

Jurisdictional overlaps in labour matters

By [Samiksha Singh](#) and [Katlego Letlonkane](#)

4 Feb 2016

Recent cases underline that jurisdictional overlaps between the High Court and the Labour Court may occur in certain labour cases.



© Sebastian Duda – [123RF.com](#)

In the case of *Greater Tzaneen Municipality v Le Grange*, the employee entered into a fixed-term contract of employment with the appellant, the employer, in terms of which he would be employed as the chief financial officer for a period of three years. The parties also recorded that upon expiration of this period, the employer would endeavour to accommodate the employee in a suitable permanent alternative position.

Upon the expiry of the three-year period, the employer refused to re-employ the employee. The employee contended that in terms of the agreement between the parties when the contract was concluded, the employer was obligated to re-employ him in an alternative permanent position.

The employer initially approached the High Court, on an urgent basis, for an order to interdict the former employee from accessing its premises as an employee in circumstances where the fixed term contract had expired. The employee filed a counter application in which he sought to assert his right to be re-employed and to rectify the contract in an order to give true meaning to the intention of the parties. The basis for the rectification was that during the negotiation of the contract it was understood by all involved that the word 'endeavour' in fact meant an obligation by the employer to re-employ the employee after the expiry of the fixed term contract.

The High Court granted an order for rectification of the agreement and the employer lodged an appeal to the Supreme Court of Appeal (SCA). Before the SCA, the employer argued that the High Court lacked jurisdiction to hear the employee's complaint because the employee was essentially requesting a re-instatement, which was a labour matter that could only be brought before a Labour Court.

The SCA had to determine whether the High Court had jurisdiction to hear a matter concerning a contractual agreement to employ a person, or whether Section 157 of the Labour Relations Act (LRA) excluded such jurisdiction. S157(1) of the LRA provides that, 'subject to the Constitution and section 173, and except where this Act provides otherwise, the Labour Court has exclusive jurisdiction in respect of all matters that elsewhere in terms of this Act or in terms of any other law are to be determined by the Labour Court.'

The argument before the SCA was that the matter fell within the provision of s186(2)(c) of the LRA, which provides that a failure or refusal by an employer to reinstate or re-employ a former employee in terms of any agreement, constitutes an unfair labour practice and as such, falls within the exclusive jurisdiction of the Labour Court.

The SCA rejected this argument and the employer's submission on the basis that the remedy sought by the employee was specific performance of a contractual term and was not based on any provisions of the LRA.

The SCA further explained that the provisions of the LRA did not arise in this case as the remedy sought by the employee was not 're-instatement' to a position previously held with the employer; nor did the employee seek renewal of the expired agreement. What the employee sought was specific performance of the agreement.

Clarification

In the case of *Gcaba v Minister for Safety and Security*, the Constitutional Court clarified the issue concerning the overlap in jurisdiction of the Labour Court and the High Court in respect of employment matters, by explaining that the Labour Court has exclusive jurisdiction in terms of s157(1) of the LRA over those matters which the LRA prescribes should be determined by it.

That Constitutional Court, however, endorsed the concurrency of jurisdiction between the two courts in terms of s157(2) of the LRA which provides that 'the Labour Court has concurrent jurisdiction with the High Court in respect of any alleged or threatened violation of any fundamental right entrenched in Chapter 2 of the Constitution of Republic of South Africa, 1996, and arising from, inter alia, employment and from labour relations.'

Accordingly, it is important to bear in mind that s157(2) of the LRA should not be misunderstood to mean that the High Court has jurisdiction to determine issues which, in terms of s157(1) of the LRA, fall exclusively under the jurisdiction of the Labour Court. Furthermore, the fact that the relief sought relates to an employment issue does not necessarily mean that it will always be rooted in the provisions of the LRA, for exclusive determination by the Labour Court.

ABOUT THE AUTHOR

Samiksha Singh, is a director and Katlego Letlonkane, an associate in Cliffe Dekker Hofmeyr's Employment Practice.