Online Symposium on Recent Developments in African PIL (V) – Cross-border employment, competition and delictual liability merge in the South African High Court: Placement International Group Limited v Pretorius and Others



As part of the second online symposium on ***recent developments in African private international law****, we are pleased to present the fifth contribution, kindly prepared by* ***Elisa Rinaldi*** *(****University of Pretoria, South Africa****) on* **Cross-border employment, competition and delictual liability merge in the South African High Court: *Placement International Group Limited v Pretorius and Others.***

The High Court of South Africa recently heard a dispute that concerned an application for interim relief to interdict South African competitors from competing in the field of international recruitment.[i] The case of *Placement International Group Limited v Pretorius and Others* [2025] ZAGPPHC 1252 centred on the work undertaken by international hiring companies who, with the rise of transnational employment, facilitate the recruitment and placement of potential employees from anywhere in the world. The applicant in this dispute, Placement International Group Limited, a company incorporated in Hong Kong, is a hiring company who worked to source candidates in South Africa for employment opportunities overseas. The dispute was brought by Placement International against a previous employee who, upon leaving the applicant's employment, went on to establish her own hiring company. The respondents, a South African national, and her company, Integricore Global (Pty) Ltd, incorporated in South Africa, aimed to facilitate the hiring of South African candidates, resulting in direct competition with the applicant. Aggrieved, the applicant turned to the South African High Court to request that they interdict Integricore from sourcing candidates in South Africa as they considered this to amount to unlawful competition. The relief sought by the applicant was based on South African common law.

The alleged unlawful competition arose out of an employment relationship between the applicant and respondent. The central contention by the applicant was that the respondent had breached her fiduciary duties by establishing Integricore and working in direct competition with Placement International.[ii] The applicant argued that the information regarding potential candidates and companies was proprietary confidential information which the respondent required and used in order to establish Integricore.[iii] The right to claim relief for breach of an employee's fiduciary duties exists in South African common law, granting the aggrieved party a right to claim under either delict or contract.[iv] Such an election is permitted in South African law and in this case, the applicant decided to claim under delictual breach of fiduciary duty rather than under the terms of the contract.

The decision to claim under delict prompted an interesting investigation into the integrity of such claim. The reason being is that the employment contract, between the applicant and responded, contained a restraint of trade clause which, as according to the choice of law clause within the contract, should have been

governed by Hong Kong law.[v] The applicant, however, decided not to enforce the contractual provision for reasons that turned out to be rather interesting. While employers are said to be in a generally stronger bargaining position when it comes to choice of law, in this instance the choice of Honk Kong law applied against the employer. As it came to be revealed, the position of restraint of trade clauses in Hong Kong law is that they are generally void for being against public policy.[vi] This is the case unless the employer is able to show that the restrictions are necessary to protect their legitimate business interests. In South Africa the position is reversed. Restraint of trade clauses are generally valid and enforceable unless they are deemed unreasonable.[vii] In determining whether a restraint of trade clause is unreasonable, a court will consider whether the business interest is deserving of protection and weigh this against the interests, of the former employee, to earn a living. Irrespective of this distinction, the applicant chose to rely on South African common law instead of the contract, likely because of the fact that the application of Hong Kong law would not result in their favour.

The decision to rely on the common law led the High Court to consider whether this amounted to an abuse of process. Reason being is that, the common law right to claim relief for breach of fiduciary duty is a right that comes to existence through the employment contract, a point which the court rightfully made:

“It is a far cry to approach the court for common law relief based on a fiduciary duty arising from the contract of employment when the same contract does not have the same consequence under Hong Kong law as a South African contract of employment. That creates doubt on the applicant’s entitlement to common law interdictory relief by merely jettisoning a troublesome consequence of the choice of law in the contract of employment.”[viii]

Nevertheless, the court reasoned that the decision to rely on the South African common law could not amount to an abuse of process in light of there being doubt as to whether the applicant would have been able to establish a contractual right under Hong Kong law for the enforcement of the restraint of trade clause.[ix] The protection of lawful competition also seemed to necessitate a decision on the merits.[x] Having concluded that there was no abuse of process, the court went on to make its judgment against the applicant. A number of reasons were made, most of which were due to the circumstances surrounding the termination of the employment relationship between the applicant and respondent.[xi] In essence,

the competition arising from the activities of Integricore was found to be lawful, meaning there was no right from which to claim interdictory relief. The respondent's knowledge of the South African market was found to be part of the respondent's general skill set and not part of the applicant's proprietary confidential information. In other words, the applicant had not proven that there was a reasonable apprehension of irreparable harm, which is an element that must be proven in order for the interdict application to succeed. Lastly, the court held that it would be unlikely to grant relief by exercise of their judicial discretion due to the contractual relationship being governed by Hong Kong law.

Certain concerns have been raised in respect to the lack of a private international law approach by the High Court in this judgment. These concerns can be read here. Essentially, the court failed to conduct a proper investigation into the choice of law governing the unlawful competition claim. A private international law approach would have necessitated characterising the dispute and determining which law would apply, either by application of a conflict rule or through the determination of which legal system is manifestly closer or significantly connected to the dispute. The South African choice of law rule for delictual disputes is the *lex loci delicti*.[xii] The court, however, did not follow through with a determination on the choice of law. Nonetheless, I do not believe that the court erred in their approach for a few reasons. The main issue concerned the question of whether the applicant had met the requirements for an interdict, as according to South African law. The applicant had approached the High Court for interdictory relief on the basis of South African common law. The court scrutinized this decision in light of the employment contract and its express choice of Hong Kong law. Far from ignoring the relevance of foreign law, the court went on to ascertain the content of Hong Kong law in respect to restrain of trade. The determination of whether the applicant had established a *prima facie* right to claim interdictory relief, as well as whether the court should grant discretionary relief in lieu of a *prima facie* right hinged on the employment contract, its choice of Hong Kong law as well as its subsequent repudiation. A determination of the applicable law over the alleged unlawful competition was not necessary in order for the court to make its conclusion. The question of whether the competition was unlawful was answered by looking at the surrounding circumstances of the employment contract and, more specifically, the conduct of the applicant in respect to the contract. The employment contract and its choice of law clause was central to the court's adjudication of the matter.

While a clear and express private international law approach is always valuable, particularly in South Africa where private international law disputes are not often heard, a dogmatic choice of law approach is not always necessary. The court may in fact be commended for how it handled the aspects of foreign law which arose in this dispute. The court went through the process of actually ascertaining the position in Hong Kong law, highlighting the importance of express choice of law clauses within contractual agreements. What may be considered a cosmopolitan approach, akin to private international law concerns, ensured the court considered factors beyond the elements necessary for interdictory relief under South African law. The court raised concerns surrounding potential abuse of process, which factored heavily in the courts choice to not grant discretionary relief. The attention brought to these concerns are welcomed, particularly in the face of the relative ease that transnational employers have over the litigation process.[xiii]

Previous contributions:

1. **Online Symposium on Recent Developments in African Private International Law**, *by Béligh Elbalti & Chukwuma S.A. Okoli* (Introductory post)
2. **Recognition and Enforcement of International Judgments in Nigeria**, *by Abubakri Yekini & Chukwuma Samuel Adesina Okoli*
3. **The Recognition and Enforcement of Foreign Judgments within the CEMAC Zone**, *by Boris Awa*
4. ***Foreign Judgments in Mozambique through the Lens of the Enforcement of a Chinese Judgment: Liberal Practice in the Shadow of Statutory Rigidity**, by Béligh Elbalti*
5. ***Party Autonomy, Genuine Connection, Convenience, Costs, Privity, and Public Policy: The Kenyan High Court on Exclusive Jurisdiction Clauses**, by Anam Abdul – Majid and Kitonga Mulandi*

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[i] *Placement International Group Limited v Pretorius and Others* [2025] ZAGPPHC 1252 (*Placement International).*

[ii] Ibid para 1-9.

[iii] Ibid para 6

[iv] See generally, *Lillicrap Wassenaar and Partners v Pilkington Brothers* [1985] 1 All SA 347 (A).

[v] *Placement International* (n1) para 33.

[vi] Ibid para 30.

[vii] For a very recent judgment on restraint of trade clauses in South Africa see, *TWK Agri (Pty) Ltd v Holtzhausen and Another* [2025] ZALCJHB 252.

[viii] *Placement International* (n1) para 33.

[ix] Ibid para 40.

[x] Ibid.

[xi] Ibid para 42 – 50.

[xii] See *Burchell v Anglin* 2010 3 SA 48 (ECG) and *Apleni v African Process Solutions (Pty) Ltd and Another* (15211/17) [2018] ZAWCHC 160.

[xiii] See generally, Rinaldi E 'A comparative analysis of the mandatory rule doctrine and its application in the South African Labour Court' (2021) 15 *Pretoria Student Law Review*.