



GOBHOZA LEGAL PRACTICE



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JUDGEMENT

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Mr Gobhoza & Ms Dube

**“HOW MUCH
COMPENSATION
IS AN
EMPLOYEE
WHO HAS BEEN
UNLAWFULLY /
WRONGFULLY
DISMISSED
ENTITLED TO?”**

The question, rhetorical as it may, is one that every employer considering terminating a contract of employment or every employee whose employment has been unlawfully terminated grapples with~ ‘how much compensation is adequate for unlawful dismissal?’.

Gobhoza Legal Practice (GLP) in a ‘our-win-is-your-win’ moment celebrates, once more, its success at the apex court in the recently concluded January 2024 Court of Appeal session. Our Managing Partner, Mr. Malcom Gobhoza, assisted by Ms. Princess Dube acted for the Appellant in the case of **STEFANUTTI STOCKS BOTSWANA (PTY) LTD v. JOHN MAZHADZA**. The case pertained to an employment dispute wherein the employee was dismissed 17 days

into his employment, a termination which was held to be unlawful by the Industrial Court. The Industrial Court thereby ordered the employer to pay compensation equivalent to 10 months’ salary free of any deductions.

On appeal, the only issue for determination was “how much compensation ought to have been awarded to the employee?”. The firm’s argument was that compensation equivalent to 10 months’ salary was too excessive and therefore should be reduced to fall within the guide given by the Court of Appeal.

That is to say, in 2019 GLP had successfully argued before a full bench of the Court of Appeal in the case of **KHOEMACAU COPPER MINING (PTY) LTD v. STEWART WALLACE** that there should be a guide or prescription of how much compensation is grantable in the event of unlawful dismissal. Against the backdrop of this argument, there was a lot of uncertainty with the Industrial Court sometimes ordering compensation of up to 24 months in some cases and as little as 1 month in other cases. The Court of Appeal then gave a general guide that compensation for unlawful dismissal has to be within 1 – 6 months’ equivalence of salary unless there are exceptional circumstances. What amounts to exceptional circumstances remains at the discretion of the Court, with each case being considered on its own merits and demerits.

In the current case, our position was that there were no exceptional circumstances warranting compensation in excess of the 1-6 months as guided by the full bench. Therefore, the Industrial Court awarding compensation equivalent to 10 months’ salary was, in our submission, excessive and unreasonable.



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The Court of Appeal, in its judgment rendered on 23rd February 2024, agreeing with our submissions and upholding the appeal, concluded that there were no exceptional circumstances and therefore reduced the awarded compensation from 10 months' salary to 4 months' salary, less payments already effected.

Although the Court did not answer the above posed question, we consider the following precept as good take-home:

"... the amendment of the Trade Dispute Act in 2016 was not intended to create unlimited scope of extravagant awards of compensation, thus turning some dismissal into a bonanza for the employee and a financial disaster for the employer. It was intended that awards be limited to reasonable sums fairly arrived at after due consideration of the Section 27 (4) factors..."

If you have interest in an in-depth discussion on this subject matter or any employment and labour issues, feel free to contact us at info@gobhozalegalpractice.co.bw
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