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EMPLOYMENT

Jurisdiction in South African Labour Law

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Jurisdiction can be defined as the competence of a court to hear and determine an issue between the parties. A court may have limitations to its jurisdiction due to the subject matter, amount in dispute, territory and the parties. The topic of jurisdiction is particularly important in deciding whether a court, or similar tribunal has the competence to hear a matter.

In *Schenker South Africa Proprietary Limited v Robineau and others [2019] 4 BLLR 409 (LC)* ("**Schenker**"), the Applicant concluded a fixed term contract with the Respondent appointing her as a general manager in Mozambique. The Applicant is a logistics company that is based in South Africa and affiliated to a company in Germany. The fixed term contract expressly stipulated that the law of Mozambique applied in all issues arising from the application of the contract to its interpretation.

The Respondent's employment was prematurely terminated and she referred the dispute to the CCMA. The CCMA found that it did not have jurisdiction in the above matter and referred the matter to the Bargaining Council for the Road and Freight Industry ("**the Bargaining Council**") in terms of s147 of the Labour Relations Act 66 of 1995 ("**LRA**"). The Bargaining Council claimed that they had no jurisdiction and referred the matter back to the CCMA in terms of s51(4) of the LRA. Thereafter, an arbitration was set down in which a jurisdictional point was raised. The CCMA contended that the telefax sent by their offices stating that the CCMA had no jurisdiction was not a jurisdictional ruling, but a mere clerical error.

The applicant in the above matter is affiliated with Schenker AG, which is a German company. It conducts its business through various branches, which are based in South Africa. A Schenker operation was then opened in Mozambique. The applicant entered into a fixed term contract with the first Respondent in terms of which her employment would be from 1 September 2013 until 30 June 2016. The parties then entered another agreement on 23 June 2013, which is referred to the "**Mozambique contract**". This clearly provides that any dispute arising out of this contract will be dealt with in terms of Mozambican law. Further to the above, the Mozambican contract supersedes any previous agreement between the parties. The courts used the 'locality of undertaking test', which was used in the courts before.

In a jurisdictional ruling in the CCMA in the case, GAJB23048-12, between Mehmet Nadir Olgacay ("**the Applicant**") and GKFX Financial Services Proprietary Limited the CCMA dealt with a similar issue to the above. The contract of employment in dispute was an international contract, which clearly stated that courts of England would have exclusive jurisdiction. The issue that had to be decided upon was whether the CCMA had jurisdiction in the above matter. The CCMA looked into the nexus upon which jurisdiction is decided and looked at various factors, such as which country was the applicant eligible to work in, which currency the applicant was paid in, which law was applicable to the agreement, where is the applicant resident in and where the contract was concluded.

In the Schenker matter, it was clearly stated in the contract that the Mozambican courts will have jurisdiction. Hence, there is no other test that was needed. However, courts might use the above nexus when there is no predetermined jurisdiction contained in the contract of employment. On a practical note, if an employee is English, earns their salary in pounds and is employed by subsidiary of a British company, one may reasonably assume that English courts will have jurisdiction if no express clause provides otherwise. The above is not a closed list of factors and the courts may use other mechanisms to determine jurisdiction. It is important to establish which court or tribunal has jurisdiction to hear a matter in order to firstly save costs, but also to ensure that your matter is resolved and to avoid having disputes referred to other tribunals, which may prolong the dispute.



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