Inability to provide employees with work during lockdown is not unfair labour practice

By Jonathan Goldberg

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During the various stages of lockdown, many companies were not in the position to operate. Unfortunately, this led to many retrenchments and businesses needing to close down. In these situations, emotions run high and affected employees try to take legal action. However, unless there is a legal basis the application will not succeed. The case of Mqayi vs City to City Doors (2020) reported at the CCMA illustrates such an instance.

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The employee was not provided with work on certain days during the national lockdown declared under the Disaster Management Act 57 of 2002. He claimed that he had been unfairly suspended. The employer pointed out that during May 2020 they were only permitted to employ five workers at a time and denied that the employee had been suspended.

The Commissioner found that the employee had failed to prove that he had been suspended because the employer had been prohibited from conducting business, which amounted to a case of impossibility of performance. The employer was not liable for this. The employee had failed to prove that he was suspended within the meaning of that term in section 186(2)(b) of the LRA.

The application was dismissed.

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