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VOORWOORD

Die lente is op pad en hier by **SEENA** is ons optimisties oor die naderende reënseisoen en ekonomiese vooruitsigte in die tweede helfte van 2019.

As business owners, we have five months in which we are able to turn our financial fortunes during 2019.

We have established **Odula Bookkeeping and Office Solutions (Pty) Ltd** to assist our clients with more cost effective Bookkeeping / Costing options. The company will also rent office machines at more competitive rates. Lees gerus die artikel oor Odula op bladsy 5 in hierdie uitgawe.

Ons gee in hierdie Nuusbrief ook kennis van ons jaarlikse verhoging wat ons beperk tot vyf persent.

At **SEENA Labour** it is business as usual. Remember to consult us regarding all Labour related issues at your business, especially before taking decisions in the heat of the moment in employee misconduct situations.

Has your business grown to 25 employees or more? Contact **SEENA EE** (Employment Equity) to assist you with your compulsory submissions to the Employment Equity Commission.

SEENA Training will keep your employees well informed at affordable rates. We offer courses in Initiating of Disciplinary Enquiries, Junior Management and Supervisor Training, Personal Assistant Training, Customer Service Training as well as How to Sell.

Ons Tsumeb kliënte kan ons Raadsaal huur teen 'n fooi van N\$ 1000.00 per dag by ons nuwe kantore in Ndilimani Cultural Troupe Straat, nommer 419.

Kom besoek gerus ons stalletjie by die Biomass Technology Expo wat plaasvind op 9 Augustus 2019 by Otjiva Lodge buite Otjiwarongo. Ons sal twee bemarkers daar hê wat behulpsaam kan wees met inligting rakende al ons produkte.

Ons hoop dat 2019 se reënseisoen 'n draaipunt in die voortslepende droogte sal bring.

Lekker werk.

Our Tsumeb Boardroom




JJ Barkhuizen
MANAGING DIRECTOR



RETRENCHMENTS – SOME FOOD FOR THOUGHT

With retrenchment being the norm lately we are bound to get more and more case law on the subject matter. What is clear from the Court's approach to date is that great emphasis is placed on the consultative nature of the procedures provided for in section 34 of the Labour Act. In short, when it comes to retrenchments, it is important to conclude the matter, through thorough, transparent and bona fide engagement with workplace representatives, recognised Unions (where applicable) and ultimately the employees affected, all the time keeping in mind that retrenchment is a drastic measure and a last resort.

As Deputy Judge President Angula puts it:

“...the retrenchment exercise is a process and not an event.”

To gain a better understanding as to how our courts are approaching the subject matter of retrenchment, I have briefly set-out the background facts in the matter of Andreas Ngwena v Elgin Bron and Hamer and 2 others, here below.

THE FACTS:

The Appellant, one Andreas Ngwena, was employed by the Respondent, Elgin Bron and Hamer (EBH) as a pipe fitter. On the 12th of April 2014 the Appellant was injured during a company sporting event, which was treated as an injury on duty. On the 19th of April 2016 the Respondent commenced retrenchment proceedings. During this time however the Appellant was on sick leave, occasioned by the need to remove screws from his leg, which was a remainder of the injury he sustained in 2014 whilst on duty. He was booked off from 8 July to 8 August 2016 to undergo this procedure.

During the period of the Appellant's absence the company concluded a retrenchment agreement with the MUN, the majority Union at EBH, with status as exclusive bargaining agent. The agreement was concluded and signed on 14 July 2016. As a result EBH terminated the Appellant's services on 21 July 2016, with the effective date of the retrenchment stated as 31 July 2016. Realising that the Appellant was still on sick leave on the termination date EBH later tried to correct the notice. When the Appellant returned to duty following his sick leave on 5 August he was issued with a second amended notice of service termination, which notice postponed the effective date of his retrenchment to 31 August 2016.

To complicate matters further EBH concluded an amendment to their retrenchment agreement with the MUN on 29 July 2019. In terms of the amendment it was agreed that one Johannes Phillipus would be excluded from the retrenchment due to ill-health. No similar exclusion was granted to the Appellant on account of his own medical difficulties.

Keeping in mind the facts of the matter, I challenge you to predict the answers to the questions below, before continuing on to read the rest of this discussion. In your own view, should a thorough, consensus seeking and bona fide engagement of employees who are directly affected by a retrenchment, allow for:

1. An employee to be served with a retrenchment notice whilst on sick leave?
2. A Union, albeit with exclusive bargaining status, to negotiate on behalf of its members and conclude a valid and binding agreement, without the involvement of the affected union member individually once identified to be retrenched?
3. Excluding one or more employees on account of ill health, without extending that grace to all who suffer from serious ailment?

The answer to the first question is relatively straight forward as it is dealt with, in no uncertain terms, through the provisions of section 30(5) of the Labour Act, which reads:

- (5) *An employer must not give notice of termination –*
(a) *during any period of leave to which the employee is entitled in terms of Part D of this Chapter; or*
(b) *to run concurrently with any such period of leave.*

[Part D, deals with annual, sick, maternity and compassionate leave.]

In light of the above section it is clear that notice of service termination cannot be given during any period of leave. This brings us to the second question. If the Union is recognised as the exclusive bargaining agent on behalf of all employees, is the attendance of all employees required during the negotiations?

On behalf of the Appellant it was argued that he was retrenched whilst on sick leave. By the time he returned to work the decision to retrench him had already been made and it was unfair not to have consulted him individually.

On the other hand, the argument goes that it is generally accepted that an employer is not obliged to consult separately with individual employees if these individuals are represented by an exclusive bargaining agent/Union.

DJP Angula concludes that it is the positions that are being declared redundant and not the employees occupying those positions. To quote from his judgement:

“Par 33: Once the positions have been declared redundant during the process of consultation, the Union and the employer are under a statutory obligation to consider the impact of the redundancy on the employees who are occupying those positions and to further consider how to mitigate the adverse impact on such affected employees.”

So the answer it appears is that once it is concluded that positions are redundant, a failure to consult with the affected employees individually renders the retrenchment unfair, even where the Union was consulted on other issues.

Lastly, then: If you exclude one employee from being retrenched on account of some or other justification, in this instance ill health, should that then apply to all? Section 34(1) (a) of the Labour Act requires selection criteria to be fair and objective. DJP Angula interprets this to mean that once preference is given to anyone in a selected group, it should apply to all in the selected group. You cannot exclude one employee on account of ill health, but disregard another’s plight on similar grounds.

In Conclusion:

Plan retrenchments carefully, but timeously. It is not a quick fix and needs to be dealt with, with great discretion.

Compiled by: Nicky Smit

Case Ref: Ngwena v Elgin Bron and Hamer (HC-MD-LAB-APP-AAA_ 2018/00033 [2019 NALCMD 8 (31 January 2019)

ANNUAL PREMIUM INCREASE

All members are advised that an annual premium increase of 5% (Five Percent) will take effect on the 1st of September 2019. Members with 5 or less employees, as well as members who only joined us during June, July and August of 2019 will not be affected by this increase.



THE BENEFITS OF A TRAINED PERSONAL ASSISTANT

Traditionally, Personal Assistants (PA's) typed up the correspondence, answered the phone, and made the Manager's coffee, but today, there is much more to being a PA than just doing administrative work. Today's PA's are highly motivated, skilled assistants who support their managers in a myriad of ways.

A PA will essentially be the 'right-hand' of their manager, and will normally have a considerable workload. This is even more likely if the PA supports a 'management team', or a number of senior Executives where good time management becomes one of the key essential skills.

Today, PA's need to be sharp, confident, personable, dedicated, focused and able to multi-task, prioritise and complete tasks within a required time frame. This means that PA's need to be able to work well without supervision and have a number of strengths, such as:

1. **Communication Skills** – A PA needs to be able to speak and write professionally and skilfully since they represent the company in their communication. All letters, minutes and memos need to be devoid of spelling and grammatical errors. Usually, a PA is the first point of contact for clients and if the first impression of the business is not good, it will leave a lasting impression.
2. **Time Management Skills** - The number one complaint from PA's about their inability to complete tasks on time is that they; "did not have enough time". With proper time-management principles, this problem can be solved. Essentially time-management is all about making sure you get the right job done, at the right time.
3. **Project Management and Planning** – A Manager's attention is mostly focused on the operations of the business and smaller everyday projects and tasks are usually delegated to the PA who is entrusted to do the necessary planning.

Should you be interested in attending or sending your Personal Assistant to attend our **Personal Assistant Training Course** please contact us today. Our contact details are as follows:

Contact Person: Sonja van der Merwe
Telephone: 061 309 260
Fax: 061 309 266
E-mail: training@seenalegal.com

Your booking will only be confirmed once payment was received.



LAUNCHING ODULA BOOKKEEPING AND OFFICE SOLUTIONS

Over the years we have struggled to find a cheaper, yet more efficient, solution to our own bookkeeping needs. In 2019, we created that solution by establishing **Odula Bookkeeping and Office Solutions (Pty) Ltd.** Odula is a subsidiary company of SEENA and is spearheaded by Johan van Deventer (B.Com. Hons, UNISA, 2012). The idea behind Odula is to provide a niche bookkeeping service to our clients and in doing so, collectively reducing bookkeeping costs without compromising service or efficiency.

Odula's services include:

Bookkeeping and Administration Services:

- Bookkeeping from source documents to general ledger;
- Creating a filing system for all creditor and expense related payments;
- Preparing weekly cash flow analysis;
- Preparing monthly cash flow analysis;
- Submit bimonthly VAT returns, and ensure prompt payment of VAT;
- Liaise with tax practitioner to ensure provisional and final company tax is paid timeously;
- Processing of all financial transactions;
- Processing monthly invoicing (if required);
- Preparing Monthly bank reconciliations including:
 - maintaining accurate debtor records;
 - follow up on unallocated deposits;
 - processing of client refunds and/or credit notes where approved;
 - emailing of monthly invoices and statements to clients (if required);
 - assisting with client account queries;
 - providing supporting documentation and assisting with audit queries as required;
- Providing monthly management accounts which includes:
 - Income Statements;
 - Balance Sheets; and
 - Cash Flow.

Costing:

The rule here is that you can't manage, what you can't measure.

A proper costing exercise will enable your business to increase profitability and efficiency. The process of cost accounting, or costing, includes the gathering of new data from your business and processing that data into a format, the owner / management can use to benefit the business. After a costing exercise, you will be:

- provided with a holistic view of the Key Performance Indicators of your business;
- provided with a report on productivity measures; and
- be able to identify and analyse expenditure trends.

Fees:

At Seena our business model has always been to render services to our clients at a fixed, monthly retainer, without additional charges or hidden costs. We all want to be able to budget, and in an otherwise unpredictable financial world, we believe that a little predictability is a welcome reprieve. At Odula things will be no different. Aside from Costing, which will be performed at a predetermined fee, bookkeeping and administration services will be performed at a fixed monthly retainer, without exception. Your monthly retainer will be determined, based on:

- Your annual turnover;
- The average monthly transactions of your business; and
- The level of administrative assistance you are able to provide from within your existing business structures with regard to the capturing of data.

For a free assessment and obligation free quotation please feel free to contact Johan van Deventer directly at: 064 416 122 or e-mail him at johan@odulanam.com.

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