

## Can an employee who is headhunted and then retrenched cry unfair?

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Very often an employee who was headhunted, rises as a defence that he be insulated from a retrenchment process. At face value, this seems like a fair objection. Is it really? While fact-specific, we have almost always advised management that this is not a legitimate defence.

In a 2018 judgment of the Labour Court in *Mokgodi v Travelex Africa* the employee argued that his retrenchment was unfair as he had been headhunted from his previous stable employment, notwithstanding the fact that the employer knew that it was already in dire financial straits when he was recruited.

The court held that there were several difficulties with the employee's case. To the extent that he had conceded that there was a general need to retrench, he could not in the same breath argue that nonetheless, he should not have been retrenched. His allegation of unfairness was based on him being aggrieved by the fact that he had been headhunted, employed and dismissed within a short period of time.

One could appreciate this source of grief, the court remarked, and to a large extent it agreed that what had happened to him when he had had secure employment at his previous place of employment could *prima facie* be considered to be unfair. However, the unfairness did not have anything to do with the decision to declare his position redundant, and this is the critical issue.

The employee's personal circumstances were important factors to be considered only in the event of relief being granted, said the court. Mokgodi's dismissal was found to be operationally fair and based on reasons that were objectively defensible. At the end Mokgodi's dismissal was ruled as being fair.

So, headhunted employees should be warned that this is not a full proof defence in a retrenchment scenario.

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