

Employment Law

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SOUTH AFRICA

Costly negligence: Employee ordered to pay damages for contract breach and financial harm



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**EMPLOYMENT LAW
ALERT**

Costly negligence: Employee ordered to pay damages for contract breach and financial harm

In a landmark ruling in *Mogale and Another v National Health Laboratory Services* (JS958/2019) [2024] ZALCJHB 362 (13 September 2024), the Labour Court awarded damages in favour of the National Health Laboratory Services in the amount of R22,477,891.70. This decision marks a significant victory in holding executives accountable for their actions and highlights the importance of fiduciary responsibility by senior employees.

Background

Two former senior employees of the National Health Laboratory Services (the employer), Ms Mogale (who occupied the position of CEO), and Mr Zulu (who occupied the position of CFO) were dismissed on the basis that they exceeded the scope of their authority by awarding contracts to service providers that resulted in a contravention of the Public Finance Management Act 1 of 1999 and other relevant policies and procedures which incurred fruitless and wasteful expenditure and caused the employer financial harm.

The employees referred unfair dismissal disputes to the Commission for Conciliation, Mediation and Arbitration (CCMA), which were unsuccessfully conciliated. On application to the Director of the CCMA by the employer, the two referrals were consolidated and referred to the Labour Court for adjudication.

Fairness of the dismissals

The employees contested their dismissals as both procedurally and substantively unfair. The Labour Court found that the employees neither furnished an adequate explanation in the pleadings, nor in the testimony of Mogale, as to reasons for this view. The Labour Court found the misconduct committed by the employees to be serious, particularly given their senior positions and that the misconduct resulted in further financial damage to an organisation that serves the impoverished and aims to improve its financial position and curb expenses.

Damages claim

The employer instituted a counterclaim seeking damages for breach of contract in the amount of R236,410,971, alleging that the employees awarded contracts to service providers that contravened relevant legislation, policies and procedures and incurred wasteful and fruitless expenditure, which resulted in significant financial loss.

The court found that the employees failed to perform their duties efficiently and professionally and displayed severe negligence and incompetence. The employees' actions amounted to a blatant disregard for the limitations on their authority and they breached their duties to their employer and failed to take reasonable steps to prevent loss and damage to the employer, which undermined the framework and structure of tender law principles emanating from the Constitution.

While the court's assessment found that the full amount of R236,410,971 was not proven, the court held the employees jointly liable for an amount of R342,545 and the former CEO, Mogale, liable for R22,135,346.70.

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Conclusion

This judgment demonstrates the importance of appointing skilled, competent and qualified people, particularly in senior and key positions. The judgment also exemplifies the legal principle that breaches of contract and fiduciary duties carry significant consequences for both an employer and employee.

Aadil Patel, Nadeem Mahomed and Peter-Wallace Mathebula

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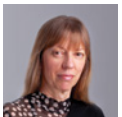
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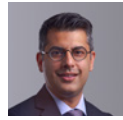
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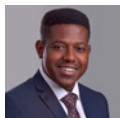
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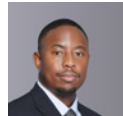
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