

VACANCY: LABOUR APPEAL COURT

Candidate: Judge Benita Maria Whitcher

1. The candidate's tertiary qualifications, professional admissions, honours, and permanent judicial appointments
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- 1.1. The candidate holds the following tertiary qualifications:
- Bachelor of Journalism and Media Studies, Rhodes University (1989);
 - LLB, University of KwaZulu-Natal (1991);
 - LLM, University of KwaZulu-Natal (2009).
- 1.2. The candidate holds the following professional admissions and honours:
- admitted as an attorney in 1996.
- 1.3. The candidate was permanently appointed to the following judicial roles:
- Judge of the Labour Court on 1 January 2015.
- 1.4. The candidate has acted in the following roles:
- Judge of Appeal in the Labour Appeal Court (approximately four months).

2. The candidate's integrity and ethics
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- 2.1. No circumstances are known to the reviewers that would suggest that the candidate is not a person of integrity with a reputation for ethical behaviour or is not a fit and proper person for appointment.

3. The racial and gender composition of the bench
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- 3.1. As far as could be ascertained, there are currently 4 permanent judges of the Labour Appeal Court:
- 1 black woman (1 African)
 - 1 black man (1 African)
 - 1 white woman
 - 1 white man
- 3.2. According to the questionnaire, the candidate is a Coloured woman.

4. The maximum period the candidate could serve if appointed

- 4.1. At the time of the interviews, the candidate will be approximately 63 years and 8 months old and will have completed a period of approximately 11 years and 9 months' of service as a judge. If appointed, the candidate would be eligible to serve as Judge of the Labour Appeal Court for a period of up to 6 years and 3 months.

5. The candidate's personal commitment to the values of the Constitution

- 5.1. While at university, the candidate was a part-time paralegal at the Association for Rural Advancement (1988 – 1990).
- 5.2. The candidate has been both a legal and national legal officer for the National Union of Metalworkers of South Africa (“NUMSA”) for 2 years (1992 – 1993).
- 5.3. The candidate did her articles at the Legal Resources Centre.
- 5.4. The positions in 5.1 to 5.2 were held when the right to fair labour practices, the right to strike, the right to collective bargaining, organisational rights and fair basic terms and conditions of employment, later codified in legislation, were being developed through case law and collective bargaining. The candidate practising in this field during this time speaks to her early commitment to the values of the Constitution.

6. The candidate's knowledge of the law, including constitutional law
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- 6.1. The candidate has sat continuously in the Labour Court for over a decade and has a large body of reported and unreported work. The reviewers could review only a sample of her judgments, which serves to show that the candidate has a good grasp of legal principles, including constitutional law.
- 6.2. *Pecton Outsourcing Solutions CC v Pillemer NO and Others* (2016) 37 ILJ 693 (LC) concerned the seemingly novel question whether a temporary employment service (“TES”) could rely on a contractual ‘automatic termination’ clause that triggered when its only client cancelled the underlying commercial contract, to avoid the termination of employees' contracts being treated as a dismissal under the Labour Relations Act 66 of 1995 (“LRA”). The candidate applied a substance-over-form test, asking whether the underlying cause of the termination, in relation to the TES employer, was one for which employees typically are dismissed, and held that what mattered was the content of the reason for the termination over the form of the contractual device covering it. (The Labour Appeal Court (“LAC”) subsequently dealt with a similar problem in

Enforce Security Group v Fikile and Others (2017) 38 ILJ 1041 (LAC) but without reference to *Pecton*. The LAC held that automatic termination clauses require a fact-specific and multi-factorial enquiry).

- 6.3. *Fraser Alexander (Pty) Ltd v Tswelopele Beneficiation Operation (Pty) Ltd and Others* [2017] 12 BLLR 1251 (LC) was an urgent application raising the question whether the cancellation of an agreement constituted the transfer of a business within the meaning of section 197 of the LRA. The candidate applied the *Plascon-Evans* rule to the material facts, and concluded that section 197 had not been triggered.
- 6.4. The candidate also dealt with section 197 transfers in *NUMSA obo Members v Sacks Packaging (Pty) Ltd and Others* (2021) 42 ILJ 165 (LC). Here, the candidate was confronted with an urgent application to interdict the transfer of contracts of employment in terms of section 197 of the LRA and to find that the transfer was invalid and unlawful. After considering the facts and the authorities pertaining to section 197, the candidate found the transfers invalid (i.e. that there had not been a transfer of business within the meaning of section 197).
- 6.5. *SA Transport and Allied Workers Union & Another v Member of the Executive Committee: Gauteng Roads and Transport and Others* 2015 36 ILJ 3155 (LC) is another section 197 judgment in the challenging context of outsourcing of services.
- 6.6. *NUMSA obo Members and Others v AIH Logistics (Pty) Ltd and Another* (2023) 44 ILJ 1099 (LC) was an application to set aside the transfer of a business on the basis that the transaction was unlawful and invalid. If the court was inclined to find that the transaction was lawful, it was asked to act in terms of section 158(2) of the LRA and determine the fairness of the member's dismissal for refusing to wear the new employer's branded clothing. The candidate found that section 197 of the LRA was not engaged and that the former employment relationship had to be restored notwithstanding the period that had passed since the alleged transfer.
- 6.7. The candidate has written a number of judgments concerning applications to review arbitration awards. In addition to those dealt with elsewhere in this review, the reviewers considered *SAMWU v City of Johannesburg and Others* (2018) 39 ILJ 894 (LC). It appears that four years had passed between the award and the hearing of the application. The candidate heard the matter nonetheless on the basis that it was an important and novel point. The issue before the arbitrator was which of two competing

collective agreements bound the applicants' members. In the review before the candidate, the applicants argued that the arbitrator failed to interpret the LRA correctly. In her judgment, the candidate sets out the legal framework and applied the principle that one should favour an interpretation that least limits rights.

- 6.8. *Toyota South Africa Motors (Pty) Ltd v NUMSA obo Njilo and Others* (2022) 43 ILJ 2393 (LC) was also a review of an arbitration award. The employee had been dismissed for dishonesty for allegedly providing false information about his relationship with deceased persons when applying for compassionate leave. The arbitrator found the dismissal substantively unfair. The candidate dismissed the application. She found the arbitrator's decision reasonable.
- 6.9. *Sampson v South African Post Office Ltd* (2017) 38 ILJ 2368 (LC) answered the question of what happens when a pre-dismissal arbitration award in terms of section 188A of the LRA has been successfully reviewed and set aside. Prior to the applicant's dismissal, he was suspended with benefits pending the finalisation of the arbitration in terms of section 188A. The applicant, however, had mitigated his losses and found employment with the Legal Aid Board, where he was still employed at the time of the hearing, and he did not tender his services to the South African Post Office. The court found that the *status quo ante* was restored once the arbitrator's dismissal in the 188A proceedings was reviewed and set aside. Notably, the court granted orders the applicant had not prayed for and ordered the respondent to pay the applicant the difference between the remuneration he had received pursuant to his Legal Aid employment and what he would have received had he been reinstated.
- 6.10. The candidate considered the enforcement of a restraint of trade and confidentiality clause in *North Safety Products v Naidoo and Another* (2020) 41 ILJ 1736 (LC). The judgment identifies the jurisdictional elements that have to be met in a restraint of trade case.
- 6.11. Similarly, in *Intertek Industry Services v Mofokeng and Others* [2025] ZALCD 50, the candidate heard an urgent application to interdict and restrain respondents from engaging with certain companies that competed with the applicant, following the termination of their employment relationship with the applicant. The candidate found that the LRA deems a TES to be the employer of the persons whose services are hired to clients. The candidate characterised the applicant's interest as '*a desire to retain a*

particular cohort of scarce, competent employees so as to preserve the slice of Sasol work which it had previously been able to service’, and thus not an incorporeal proprietary interest of the kind recognised in our law as deserving protection, such as trade secrets, confidential information or customer connections in the strict sense.

- 6.12. In *Strydom v T-Systems SA (Pty) Ltd* (2012) 33 ILJ2978 (LC), the candidate had to consider an alleged non-joinder of a former employer following a section 197 transfer in the context of an unfair retrenchment dispute. The new employer excepted on the basis that the old employer was not joined to the proceedings and the old employer, in terms of section 197 of the LRA, had a direct and substantial interest in the matter. The exception was dismissed.
- 6.13. In *Munsamy v Minister of Safety and Security and Another* [2013] 7 BLLR 696 (LC) the candidate had to decide whether the failure to appoint the applicant to a vacant position because of his race (Indian males were over-represented and Africans were under-represented at the superintendent level) was in line with a defensible employment equity plan, and, as such, constituted fair discrimination against the applicant. The candidate found that, where an employer used affirmative action measures to prefer one designated group over another who were supposedly over-represented, the employer must prove (i) that there was an over-representation of the discriminated against group and an under-representation of the preferred group in the level of the post in question (ii) that the measure is sufficiently coherent and not open to arbitrary application or abuse (iii) that the measure is permitted by the Act (iv) an equity plan that permits the disputed measure (v) that the measure is intended to correct inequitable representation in the workplace; and (vi) that the measure arose out of proper consultations. The court found that the system used by the respondent was arbitrary and lacked a rational basis. It further held that the absence of material prejudice to an applicant does not detract from a finding of unfair discrimination, as the main mischief guarded against is the infringement of dignity.
- 6.14. The candidate considered section 34(1)(b) of the Basic Conditions of Employment Act in *Padayachee v Interpak Books (Pty) Ltd* (2014) 35 ILJ 1991 (LC).
- 6.15. *O'Hara v Parliament of South Africa and Another* [2024] ZALCCT 71 required the candidate to apply the authorities on when the Labour Court may intervene in an

incomplete internal disciplinary process (here, an application to remove the chairperson of a disciplinary hearing for alleged bias). She identified intervention as exceptional.

- 6.16. In *Naude and Others v Office of the Chief Justice and Another* [2025] ZALCCT 6, decided on an urgent basis, the candidate granted an interdict restraining the Office of the Chief Justice from filling posts occupied by applicants whose fixed-term contracts had lapsed, pending the applicants' unfair-labour-practice referral to the bargaining council.
- 6.17. *NEHAWU obo Members Providing Essential Services v Minister of Health and Others* (2020) 41 ILJ 1724 (LC) was an urgent application in which health workers sought orders compelling the minister to furnish them with personal protective equipment. Although the application was withdrawn, the candidate nevertheless handed down a judgment to avoid the impression that a technicality had prevented the truth from being determined.
- 6.18. *Bronner v Alpha Pharm (Pty) Ltd & Another* (2020) 41 ILJ concerned a series of contractual and monetary claims brought by a former chief executive officer under section 77(3) of the BCEA. The candidate dismissed the remaining claims because the applicant had either failed to establish the contractual basis or quantum of the claim, or the evidence contradicted the entitlement asserted. On accrued leave, she held that section 20 of the BCEA permits recovery only for statutory leave accrued in the current and immediately preceding leave cycles, and that the applicant had already been paid more than was due for the relevant period. The claims were dismissed with costs.
- 6.19. *Police & Prisons Civil Rights Union & Another v Department of Correctional Services & Another* (2017) 38 ILJ 964 (LC) concerned deductions from the salary of a public servant whose application for temporary incapacity leave was only partly approved several years after it was submitted. The candidate rejected the argument that the employer's failure to decide the application within the prescribed 30 working days converted conditional leave into an entitlement to paid leave. She held that the payments remained conditional on the outcome of the medical assessment and that delay, although undesirable, did not entitle the employee to retain remuneration for leave ultimately not approved. The candidate further held that section 38 of the Public Service Act authorised recovery because the employee had received remuneration that was not due to him.

- 6.20. *National Union of Mineworkers obo Mngqola v VSB Construction t/a Techni-Civils CC and Others* [2018] 7 BLLR 700 (LC) concerned whether reinstatement could be refused after a finding of substantive unfairness because the employee had been dishonest during the subsequent arbitration. The candidate held that post-dismissal conduct could not establish that the employment relationship was intolerable at the time of dismissal for purposes of section 193(2)(b) of the LRA, and that there was no evidence that reinstatement was impracticable under section 193(2)(c) of the LRA. She accordingly substituted the remedy with retrospective reinstatement.
- 6.21. *Mpele v Municipal Council of the Lesedi Local Municipality & Others* (2019) 40 ILJ 572 (LC) concerned a municipal manager whose five-year appointment was rescinded after the MEC concluded that the selection panel had been constituted contrary to the applicable regulations. The candidate rejected the argument that section 54A(8) of the Municipal Systems Act 32 of 2000 required the MEC first to obtain a court order before the municipality could terminate the appointment, holding that a declaratory order was only one of the steps available to enforce compliance. Once the municipality accepted the MEC's view, however, it remained obliged to comply with the LRA in terminating the employee's contract. Although the candidate found that the applicant had been denied an opportunity to be heard, she held that the substance of his challenge was an ordinary dismissal dispute: he complained that there was no proper reason for dismissal, that the procedure was unfair and sought reinstatement. Relying on the principle that public sector employees should ordinarily use the dispute resolution mechanisms created by the LRA where an adequate remedy exists, the candidate held that the applicant could not avoid section 191 by characterising the dismissal as a legality challenge. In the absence of exceptional circumstances, the application was dismissed.
- 6.22. *KwaZulu-Natal Department of Transport v Hoosen & Others* (2016) 37 ILJ 156 (LC) concerned the review of a bargaining council award arising from a dispute about the promotion of an employee to chief provincial inspector in circumstances where he did not meet the minimum educational requirements and had not been promoted through the prescribed public service process. The candidate rejected the department's attempt to characterise the employee's advancement as a mere "*translation in rank*", holding that substance prevailed over terminology and that an increase to a higher rank and salary constituted a promotion. She upheld the commissioner's finding that the

promotion was unfair, principally because the employee lacked the minimum qualification for the post and his appointment adversely affected the position and future prospects of other officers. The candidate nevertheless found that the commissioner had acted unreasonably in ordering the department to create and recruit for an additional chief provincial inspector post, since there was no evidence that such a post was operationally required and the remedy was disconnected from the unfairness established. Rather than remit the matter, she substituted the remedy and ordered that the employee's rank be reduced to principal provincial inspector while preserving his salary.

6.23. *Medtronic (Africa) (Pty) Ltd v Kleynhans & Another* (2016) 37 ILJ 1154 (LC) concerned Medtronic's attempt to enforce a restraint of trade against a former sales representative who had joined a direct competitor in the spinal products market. The candidate distinguished between Medtronic's asserted interests in confidential information and customer connections, finding that the evidence did not establish that the employee possessed confidential business information, but that Medtronic did have a protectable interest in the customer relationships he had developed with surgeons over several years. The candidate rejected the proposition that the former employee must be able automatically to carry customers with him, holding that it was sufficient that his personal knowledge and influence enabled him easily to induce at least some customers to follow him to a competitor. Given the interchangeable nature of the competing products, the flexibility of pricing and the employee's extensive contact with the same surgeons to whom he intended to sell competing products, the candidate found an objectively reasonable apprehension that those connections could be exploited. The candidate found the restraint reasonable and enforceable.

6.24. *Zuma & Another v Public Health & Social Development Sectoral Bargaining Council & Others* (2016) 37 ILJ 257 (LC) is a matter concerning a review and cross-review of an arbitration award in which two public servants, dismissed after pleading guilty to charges of fraud and corruption arising from procurement irregularities, were found to have been substantively unfairly dismissed but awarded only two months' compensation. The candidate rejected the employer's challenge to the unusual procedure adopted at arbitration, where legally represented parties had agreed that the matter would proceed on written submissions rather than oral evidence. She held that the procedure was permissible under the LRA. On remedy, however, the candidate

found that the commissioner had acted unreasonably in departing from reinstatement merely because of the delay in finalising the dispute. Delay could affect the practicability of reinstatement, but could not, without evidence showing such impracticability, displace the primary remedy prescribed by section 193 of the LRA.

6.25. In addition to the judgments reviewed above, the candidate has delivered lectures to SASLAW on practice and procedure in the Labour Court and to CCMA Commissioners on the principles applicable to reviews.

6.26. Her publications identified as items 1 and 3 in answer to question 12 of the application demonstrate a thorough knowledge of principles of evidence.

7. Judgments of the candidate that have been overturned, upheld, or commented on, on appeal:
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7.1. The candidate has disclosed that 14 judgments have been taken on appeal, and the reviewers found a further 10 judgments of the candidate that have been taken on appeal. On appeal, 9 judgments have been upheld, and 15 judgments have been overturned.

7.2. The judgments of the candidate upheld on appeal are:

- *National Union of Metalworkers of SA and Others v Paint and Ladder (Pty) Ltd and Another* [2016] ZALCJHB 127 in *National Union of Metalworkers of SA and Others v Paint and Ladder (Pty) Ltd and Another* (2017) 38 ILJ 2285 (LAC);
- *National Bargaining Council for the Clothing Manufacturing Industry (KZN) v Glamour Fashions Worker Primary Co-operative Ltd and Others* (2017) 38 ILJ 1849 (LC) in *National Bargaining Council for the Clothing Manufacturing Industry (KZN) v Glamour Fashions Worker Primary Co-operative Ltd and Others* (2018) 39 ILJ 1737 (LAC);
- *Zungu v Premier of the Province of KwaZulu-Natal and Others* (2018) 39 ILJ 523 (CC);¹
- *Kubeka and Others v Ni-Da Transport (Pty) Ltd* (2019) 40 ILJ 1312 (LC) in *Kubeka and Others v Ni-Da Transport (Pty) Ltd* (2021) 42 ILJ 499 (LAC);

¹ Despite a thorough online search the reviewers were unable to find the judgment *a quo*.

- *Mbeje and Others v Department of Health KwaZulu-Natal and Others* (2024) 45 ILJ 2681 (LAC);²
- *Cibane and Another v Premier of the Province of KwaZulu-Natal and Another* (2024) 45 ILJ 533 (LC) in *Cibane and Another v Premier of the Province of KwaZulu-Natal* (2025) 46 ILJ 2587 (LAC);
- *Mqadi v MEC: Department of Education KZN & Others* (DA/15/23) 20 February 2026;³
- The candidate refers to *UASA – the Union and Others v Western Platinum (Pty) Ltd and Others* (2021) 42 ILJ 371 (LAC). It is likely that she intended to refer to *Association of Mineworkers and Construction Union v UASA – the Union on behalf of Members and Others* (2021) 42 ILJ 1893 (LAC), which is an appeal against her judgment in *UASA – the Union and Others v Western Platinum Ltd and Others* (2019) 40 ILJ 2405 (LC) (“*UASA*”).
- *Compendium Group Investment Holdings (Pty) Ltd and Another and Crofts and Others* [2024] ZALCD 18 in *Jones v Compendium Group Investment Holdings (Pty) Ltd* [2024] ZALAC 49.

7.3. In *Paint and Ladder*, the candidate granted an application by the respondent in terms of Rule 11 of the Labour Court Rules for the dismissal of the applicant’s statement of claim for want of timeous and diligent prosecution. On appeal, the LAC held that ‘*Having succinctly dealt with the parties’ arguments the Court a quo found that the appellants took ages to prosecute each stage of the litigation and took no further steps to facilitate that their matter be set down for trial. The Court found the argument by the appellants preposterous and their conduct inexcusable.*’ (para 8) The candidate also found that the delay meant that the quality of the litigation would inevitably be compromised. The LAC held that she had correctly exercised her discretion and that her conclusion was correct.

7.4. In *Glamour Fashions*, the appellant sought declaratory relief that certain provisions of the Co-Operatives Act 14 of 2005 did not prevail over the LRA and that members of co-operatives were employees within the meaning of the LRA and were thus bound by

² Despite a thorough online search the reviewers were unable to find the judgment *a quo*.

³ Despite a thorough online search the reviewers were unable to find the judgments *a quo* and on appeal.

the LRA. The candidate, sitting in the Labour Court, dismissed the application. The LAC agreed with the Labour Court that no proper case had been made out for relief and dismissed the appeal.

- 7.5. In *Zungu* (according to the Constitutional Court judgment), the Labour Court dismissed an application in which the appellant sought an order preventing her contract post from being filled with another incumbent, appointing her to the position, and declaring that a certain investigation report not be taken into account in the decision whether to re-appoint her to her position. The Labour Court found that it had no jurisdiction and that, in any event, no case had been made for urgency or for final interdictory relief. The Labour Court thus dismissed the application for an interdict with costs. The Constitutional Court upheld the decision on the merits but found that the candidate (and the Labour Appeal Court) had misdirected herself in relation to costs by simply following the rule that costs follow the result, a rule which is inapplicable in labour matters.
- 7.6. *Kubeka* concerned a claim by the appellants for arrear wages consequent on an order for reinstatement, brought in terms of section 77(3) of the Basic Conditions of Employment Act 75 of 1997 (“BCEA”). The candidate dismissed the appellants’ claim on the grounds that they had followed the wrong legal process to obtain redress for the respondent's failure to comply with its obligation to reinstate them. The LAC found that the candidate's application of the Constitutional Court decision in *Hendor*⁴ was correct and dismissed the appeals. The reviewers note that certain appellants had been re-employed and thus had a contractual claim under section 77(3) of the BCEA and the appeals in respect of these employees were upheld. It is unclear when they were re-employed, and the facts pertaining to their re-employment do not feature in the candidate’s judgment *a quo*. The reviewers thus cannot tell whether the candidate erred in respect of these employees.
- 7.7. *Mbeje* concerned the dismissal of a review from an arbitration award. Although the LAC dismissed the appeal, it held that the Labour Court had impermissibly strayed into determining issues which fell outside of the binding pre-arbitration minute (paragraphs 17 and 26).

⁴ *National Union of Metalworkers of South Africa obo M Fohlisa and Others v Hendor Mining Supplies* (2017) 38 ILJ 1560 (CC)

- 7.8. In *Cibane* the appellants had been subjected to disciplinary proceedings and had applied to have the disciplinary charges quashed on the grounds of unreasonable delay in prosecution. An application was brought in the Labour Court to quash the charges and review and set aside the decision made by the presiding officer in the disciplinary enquiry. The candidate dismissed the application.
- It is of concern that the LAC records (in paragraph 3) that the candidate's judgment was delivered after a year and three months, and that leave to appeal was granted six months later.
 - Despite jurisdiction being in issue on the pleadings, the question of the Labour Court's jurisdiction to grant the relief sought was not addressed in the judgment. The candidate accepted that the first respondent had failed to provide an adequate explanation for the delay in filing the charges of misconduct, but despite the long delay and the absence of an adequate explanation, held that the case did not qualify for a permanent stay of disciplinary proceedings because the nature of the charges and the seniority of the appellants meant that there was a societal interest in the charges being aired in a disciplinary process.
 - The LAC did not comment on these findings as it concluded that the appellants had not established that the Labour Court had jurisdiction in respect of the declaratory relief sought, and that the Labour Court was correct to refuse to entertain a review application *in medias res*.
- 7.9. In *UASA* the candidate declared invalid and unenforceable an agency shop agreement concluded between the Association of Mineworkers and Construction Union ("AMCU") and the employer. The candidate interdicted the employer from deducting any agency fee in terms of the agreement in favour of AMCU from the wages of the members of the union and to refund all deductions made. The issue on appeal was whether the Labour Court had jurisdiction to consider the dispute having regard to section 24(2) of the LRA, and whether the agency shop agreement between AMCU and the employer complied with the provisions of section 25(3) of the LRA. It was contended for AMCU that, since section 24(2) of the LRA requires that disputes concerned with the interpretation and application of a collective agreement be arbitrated by the CCMA, the Labour Court lacked jurisdiction to determine the matter. The LAC found that the candidate was correct in finding that the Labour Court had the

requisite jurisdiction to determine the application, and that it did not err in declaring the agreement invalid for non-compliance with section 25(3) and, thus, in granting interdictory relief.

7.10. *Jones* concerned the enforcement of a restraint of trade. The LAC described the candidate's judgment as "*well-reasoned and beyond reproach.*"

7.11. The judgments of the candidate overturned on appeal are:

- *Ramabulana v Pilansberg Platinum Mines (Pty) Ltd* (2015) 36 ILJ 2333 (LC) in *Pilansberg Platinum Mines (Pty) Ltd v Ramabulana* (2019) 40 ILJ 2723 (LAC);
- *Armaments Corporation of SA (SOC) Ltd v Commission for Conciliation, Mediation & Arbitration and Others* (2016) 37 ILJ 1127 (LC) in *Solidarity and Another v Armaments Corporation of South Africa (SOC) Ltd and Others* (2019) 40 ILJ 535 (LAC);
- *MEC: Department of Health, ECP v PHSDSBC and Others* (2016) 37 ILJ 1429 (LC) in *Burton and Others v MEC for the Department of Health Eastern Cape Province and Others* (2022) 43 ILJ 2284 (LAC);
- *Samuels v Old Mutual Bank* (2017) 38 ILJ 1790 (LAC);⁵
- *Msunduzi Municipality v Hoskins* (2017) 38 ILJ 5823 (LAC);⁶
- *Gangaram v MEC for the Department of Health, KwaZulu-Natal and Another* (2017) 38 ILJ 2261 (LAC);⁷
- *National Commissioner of the South African Police and Another v Myers* (2018) 39 ILJ 1965 (LAC);⁸
- *Pailprint (Pty) Ltd v Lyster NO and Others* (2019) 40 ILJ 2047 (LAC);⁹
- *Imperial Cargo (Pty) Ltd v DETAWU and Members* [2017] ZALCJHB 389 in *Imperial Cargo (Pty) Ltd v DETAWU and Another* (2019) 40 ILJ 2499 (LAC);

⁵ Despite a thorough online search the reviewers were unable to find the judgment *a quo*.

⁶ Despite a thorough online search the reviewers were unable to find the judgment *a quo*.

⁷ Despite a thorough online search the reviewers were unable to find the judgment *a quo*.

⁸ Despite a thorough online search the reviewers were unable to find the judgment *a quo*.

⁹ Despite a thorough online search the reviewers were unable to find the judgment *a quo*.

- *National Union of Metalworkers of SA obo Members v Trenstar (Pty) Ltd* (2021) 42 ILJ 555 (LC) in *National Union of Metalworkers of SA v Trenstar (Pty) Ltd* (2023) 44 ILJ 1189 (CC);
- *SAMWU and Another v Ethekekwini Municipality and Others* [2019] 1 BLLR 46 (LAC);¹⁰
- *Working on Fire (Pty) Ltd v NUMSA and Others* (2022) 43 ILJ 2764 (LAC);¹¹
- *HOD Sports, Arts, Culture and Recreation – Free State v NEHAWU obo Masekoa and Others* (2023) 44 ILJ 147 (LAC);¹²
- *Jacobs v CCMA and Others* (2024) ILJ 1009 (LC) in *Golden Arrow Bus Services (Pty) Ltd v CCMA and Others* (2025) 46 ILJ 2093 (LAC); and
- *African Meat Industry and Allied Trade Union (AMITU) and Others v Shave and Gibson Packaging (Pty) Ltd* (2024) 45 ILJ 79 (LC) in *Shave and Gibson Packaging (Pty) Ltd v African Meat Industry and Allied Trade Union and Another* (2025) 46 ILJ 1923 (LAC).

7.12. *ARMSCOR* concerned the dismissal of an employee whose security clearance was not renewed. A CCMA commissioner found that *ARMSCOR* did not prove a fair reason for the dismissal and concluded that the dismissal was both substantively and procedurally unfair. The candidate, in the Labour Court, found that the commissioner failed to consider *ARMSCOR*'S alternative defence that the non-renewal of the employee's security clearance constituted incapacity.

- The candidate held that the dismissal was fair because it resulted from a legal prohibition on further employment brought about by s37(2) of the Defence Act 44 of 1957 ("Defence Act") and *ARMSCOR*'s corresponding internal policies.
- On the contention that it was premature to dismiss the employee absent a finding that it had become permanently and objectively impossible for him to be retained in his position, the candidate agreed with *ARMSCOR* that the employee could not be deployed elsewhere because his security clearance was removed in its entirety. The candidate concluded that the dismissal was substantively fair. In view of the

¹⁰ Despite a thorough online search the reviewers were unable to find the judgment *a quo*.

¹¹ Despite a thorough online search the reviewers were unable to find the judgment *a quo*.

¹² Despite a thorough online search the reviewers were unable to find the judgment *a quo*.

fact that ARMSCOR conceded that the dismissal was procedurally unfair, the candidate upheld the commissioner's award in that respect.

- On appeal, the LAC held that the candidate had erred in holding that the dismissal was substantively fair without assessing the impact of section 39 of the Defence Act on the substantive fairness thereof (section 39 provides for a challenge to the non-renewal of security clearance). A reviewing court must consider whether, apart from the flawed reasons of or any irregularity by the arbitrator, the result could be reasonably reached in the light of the issues and the evidence.

7.13. *Samuels* was an appeal against the candidate's decision to dismiss an application to have a file for a review application removed from the archives in terms of clause 11.2.7 of the Labour Court's practice manual. On appeal, the LAC found that the candidate had misdirected herself in dismissing the application. The form of the misdirection is not readily apparent from the appeal judgment.

7.14. *Hoskins* was an appeal against a judgment of the candidate in which she reviewed and set aside an arbitration award and substituted the award with an order that the dismissal of the respondent by the appellant was unfair on the basis that the sanction of dismissal was inappropriate. The candidate ordered that the respondent be issued with a final written warning.

- On appeal, the LAC held (at paragraph 30) that the candidate failed to apply the proper test to be applied in a review of an arbitration award on sanction: whether a reasonable arbitrator could not have reached the decision on the fairness of the sanction imposed by the employer. It held that the decision in issue was reasonable and justified by the material placed on record.
- It thus held that it was not open to the candidate to consider whether the sanction was harsh and impose a sanction that, in its opinion, was not harsh.

7.15. In *Gangaram*, the candidate dismissed an application brought in terms of s 158(1)(h) of the LRA wherein the appellant sought to review an alleged 'decision' by her employer not to reinstate her after she was purported to have been deemed dismissed by operation of law in terms of s17(3) of the Public Service Act, 1994 ("PSA"). The candidate accepted the respondents' contention that the appellant had failed to establish the existence of a 'decision taken' by the respondents and that, as a result, the review was incompetent.

- On appeal, the LAC held that the first inquiry should have been whether, given the facts and chronology of the events in the matter, it could be said that the appellant was properly deemed to have been dismissed in terms of s 17(5) of the PSA. Absent a correct deemed dismissal, there would be no need for the procedure set out in s 17(3)(b) of the PSA. It found that there was no deemed dismissal.
- The appeal court further disapproved (at paragraph 31) of the respondents' failure to respond to the application for reinstatement, and their reliance on their failure as a defence to the application.

7.16. *Myers* was an appeal against an order by the candidate directing that the respondent, Lieutenant-Colonel Myers, be appointed to the upgraded salary level 12 post of Commander of the Cape Town K9 Dog Unit of the South African Police Service at salary level 12, rank of Colonel. This post is at a higher salary level and rank than the post he occupied at the time of his dismissal. There was also a cross-appeal against the period of retrospectivity of the back pay. The candidate's order was premised on her findings that, but for Myers' dismissal, he would have occupied this post. She further found that the employer bore an onus to show that this was not so.

- On appeal, the LAC found (at paragraph 52) that the candidate's order was inconsistent with the meaning of reinstatement articulated by the Constitutional Court in *Equity Aviation Services*,¹³ which was that the employee was to be restored to the position he was in prior to dismissal. The LAC also found (at paragraph 53) that the candidate had erroneously imposed an onus on the appellant to prove that Myers would not have attained this position but for his dismissal.
- The LAC criticised the candidate (at paragraphs 66 - 69) for not following a factual finding contained in an LAC judgment in the litigation between the parties.

7.17. In *Imperial Cargo*, the candidate dismissed an application for orders declaring the respondents' strike action unprotected and unlawful, and interdicting them from embarking on and participating in an intended strike.

¹³ *Equity Aviation Services (Pty) Ltd v Commission for Conciliation, Mediation, Arbitration and Others* 2009 (1) SA 390 (CC)

- The LAC found that the right to strike in pursuit of a permissible demand did not evaporate on the addition of impermissible demands, and that the respondents could embark on a protected strike in respect of permissible demands.
- It thus did not follow that the appellant was not entitled to orders prohibiting a strike over the impermissible demands and the candidate erred in not making such orders.

7.18. *Trenstar* emanated from an urgent application by NUMSA in the Labour Court to interdict Trenstar from using replacement labour during a lock-out. NUMSA did not challenge the lawfulness of the lock-out but alleged that it was not in response to a strike. The candidate dismissed the application. She found that the lock-out was lawful and emphasised that the issue was not the lawfulness of the lock-out but whether Trenstar could use replacement labour. In the candidate's view, the word 'strike' in section 76(1)(b) of the LRA functioned to qualify and identify the kind of lock-out during which replacement labour could be used. The candidate did not accept that the mere suspension of a strike, which attracted the employer's counter-measure of a lock-out, disqualified the use of replacement labour. The candidate held that she was aware that its interpretation would considerably weaken NUMSA's bargaining position. However, she said that this was what the drafters of the LRA had done when permitting an employer to use replacement labour after a union has called a strike and the employer has responded with a lock-out.

- As the Constitutional Court held (at paragraph 12): '*The effect of the Labour Court's judgment was that Trenstar could continue to use replacement labour indefinitely without any negative impact on its business operations. NUMSA's bargaining position was hopelessly weak.*'
- While recognising that the candidate's interpretation was semantically plausible, the Constitutional Court found that its jurisprudence mandated preferring an interpretation which confines the use of replacement labour to the duration of the strike, provided that section 76(1)(b) of the LRA is reasonably capable of that meaning. It found, further, that this was a meaning which the language of the section could bear.

7.19. *Ramabulana v Pilansberg Platinum Mines* (2015) 36 ILJ 2333 (LC) concerned an employee dismissed after members of the local community accused her of dishonesty

and demanded her removal. The candidate held that the dominant and principal cause of the dismissal was the allegations of misconduct and because the employee's contract incorporated a disciplinary code requiring a formal enquiry in cases of serious misconduct, found that the employer had breached the contract by dismissing her without such a hearing. The termination was set aside, and the employee was reinstated with retrospective salary and benefits.

- On appeal (as *Pilanesberg Platinum Mines (Pty) Ltd v Ramabulana (2019) 40 ILJ 2723 (LAC)*), the LAC held that this characterisation was wrong. Applying the *Plascon Evans* test, the LAC found that the employer had terminated the employment relationship because of the conflict between the employee and a material shareholder, the need to preserve its relationship with the community, and concerns for the employee's safety. The dismissal was not shown to be unlawful.
- The LAC rejected the premise that the contractual disciplinary provisions were engaged, holding that their precondition was a dismissal for misconduct or capacity and that neither party's case was that the employee had been dismissed on either basis. The candidate therefore erred in treating the allegations of misconduct as the legal cause of the dismissal and in holding that the absence of a disciplinary hearing constituted a contractual breach.
- The LAC also held that, even if breach had been established, specific performance would not have been appropriate on the facts and the employee had failed to prove contractual damages.
- The Labour Court's order was accordingly set aside and the application dismissed.

7.20. *SAMWU v Ethekekwini* was an appeal against the candidate's dismissal of an application to review an arbitration award. The arbitrator had found the dismissal unfair but found that reinstatement would be impracticable, and compensation was awarded instead. In the Labour Court, the candidate found that the employee's conduct demonstrated a wilful and serious refusal to obey a lawful instruction, which amounted to gross insubordination. This, held the candidate, made '*nonsense of his contention that he should have been issued with a series of written warnings prior to dismissal*'. The candidate further found that, on her assessment of the evidence, reinstatement would be inappropriate.

- On appeal, the LAC held that the candidate was tasked with reviewing the arbitrator's exercise of his discretion. It was not open to the court a quo to exercise its discretion afresh on the issue of remedy, without finding that the decision of the arbitrator, in light of all the relevant facts and circumstances, was unreasonable.
 - The LAC further found that the candidate treated the matter before it as an appeal, rather than a review of the arbitrator's decision, and, in this respect, erred in its approach.
- 7.21. In *Working on Fire*, NUMSA referred a mutual interest dispute to arbitration in terms of section 74(4) of the LRA. It sought to improve its members' wages through arbitration, as they engage in an essential service and were precluded from embarking on a protected strike. The arbitrator favoured Working on Fire's position not to bargain with NUMSA and held that the wage levels and terms and conditions of employment in place for the period in issue would remain in place.
- In a review application, the candidate found that, while the arbitrator's adoption of the hypothetical approach was understandable, it constituted a material error of law that rendered the award irrational and unjustifiable.
 - On appeal, the Labour Appeal Court disagreed and held that the adoption of this approach was clearly a matter of the arbitrator's discretion (at paragraph 28).
- 7.22. In *Masekoa*, the candidate dismissed an application to review and set aside an arbitration award in which the arbitrator had found a dismissal to have been procedurally and substantively unfair. She found the arbitrator to have grossly misdirected him- or herself on the question of procedural unfairness, but found that the finding on substantive unfairness was reasonable.
- After a review of the evidence on the record, the LAC concluded (at paragraph 34) that the candidate (and the arbitrator before her) made '*errors in respect of crucial factual issues and [appeared] not to have taken into account all of the evidence.*'
- 7.23. *Golden Arrow* related to a CCMA arbitration award in terms of which a dismissal was found to be unfair and, despite the employee seeking reinstatement, he was awarded 12 months' compensation. On review, the candidate set aside the compensation award and ordered the respondent's retrospective reinstatement. The candidate found that no clear and convincing reasons, supported by solid evidence, were advanced to deny

reinstatement, nor did the evidence surrounding the dismissal indicate that reinstatement was intolerable. She found that denying reinstatement when the dismissal was substantively unfair was a reviewable decision, and the candidate set aside the award and ordered the employee's reinstatement.

- The LAC found that the Commissioner had considered all the evidence and decided whether to grant the primary remedy of reinstatement.
- The LAC further held that it was a decision which should not readily be interfered with by a review court, and the candidate was not entitled to set aside the decision simply because she would have reached a different conclusion.

7.24. *AMITU* concerned dismissals following a protected strike. The appellant had obtained an order that, pending the finalisation of picketing rules by the CCMA, those on strike were interdicted and restrained from harassing, intimidating and interfering with non-striking employees, and from unlawfully obstructing access and egress at the main gate by disrupting traffic.

- Subsequently, the CCMA established picketing rules and provided that '*[t]he picket will be held strictly in the area defined in the attached map.*' A number of employees nonetheless continued to picket in their preferred area, rather than within the demarcated area.
- The Labour Court (per Lagrange J) heard an application to institute contempt proceedings on an urgent basis and issued a rule nisi calling on the respondents to show cause why they should not be found guilty of contempt and punished for non-compliance with the order (the rule nisi). More than 160 employees were subsequently charged, found guilty and dismissed for various infractions pertaining to their participation in the strike.
- 126 employees challenged the fairness of their dismissals before the Labour Court. The candidate rejected the contention that the strike was unprotected. The subsequent violence and intimidation did not cause the strike to lose its status as a protected strike. This finding was not interfered with on appeal. The candidate rejected dismissal due to derivative misconduct absent evidence that employees had actual knowledge of the identity of those responsible for the primary misconduct.

- The candidate also held that there was no evidence that the employees were complicit in the various acts of misconduct referred to in the charge. These findings were not interfered with on appeal.
- On a charge of intimidation, harassment and threatening behaviour, barring two employees, the Labour Court held that there was no evidence linking the employees to any acts of intimidation, harassment or assault of specific individuals, or to the prevention of access or egress to the premises. This finding was not interfered with on appeal.
- In regard to strikers being in contempt of the Labour Court's order by failing to restrict their picket to the demarcated area, the candidate held that the Labour Court's order was contradictory, so that the employees ought not to have been dismissed on this basis. In addition, the employees substantially complied with the order by moving to a field 700 metres away from the appellant's premises. The LAC overturned this latter finding.
- The LAC found that, properly construed, the order was unequivocal and peremptory. The Labour Court restricted its focus to the language used, erroneously ignoring the evidence regarding the circumstances that resulted in the granting of the order and the importance of the demarcated area to the company. It also ignored the manner in which AMITU had contrived to feign confusion regarding the location of the demarcated area, when in fact this had always been readily apparent.
- The Labour Court's approach negated its own earlier order on the appropriate place for picketing. In addition, once the CCMA established the picketing rules, there was no basis for the employees to continue ignoring the existence and location of the demarcated area. The candidate erred in failing to appreciate the importance of this development.

8. The extent and breadth of the candidate's professional experience

- 8.1. The candidate has sat continuously in the Labour Court for over a decade. Prior to her elevation, she practised as an attorney and an academic, both predominantly in employment law.

- 8.2. The candidate's legal experience is thus predominantly in labour and employment law, although it is not confined to that field. Her experience includes expertise in the law of evidence.

9. The candidate's linguistic and communication skills

- 9.1. The candidate's judgments are written in English.
- 9.2. Nothing in the judgments and other writings considered by the reviewers indicates that the candidate's linguistic and communication skills are not adequate.

10. The candidate's ability to produce judgments promptly

- 10.1. The candidate indicated that four judgments were outstanding at the time of completing the questionnaire.
- 10.2. As far as could be ascertained at the time of completing this review, three of these judgments were still outstanding, all of which three have been outstanding for more than three months.
- 10.3. Of the 44 judgments of the candidate considered by the reviewers, eight were handed down more than three months after hearing.

11. The candidate's ability to conduct court proceedings fairly, efficiently, and effectively

- 11.1. The reviewers received no adverse comments from colleagues relating to the candidate's ability to conduct court proceedings fairly, efficiently, and effectively.

12. The candidate's independent-mindedness

- 12.1. There is no reason to believe that the candidate, if appointed, would not bring an independent mind to bear on issues presented for judicial determination, nor that the candidate would be unduly influenced in any way, including by the executive or legislative branches of government.

13. The candidate's administrative ability (other than in relation to court proceedings)

- 13.1. Prior to judicial appointment, the candidate practised as an attorney while serving as a lecturer at the University of KwaZulu-Natal for a number of years, and supervised Master's students.

- 13.2. The candidate has held organisational and leadership responsibilities, including serving as a National Legal Officer at NUMSA and as an executive member of SASLAW.
- 13.3. The candidate has also undertaken professional education and training responsibilities through SAJEI, SASLAW, the KwaZulu-Natal Bar Council, the CCMA and the LRC.
- 13.4. The information provided does not identify prior judicial leadership or court administrative roles. However, it can be inferred that the candidate has strong administrative ability to juggle these various roles simultaneously.

14. The message that the candidate's appointment would send to the public at large

- 14.1. Members of the public may regard the candidate's appointment positively given her extensive experience in labour and employment law, developed across trade union work, private practice, academia and more than a decade in the Labour Court.
- 14.2. Her professional experience reflects handling matters concerning disputes affecting employees, employers and trade unions, together with substantial expertise in the law of evidence.
- 14.3. Her academic publications, teaching experience and involvement in professional legal education may further support a perception of strong technical competence and commitment to the development of the law outside of practice.
- 14.4. The candidate's career reflects progression through distinct parts of the legal profession, from paralegal and trade union work to practice as an attorney, academia and judicial office.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported judgments

1. *Aquatan (Pty) Ltd v Janse van Vuuren and Another* (2017) 38 ILJ 2730 (LC)
2. *Association of Mineworkers and Construction Union v UASA and Others* (2021) 42 ILJ 1893 (LAC)
3. *Burton and Others v MEC for the Department of Health Eastern Cape Province and Others* (2022) 43 ILJ 2284 (LAC)
4. *Bronner v Alpha Pharm (Pty) Ltd & Another* (2020) 41 ILJ (LC)
5. *Cibane and Another v Premier of the Province of KwaZulu-Natal* (2025) 46 ILJ 2587 (LAC)
6. *Ethekwini Municipality v Nadesan and Others* (2021) 6 BLLR 598 (LC)
7. *Fraser Alexander (Pty) Ltd v Tswelopele Beneficiation Operation (Pty) Ltd and Others* [2017] 12 BLLR 1251 (LC)
8. *Gangaram v MEC for Health* (2017) 38 ILJ 2261 (LAC)
9. *Golden Arrow Bus Services (Pty) Ltd v CCMA and Others* (2025) 46 ILJ 2093 (LAC)
10. *HOD Sports, Arts, Culture and Recreation – Free State v NEHAWU obo Masekoa and Others* (2023) 44 ILJ 147 (LAC)
11. *Imperial Cargo (Pty) Ltd v DETAWU and Another* (2019) 40 ILJ 2499 (LAC)
12. *Jacobs v CCMA and Others* (2024) ILJ 1009 (LC)
13. *Kangra Coal (Pty) Ltd v Minister of Minerals & Energy & Others* (2021) 42 ILJ 2234 (LC)
14. *KwaZulu-Natal Department of Transport v Hoosen & Others* (2016) 37 ILJ 156 (LC)
15. *Kubeka and Others v Ni-Da Transport (Pty) Ltd* (2019) 40 ILJ 1312 (LC)
16. *Mbeje and Others v Department of Health KwaZulu-Natal and Others* (2024) 45 ILJ 2681 (LAC)
17. *Medtronic (Africa) (Pty) Ltd v Kleynhans & Another* (2016) 37 ILJ 1154 (LC)

18. *Minister of Police v M* (2017) 38 ILJ 402 (LC)
19. *Msunduzi Municipality v Hoskins* (2017) 38 ILJ 582 (LAC)
20. *Munsamy v Minister of Safety and Security and Another* (2013) 34 ILJ 2900 (LC)
21. *National Commissioner of the South African Police and Another v Myers* (2018) 39 ILJ 1965 (LAC)
22. *National Bargaining Council for the Clothing Manufacturing Industry (KZN) v Glamour Fashions Worker Primary Co-Operative Ltd and Others* (2017) 38 ILJ 1849 (LC)
23. *NEHAWU obo Members Providing Essential Services v Minister of Health and Others* (2020) 41 ILJ 1724 (LC)
24. *Ngcobo and Others v Chester Butcheries* (2012) 33 ILJ 2932 (LC)
25. *North Safety and Products v Naidoo and Another* (2020) 41 ILJ 1736 (LC)
26. *National Union of Metalworkers of SA and Others v Paint and Ladder (Pty) Ltd and Another* [2016] ZALCJHB 127
27. *NUMSA obo Members v Murray Roberts Projects (Pty) Ltd* 2012) 33 ILJ 2932 (LC)
28. *NUMSA obo Members and Others v AIH Logistics (Pty) Ltd and Another* (2023) 44 ILJ 1099 (LC)
29. *NUMSA obo Members v Sacks Packaging (Pty) Ltd and Others* (2021) 42 ILJ 164 (LC)
30. *NUMSA obo Members v Trenstar (Pty) Ltd* (2021) 42 ILJ 555 (LC)
31. *Padayachee v Interpak Books (Pty) Ltd* (2014) 35 ILJ 1991 (LC)
32. *Pailprint (Pty) Ltd v Lyster NO and Others* (2019) 40 ILJ 2047 (LAC)
33. *Pecton Outsourcing Solutions CC v Pillemer NO and Others* (2016) 37 ILJ 693 (LC)
34. *Ramabulana v Pilansberg Platinum Mines (Pty) Ltd* (2015) 36 ILJ 2333 (LC)
35. *Police & Prisons Civil Rights Union & Another v Department of Correctional Services & Another* (2017) 38 ILJ 964 (LC)
36. *Sampson v South African Post Office SOC Ltd* (2017) 38 ILJ 2368 (LC)
37. *Samuels v Old Mutual Bank* (2017) 38 ILJ 1790 (LAC)

38. *SAMWU v City of Johannesburg and Others* (2018) 39 ILJ 894 (LC)
39. *SAMWU and Another v Ethekekwini Municipality and Others* [2019] 1 BLLR 46 (LAC)
40. *SATAWU and Another v MEC: Gauteng for Roads & Transport and Others* (2015) 36 ILJ 55 (LC)
41. *African Meat Industry and Allied Trade Union (AMITU) and Others v Shave and Gibson Packaging (Pty) Ltd* (2024) 45 ILJ 79 (LC)
42. *Solidarity and Another v Armscor* (2019) 40 ILJ 535 (LAC)
43. *Strydom v T-Systems SA (Pty) Ltd* (2012) 33 ILJ 2978 (LC)
44. *Toyota South Africa Motors (Pty) Ltd v NUMSA obo Njilo and Others* (2022) 43 ILJ 2393 (LC)
45. *UASA – the Union and Others v Western Platinum Ltd and Others* (2019) 40 ILJ 2405 (LC)
46. *Working on Fire (Pty) Ltd v NUMSA and Others* (2022) 43 ILJ 2764 (LAC)
47. *Zuma & Another v Public Health & Social Development Sectoral Bargaining Council & Others* (2016) 37 ILJ 257 (LC)
48. *Zungu v Premier of the Province of KwaZulu-Natal and Others* (2018) 39 ILJ 523 (CC)

Unreported judgments

49. *Compass Group Southern Africa (Pty) Ltd v Van der Merwe NO and Others* [2018] ZALCJHB 49
50. *Ethekekwini Municipality v SAMWU and Others* [2024] ZALCD 33
51. *Gwala v CCMA and Others* [2020] ZALCD 6
52. *Intertek Industry Services (Pty) Ltd v Mofokeng and Others* [2025] ZALCD 50
53. *Jones v Compendium Group Investments Holdings (Pty) Ltd* (ZALAC) 49
54. *Logtrans Plant and Truck Hire Civils v CCMA* [2024] ZALCD 12
55. *Naude and Others v Office of the Chief Justice and Another* [2025] ZALCCT 6
56. *Ntomnela v ELPC and Others* [2024] ZALCD 25

57. *O'Hara v Parliament of South Africa and Another* [2024] ZALCCT 71

Judgments upheld on appeal

58. *Compendium Group Investment Holdings (Pty) Ltd and Another and Crofts and Others* [2024] ZALCD 18 in *Jones v Compendium Group Investment Holdings (Pty) Ltd* [2024] ZALAC 49

59. *Cibane and Another v Premier of the Province of KwaZulu-Natal and Another* (2024) 45 ILJ 533 (LC) in *Cibane and Another v Premier of the Province of KwaZulu-Natal* (2025) 46 ILJ 2587 (LAC)

60. *Kubeka and Others v Ni-Da Transport (Pty) Ltd* (2019) 40 ILJ 1312 (LC) in *Kubeka and Others v Ni-Da Transport (Pty) Ltd* (2021) 42 ILJ 499 (LAC)

61. *National Union of Metalworkers of SA and Others v Paint and Ladder (Pty) Ltd and Another* [2016] ZALCJHB 127 in *National Union of Metalworkers of SA and Others v Paint and Ladder (Pty) Ltd and Another* (2017) 38 ILJ 2285 (LAC)

62. *National Bargaining Council for the Clothing Manufacturing Industry (KZN) v Glamour Fashions Worker Primary Co-Operative Ltd and Others* (2017) 38 ILJ 1849 (LC) in *National Bargaining Council for the Clothing Manufacturing Industry (KZN) v Glamour Fashions Worker Primary Co-operative Ltd and Others* (2018) 39 ILJ 1737 (LAC)

63. *UASA – the Union and Others v Western Platinum Ltd and Others* (2019) 40 ILJ 2405 (LC) in *Association of Mineworkers and Construction Union v UASA – the Union on behalf of Members and Others* (2021) 42 ILJ 1893 (LAC)

Judgments overturned on appeal

64. *African Meat Industry and Allied Trade Union (AMITU) and Others v Shave and Gibson Packaging (Pty) Ltd* (2024) 45 ILJ 79 (LC) in *Shave and Gibson Packaging (Pty) Ltd v African Meat Industry and Allied Trade Union and Another* (2025) 46 ILJ 1923 (LAC)

65. *Armaments Corporation of SA (SOC) Ltd v Commission for Conciliation, Mediation & Arbitration and Others* (2016) 37 ILJ 1127 (LC) in *Solidarity*

- and Another v Armaments Corporation of South Africa (SOC) Ltd and Others* (2019) 40 ILJ 535 (LAC)
66. *Jacobs v CCMA and Others* (2024) ILJ 1009 (LC) in *Golden Arrow Bus Services (Pty) Ltd v CCMA and Others* (2025) 46 ILJ 2093 (LAC)
 67. *MEC: Department of Health, ECP v PHSDSBC and Others* (2016) 37 ILJ 1429 (LC) in *Burton and Others v MEC for the Department of Health Eastern Cape Province and Others* (2022) 43 ILJ 2284 (LAC)
 68. *National Union of Metalworkers of SA obo Members v Trenstar (Pty) Ltd* (2021) 42 ILJ 555 (LC) in *National Union of Metalworkers of SA v Trenstar (Pty) Ltd* (2023) 44 ILJ 1189 (CC)
 69. *Ramabulana v Pilansberg Platinum Mines (Pty) Ltd* (2015) 36 ILJ 2333 (LC) in *Pilansberg Platinum Mines (Pty) Ltd v Ramabulana* (2019) 40 ILJ 2723 (LAC)

Academic writings

70. Co-author: Textbook: *The Law of Evidence in South Africa: Basic Principles* (1st ed. 2013; 2nd ed. 2026) Oxford University Press. Chapters 27, 28, 29, 30, 53 and 63
71. 'Similar fact evidence in arbitration proceedings' (2014) 35 ILJ 89
72. 'Workplace Bullying Law: Is it Feasible?' (2010) 31 ILJ 43
73. 'Two Roads to an Employer's Vicarious Liability for Sexual Harassment' (2004) 25 ILJ 1907