

# Labour Court judgment surprises

By [Richard Marcus](#)

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In a recent as yet unreported judgment of the Labour Court of South Africa, NUMSA on behalf of four members v Motheo Steel Engineering CC (Case No. METS3334) - issued on 4 April 2014 - the Labour Court has clarified yet another gap which needed to be closed in the Companies Act.



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Issuing a terse judgment, La Grange J held, relying on Section 210 of the Labour Relations Act, that a matter dealt with in terms of the Labour Relations Act prevailed over the provisions of any other law save the Constitution or an Act expressly amending it.

As a result, the Labour Court found that Section 133(1) of the Companies Act does not expressly amend the persons of the Labour Relations Act.

Section 133(1) is the general requirement that, in business rescue proceedings, no legal proceedings, including enforcement action, may be commenced or proceeded with in any forum except with the consent of the practitioner with the leave of the Court.

## Wording is explicit

It will be interesting to see if this judgment stands scrutiny. Section 133 expressly provides for a 'general moratorium' against all legal proceedings against a company in business rescue. The wording used in the Act is quite explicit. It provides that "...no legal proceeding...may be commenced with or proceeded with in any forum...". There are four exceptions where proceedings may continue, namely:

- with the leave of the business rescue practitioner;
- with the leave of the Court on application;
- as a set-off against claims made by the company in business rescue; and
- criminal proceedings against the company's directors.

Given the express language used in the Companies Act, it is difficult to see how, with respect, Le Grange J could come to the conclusion that he did. The language of the Companies Act is intended to cover all legal proceedings save for the four express exceptions.

This ruling should also be seen in the context of the special protection given to employees in business rescue, especially those set out in Section 136 which expressly provides that, during business rescue proceedings, employees continue to be employed on the same terms and conditions and that any retrenchment of employees in business rescue has to take place in terms of the Labour Relations Act.

However, the fact that this particular issue is mentioned whilst at the same time no provision is made in the Act for an exception to the moratorium against Labour Law proceedings, is indicative of the fact that the legislature did not intend to make an exception for the Labour Relations Act.

This type of tension between competing legislation does arise from time to time, and it is up to the Courts to resolve it. It remains to be seen what a higher court will have to say about the issue.

## ABOUT THE AUTHOR

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