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EMPLOYMENT

Labour Law is not optional: Discouraging forum shopping and duplication of claims

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South Africa has a comprehensive framework of employment legislation specifically designed to regulate workplace disputes and provide remedies where employees' rights have been infringed. Employees cannot simply sidestep that framework by repackaging ordinary employment disputes as constitutional or contractual claims. This was reinforced by the Labour Court in *Hatfield Holdings (Pty) Ltd and Another v D and Another*, where the Court confirmed that the existence of constitutional rights does not automatically entitle employees to pursue separate constitutional remedies where employment legislation already provides adequate protection.

The employee alleged that she had been sexually assaulted by her superior and that her employer had failed to take appropriate action despite previous complaints of sexual harassment. Following disciplinary proceedings, the superior received a warning, notwithstanding the chairperson's recommendation that he be dismissed. The employee subsequently resigned and instituted a claim for R350,000 in general damages, alleging that her constitutional rights to dignity and bodily and psychological integrity had been infringed. Rather than pursuing remedies under the Employment Equity Act (EEA) or Labour Relations Act (LRA), the employee relied directly on the Constitution and section 157(2) of the LRA, which confers jurisdiction on the Labour Court in certain constitutional disputes arising from employment. The employer excepted to the claim, arguing that it disclosed no sustainable cause of action.

The Labour Court upheld the exception. The Court emphasised the principle of constitutional subsidiarity: where legislation has been enacted to give effect to constitutional rights, litigants should ordinarily rely on that legislation rather than bypassing it and invoking the Constitution directly. The EEA expressly prohibits sexual harassment as a form of unfair discrimination and provides remedies, including compensation and damages. It also specifically regulates the circumstances in which employers may be held liable for harassment committed by employees. Similarly, the LRA provides remedies where an employee resigns because the employer has made continued employment intolerable. Such circumstances may constitute constructive dismissal, for which the legislation provides a specific cause of

action and remedies. The common law also provides delictual remedies for sexual assault and infringements of bodily integrity. In other words, since the LRA and EEA have been drafted so as to give effect to constitutional rights to fair labour practice, equality and fair treatment, there is no need to approach the Constitutional Court; the Labour Courts, interpreting and applying labour laws, are the appropriate frame of reference.

The Court found that these existing remedies adequately addressed the alleged violations. The employee had not established that they were insufficient or that an additional constitutional remedy was necessary. The important point is that Parliament has deliberately created a specialist legislative framework to address workplace disputes. That framework identifies prohibited conduct, establishes the requirements for liability and prescribes the remedies available. Allowing employees to circumvent these provisions by pursuing parallel constitutional claims would undermine the legislative scheme and create unnecessary duplication of claims and remedies. The Court accordingly upheld the exception, although the employee was afforded an opportunity to amend her pleadings.

Although the judgment concerned sexual harassment and constitutional damages, its reasoning has broader significance for disputes concerning termination of employment. The LRA specifically regulates unfair dismissals. It establishes the standards of substantive and procedural fairness, provides dedicated dispute-resolution mechanisms and prescribes remedies, including reinstatement, re-employment and compensation. Where the substance of an employee's complaint is that, for example, the termination of employment was unfair, the appropriate starting point is therefore the unfair dismissal provisions of the LRA. An employee should not ordinarily be permitted to avoid the requirements, limitations or remedies of that framework merely by characterising an allegedly unfair dismissal as a breach of constitutional rights or a contractual dispute. A claim for unlawful termination, based on the notion that the termination of employment was unreasonable, or should be judged against a fairness standard, is nothing more than a claim for unfair dismissal under the LRA and should be exclusively pursued as such.

This does not mean that every claim arising from termination is necessarily an unfair dismissal claim. Where an employer breaches a specific, enforceable contractual obligation, such as a unconditional contractual undertaking to maintain employment for a fixed period of time, an employee may have an independent contractual remedy. However, a distinction must be drawn between a genuine breach of an express contractual term and a complaint that the dismissal was unfair. The latter is precisely what the LRA was enacted to regulate. Importantly, this broader application is consistent with the principle underlying *Hatfield Holdings*, rather than a separate ruling made by the Court on contractual termination claims.

The judgment reinforces an important principle: employment legislation is not merely one of several interchangeable routes through which workplace grievances may be pursued. The LRA and EEA were specifically enacted to regulate employment relationships, establish standards of fairness and provide appropriate remedies. Employers should therefore carefully scrutinise claims that seek to duplicate statutory remedies through constitutional or contractual causes of action.



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