

Will the Labour Court enforce an employee claim against a company in business rescue?

 By [Jacques van Wyk](#)

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The Labour Court recently ruled on whether employees may approach said court to enforce a claim against a company under business rescue proceedings...



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During business rescue proceedings a moratorium is placed on claims being instituted or proceeded with against a company which is in business rescue proceedings. Certain exceptions are, however, provided for. One such exception is where a 'court' grants leave to do so. Importantly, only the High Court, or a qualifying High Court Judge, may grant such leave, not the Labour Court (even though the claim may be of a labour nature, such as outstanding remuneration).

Case

This issue was dealt with by the Labour Court in *Marais and others v Shiva Uranium (Pty) Ltd and others (2019)*. Shiva Uranium (employer) formed part of Oakbay Investment Group (Oakbay). When certain business ties were cut with Oakbay, the employer was compelled to go into business rescue as of 19 February 2018. For two months, a number of employees were not paid their salaries. As a result, they launched a claim, on an urgent basis, in the Labour Court for their unpaid remuneration.

The company (controlled by the business rescue practitioners) had two objections to the employees seeking relief in the Labour Court. The first was that as the company was under business rescue proceedings, there was a moratorium on any claims being launched or proceeded with and the Labour Court did not have jurisdiction to hear the matter / allow the matter to proceed. Second, the matter was not urgent.

Court's evaluation

Section 133 of the Companies Act 71 of 2008 (Companies Act) provides that during business rescue proceedings, a moratorium is placed on any and all claims. The section provides, among others, that "no legal proceedings, including

enforcement action, against the company, or in relation to any property belonging to the company, or lawfully in its possession, may be commenced or proceed with in any forum, except" in, among others, the instance where 'leave' of the court is granted.

Section 128(1)(e) of the Companies Act, in turn, defines 'court' as,

“ depending on the context, either (i) the High Court that has jurisdiction over the matter; or (ii) either (aa) a designated judge of the High Court that has jurisdiction over the matter, if the Judge President has designated any judges ... or (bb) a judge of the High Court that has jurisdiction over the matter, as assigned by the Judge President to hear the particular matter, if the Judge President has not designated any judges. ”

Taking the above into account, the company argued that the term 'High Court' included the Labour Court, whereas the employees argued it included only the High Court, specifically and exclusively. The employees went on to argue that to hold otherwise would undermine the jurisdiction of the Labour Court and that, in any event, where there is a conflict between the Labour Relations Act 66 of 1995 (LRA) and another act (in this instance, the Companies Act) the LRA shall prevail.

The Labour Court held that the reference to 'court' was an exclusive reference to the High Court. They held, further, that there was no conflict between the LRA and Companies Act.

In coming to its decision, the Labour Court considered the nature and purpose of business rescue proceedings and held that "the essence of business rescue proceedings is to engender a rehabilitation of a financially distressed company through temporary oversight and management of its affairs, businesses and property." The Labour Court made reference to the case of *Sondamase and another v Ellerine Holdings Ltd and another* which held, among others, that "the aim of the provision is clear. It is to create some breathing space for the business to be rescued and thus to put all legal proceedings on hold until the company may be brought back on track."

In this regard, the legislature determined a specific court to deal with the issue. The Labour Court, therefore, declined to lift the moratorium so that the employees may pursue their claim for outstanding remuneration.

Importance of the case

This case is important in reiterating that during business rescue proceedings, a moratorium is put in place regarding any and all claims, including labour-related claims. A claim may only proceed during this period if specific exceptions are met; one of which is when a court has granted permission. Importantly, while the matter may be labour related (i.e. outstanding remuneration) the only court that can grant such permission is a High Court or a qualifying judge of the High Court.

ABOUT JACQUES VAN WYK

Jacques van Wyk is a director in Labour and Employment Law at Werksmans Attorneys. He was named as a recommended lawyer in Labour & Employment by the Legal500 (2010-

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