.

13.

SAMANCOR CHROME LTD (EASTERN CHROME MINES) v NATIONAL UNION OF METALWORKERS OBO MAHLANGU AND OTHERS (LC)

Discrimination (Pregnancy) – The respondent, a heavy duty truck driver, was placed on unpaid leave when she reported that she was pregnant. Her maternity leave was to commence six months after reporting. The company placed her on unpaid leave and the respondent referred a dispute claiming that being placed on unpaid leave amounted to discrimination based in the ground of pregnancy. The company contended that she had been placed on unpaid leave as it was unable to find her a suitable alternative position and that it acted in accordance with its maternity policy. The Commissioner found that the appellant had discriminated against the employee because this was her second pregnancy in three years which led to her being treated differently. The appellant was ordered to pay compensation and to amend its maternity policy.

The question for decision by the court was whether the company's conduct was justifiable in terms of section 11(1)(b) of the EEA. The objective of the maternity policy was to protect pregnant and breast feeding employees and to comply with the prohibition on permitting such employees to perform work dangerous to their health or that of their child. The court found that the true reason why the employee had been placed on unpaid leave was that no alternative position was available to her. That another pregnant employee was found alternative work did not mean that the employee was discriminated against. The Commissioner erred by finding to the contrary. The appeal was upheld.

14.

AFRICAN MEAT INDUSTRY & ALLIED TRADE UNION v PREMIER FMCG (CCMA)

Discrimination (*Unequal pay*) – The applicants claimed that the hourly wage rate of the respondents differed and that this amounted to unfair discrimination. The respondent contended that the difference in wage rates were based upon the length of service and other considerations such as the employment of former TES employees.

The applicant claimed unfair discrimination on an arbitrary ground and the onus therefore rested on them to prove that the differences in the hourly rate were irrational and unfair. The applicants divided the claimants into three groups. It was obvious that the wage differentials in each group were based on level of seniority although other factors might have played a part. The applicants merely relied on the differences in wage rated without citing the ground which they relied on.

The Commissioner found that the difference in wage rate was neither irrational nor unfair and did not amount to discrimination. The application was dismissed.

15.

MKHIZE AND OTHERS v MASA OUTSOURCING (PTY) LTD AND ANOTHER (CCMA)

Employment Services (section 198A) – The applicants were employed by the first respondent TES and were placed with the second respondent (Pepkor) as general workers. The employees claimed that they had become permanent employees of the second respondent by virtue of section 198A of the LRA and sought compensation. The first respondent admitted that the employees had become "deemed" employees of the second respondent but claimed that it was merely providing administrative services to Pepkor.

The Commissioner found nothing wrong with this arrangement except that Pepkor had not provided the workers with written contracts of employment as required. Pepkor was ordered to do so (i.e. provide written contracts) but its omission did not entitle the employees to compensation as claimed.

16.

PUBLIC SERVANTS ASSOCIATION OF SOUTH AFRICA OBO MEMBERS v MINISTER OF HEALTH AND OTHERS (LC)

Labour Court (Jurisdiction) – The applicant union instituted proceedings directing the Department to comply with the Occupational Health and Safety Act ("OHSA") after independent surveys established that health and safety standards were deficient in several aspects regarding the safety of the office block occupied by employees of the National Department of Health. The nature of the application was brought in terms of section 158(1)(b) of the LRA which empowers the court to grant orders to compel compliance with the LRA or any other employment law. The respondents contended that there was no factual basis to justify the relief sought and the court raised the issue of jurisdiction *mero metu*.

In applications under section 158 the court must determine whether the power concerned is to be exercised in a manner over which the court has jurisdiction

or whether the power can be exercised only once jurisdiction is established. The applicants had not approached the court because they were aggrieved by a decision of the chief director; they expressly sought enforcement of OHSA.

The court further held that section 158(1)(b) of the LRA is not a jurisdiction conferring provision; it merely empowers the court to order compliance in terms of the statute concerned. In terms of the OHSA, the Labour Court may only entertain appeals against decisions of the chief inspector and not to assume the functions of the inspector. The same applied to enforcing minimum requirements under the BCEA. The court could not intervene merely because the matter was urgent. The application was dismissed.

17.

THIPE AND OTHERS v BADER SOUTH AFRICA (PTY) LTD (CC)

Condonation (Jurisdiction) – The applicants were dismissed in June 2012. They referred a statement of claim to which the respondent took several exceptions, one of which that the dispute had not been referred for conciliation. In February 2018, the Labour Court granted the applicant's leave to amend their statement of case and also to satisfy the court that the dismissal had been referred for conciliation and seek condonation for late filing.

A dispute concerning unfair labour practice had been referred in July 2012 and the commissioner during arbitration ruled that the Commission lacked jurisdiction. No mention was made of an unfair dismissal dispute. The applicants' allegation that the two disputes were consolidated was not supported by the documents. They had relied on an illegible LRA 7.11 form which appeared dubious and which the respondent denied receiving. In the absence of proof that the matter had been referred for conciliation, the court lacked jurisdiction to adjudicate the dispute.

The Court noted that 16 months had lapsed before the dispute was finally referred. The applicants failed to account for 14 months of this delay. They

were members of experienced trade unions at the time of their dismissals and had tried to switch to a newly formed union, which they attempted to blame for the delay. The application was dismissed.

18.

NUMSA v TRANSNET SOC LTD (LC)

Trade Union (Rights) – In 2014 the respondent adopted a clothing policy which prohibited the wearing of "political party clothing or other non-recognised union regalia" during working hours. After the appellant union filed a statement of claim declaring the ban on wearing union regalia unconstitutional, the respondent amended its policy to prohibit all employees from wearing clothing of any regalia of any sort of any trade union or political party. NUMSA contended that the new ban was unconstitutional and a breach of its members' rights.

The court held that NUMSA was precluded from relying on its members' constitutional rights by the doctrine of subsidiary. Given the wide interpretation that must be given to the right to engage in union's lawful activities, the ban infringed section 5 of the LRA. The court added that such ban might be justified for safety purposes or if it provoked violent union rivalry but found it unnecessary to consider that issue because Transnet had not raised justification as a defence. The relevant provision of the respondent's clothing policy was set aside as was any disciplinary action contemplated against employees for breaching the rule.

19.

SACTWU OBO MEMBERS v ADCORP BLU, A DIVISION OF WORKFORCE SOLUTIONS (PTY) LTD AND ANOTHER (CCMA)

Trade union (Organisational Rights) – The applicant union had signed up 53 members among the 123 employees supplied by the first respondent TES to the second respondent, Pepkor (Kuils River). The applicant union demanded access to the workplace and assistance with deductions of union dues from

the second respondent. The second respondent refused to grant those rights but conceded that the 123 workers were deemed its employees by virtue of section 198A (3) of the LRA.

The union had to prove that it was sufficiently representative in the workplace to qualify for the rights concerned. The second respondent was a national company. The evidence indicated that the Pepkor Kuils River operation was part of the Pepkor logistics operation, which consisted of 12 hubs. All are controlled by a central office. Viewed in this way, the applicant union only represented about 5% of the logistic division's workforce. The union was accordingly not entitled to exercise the organisational rights it sought. The application was dismissed.

20.

CHEMICAL, ENERGY, PAPER, PRINTING, WOOD AND ALLIED WORKERS' UNION v GRAFTON EVEREST (CCMA)

Collective Bargaining (Organisational Rights) – The applicant union sought organisational rights at the workplace of the respondent and referred a dispute to the Commission. The ruling stated that the applicant failed to comply with section 21(2) of the LRA and therefore the Commission lacked jurisdiction to hear the dispute. The applicant subsequently re-referred the dispute and the Commissioner noted that the applicant union, CEPPWAWU, had complied with the requirements of section 21(2) in that it listed the rights it wished to exercise and had supplied the respondent with its certificate of registration.

A verification exercise had been attempted to establish the number of members employed in the workplace but could not be completed. The respondent accepted that about 256 membership forms had been submitted but disputed some of the forms. The Commissioner found that even if the disputed forms were discounted, the union had as members, about 25% of the workforce. This was sufficient for CEPPWAWU to qualify for rights of access and stop order facilities but not to have shop stewards recognised.

The mere fact that there was another majority union did not preclude CEPPWAWU from acquiring organisational rights.

21.

MOTSOALEDI AND OTHERS v MABUZA (LAC)

Prescription (Unfair labour claims) – During arbitration proceedings a settlement agreement had been reached between the parties. It was agreed, *inter alia*, that nurses performing certain duties would be translated to specific salary notches. The respondent referred a dispute in terms of the settlement agreement. The dispute was arbitrated and the arbitrator found that failure of the fourth appellant and the Witbank hospital to translate the respondent to the post of Deputy Manager amounted to an unfair labour practice. The award was dated 30 September 2010. Despite the demand made, the fourth appellant did not comply and during October 2013, the respondent certified the award in terms of section 143 of the LRA.

On 17 April 2015, the respondent launched an urgent *ex parte* application to hold the appellants in contempt of court. The contempt application gave rise to a rule *nisi* which was opposed by the four appellants. They submitted that no one could be held in contempt of an arbitration award. The first and third appellants submitted that they were not responsible for ensuring compliance with the award and that it was only binding on the fourth appellant but that it was not enforceable because the award or debt was not implementable and that it had prescribed in terms of the Prescription Act.

The second and fourth appellants raised a plea of prescription and submitted that the award had prescribed on 6 October 2013. The Labour Court held that the running of prescription of the award had been interrupted by its certification and that the award was binding on all appellants and ordered them to comply with it.

The Labour Appeal Court held that the first and third appellants lacked power to implement the award because the hospital was under the control of a

provincial government. The LAC noted that the appellants had relied upon conflicting judgments in *Myathaza v Johannesburg Metropolitan Bus Services (SOC) Limited t/a Metrobus and others [2017] 3 BLLR 213 (CC)* when establishing whether an unfair labour practice constitutes a debt that is capable of prescription. The issue of prescription of claims under the LRA was revisited in the *Food and Allied Workers Union obo Gaoshubelwe v Pieman's Pantry [2018] 6 BLLR 531 (CC)* matter in which the majority had held that an alleged unfair dismissal claim is for the recovery of a debt as contemplated by the Prescription Act and that the referral of such dispute for conciliation interrupts the running of prescription.

Normally, a debt prescribes after three years. It follows that an unfair labour practice claim also prescribes after three years. In this case, the running of prescription might have been interrupted by the referral of the dispute to the bargaining council. The question, however, was when did the interruption cease. The court held that this occurred on the date the award was issued because that introduced a new period of prescription, namely 30 years. The appeal by the first and third appellants was upheld but was dismissed against the second and fourth appellants, which were ordered to comply with the award.

22.

PROFESSIONAL TRANSPORT AND ALLIED WORKERS' UNION OF SOUTH AFRICA OBO XOLANI AND OTHERS v MHOKO'S WASTE & SECURITY SERVICES (LC)

Enforcement of award (Prescription) – In 2012, a Commissioner found that the dismissals of the applicant employees were unfair and awarded their reinstatement with retrospective effect with limited back pay. After failure by the respondent to comply with the award, the employees launched two contempt applications, the first of which failed and the second of which the respondent pleaded that the award had prescribed. The Court noted that the Constitutional Court deliberated on whether the Prescription Act applies to disputes relating to unfair dismissals under the LRA. It was finally decided in

Food and Allied Workers Union obo Gaoshubelwe v Pieman's Pantry [2018] 6 BLLR 531 (CC) that the Prescription Act applies to LRA matters and that a reinstatement order constitutes a debt in terms of the Act. Even if the first contempt application had interrupted the running of prescription, this was well outside the three year period. This meant that there was no enforceable award with which the respondent was obliged to comply. The Court added that since this matter arose before the 2014 amendments to the LRA, the judgment need not necessarily apply to awards issued after that date. The special plea of prescription was upheld.

_____*May 2019*