

ISSUE

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CAN AN EMPLOYER ENFORCE A RESTRAINT OF TRADE AFTER DISMISSING AN EMPLOYEE?

A recent Labour Court judgment has spotlighted a critical issue in employment law: Can an employer enforce a restraint of trade against an employee they have dismissed? The court's answer is not always straightforward and depends on the specific circumstances.

Case Overview

In this case, the employee had signed an employment contract containing a 12-month restraint of trade clause. However, after only 10 months of employment, the employer dismissed the employee following a disciplinary process. The employer later sought to enforce the restraint after alleging that the employee had breached it by engaging in competitive activities.

The Labour Court, however, ruled against the employer.

Key Findings of the Labour Court

No Established Breach

The court found that the employer failed to prove that the employee had actually breached the restraint of trade. Without clear evidence, the claim could not stand.

Unreasonableness of the Restraint

Even if there had been a breach, the court deemed it unreasonable to enforce a 12-month restraint against an employee who had only worked for 10 months.

Dismissal vs. Voluntary Exit

One of the most compelling aspects of the judgment was the principle of fairness. The court emphasised that the employee did not leave voluntarily but was dismissed by the employer. This, in the court's view, made it unfair to prevent the employee from earning a living, stating:

"It will be an injustice and unjustified limitation of an individual's right to enforce a restraint agreement against him when his ex-employer dismissed him. The applicant, having fired the first respondent, now expects him to starve by interdicting and restraining him from earning a living and from his occupation and trade."

What This Means for Employers and Employees

This ruling serves as an important precedent for businesses and employees alike:

For Employers

- If you wish to enforce a restraint of trade, ensure that it is reasonable and enforceable under the specific circumstances.
- Dismissing an employee and then trying to enforce a restraint may be challenged on fairness grounds, especially if it hinders the individual's ability to earn a living.
- Carefully draft restraint clauses with legal advice to ensure they hold up in court.

For Employees

If you have signed a restraint of trade, understand your rights and obligations under the agreement.

If you are dismissed, this case suggests that enforcement of the restraint against you may be challenged on the grounds of fairness.

Seek legal advice if an employer attempts to enforce a restraint after terminating your employment.

Final Thoughts

While restraint of trade clauses are commonly used to protect business interests, they must be balanced against an individual's right to work and earn a living. This judgment reinforces the principle that fairness and reasonableness remain key considerations in South African employment law.

If you have questions about restraint of trade agreements, employment contracts, or labour law compliance, feel free to reach out.



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