THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: Thursday 31 May 2007

Status: Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal

Boxer Superstores Mthatha v Mbenya [2007] SCA 79 (RSA)

In a judgment delivered today, the Supreme Court of Appeal has ruled that an employee may approach the High Court to declare a dismissal unlawful on the basis that the pre-dismissal hearing was unfair.

The case involved the limits of the exclusive jurisdiction of the labour courts under the Labour Relations Act 66 of 1995 (the LRA). Boxer Superstores argued that in substance Ms Mbenya, its former employee, was complaining about the unfairness of her dismissal, even though she claimed in her application that the dismissal was 'unlawful'.

The labour courts have exclusive jurisdiction under the LRA to adjudicate on and give relief for unfair labour practices, while the ordinary courts have jurisdiction to rule on the lawfulness of breaches of contract.

The SCA had previously ruled that dismissed employees could approach the High Court to claim damages arising from unlawful dismissals, or from unlawful breaches of the employer's own disciplinary code under a contract of employment.

In the *Boxer Superstores* case, the SCA has now held that the employee can approach the High Court even when she does not claim damages, but seeks only a declarator in relation to the pre-dismissal hearing.

However, the SCA warned that the employee's insistence on approaching the ordinary courts – when the LRA afforded ample remedies through the labour courts, including retrospective reinstatement and compensation if the employer failed to discharge the burden of proving that the dismissal was both procedurally and substantively fair – could involve a penalty in the relief that the High Court might grant.

The ordinary courts should be careful in employment-related matters not to usurp the labour courts' remedial powers, and their special skills and expertise.

This means that the employee may well not ultimately be entitled to the relief she seeks, particularly since according to her founding papers she had an internal right to appeal, which she failed to exercise. At best she may be entitled (subject to the unexhausted appeal process) to have the hearing set aside, and the matter remitted to the employer – and not get reinstatement or back-pay, which are remedies special to the labour courts and their unfair labour practice jurisdiction.