

**THE ENFORCEABILITY OF ILLEGAL EMPLOYMENT CONTRACTS ACCORDING  
TO THE LABOUR APPEAL COURT: COMMENTS ON *KYLIE V CCMA* 2010 4 SA  
383 (LAC)**

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**SUMMARY**

The Labour Appeal Court in *Kylie v CCMA* decided the vexed question as to whether or not the CCMA has jurisdiction to resolve a dispute of unfair dismissal involving a sex worker. Both the CCMA and the Labour Court had declined to assume jurisdiction to resolve the dispute on the basis that the employee's contract of employment was invalid and therefore unenforceable in law. The Labour Appeal Court, on the other hand, overturned the Labour Court's decision and held that the CCMA has jurisdiction to resolve the dispute, regardless of the fact that sex work is still illegal under the South African law. For this decision, the Labour Appeal Court relied on section 23(1) of the *Constitution*, which provides that everyone has the right to fair labour practices. According to the Labour Appeal Court the crucial question for determination by the court was if a person in the position of a sex worker enjoyed the full range of constitutional rights including the right to fair labour practices. In the court's reasoning the word everyone in section 23(1) of the *Constitution* is a term of general import and conveys precisely what it means. In other words everyone, including a sex worker, has the right to fair labour practices as guaranteed in the *Constitution*. A critical analysis of the judgment is made in this case note. The correctness of the court's judgment, particularly insofar as it relates to the approach to and the determination of the issue of jurisdiction, is questioned. It is argued that the Court lost focus on the main issue in the appeal, namely jurisdiction, and instead proceeded to place heavy emphasis on the employee's constitutional rights. Relying on a handful of cases of the Supreme Court of Appeal and the Constitutional Court, the case note concludes that the approach adopted by the

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Labour Appeal Court in the determination of the appeal was incorrect - hence its decision. Given the critical importance of the matter, and the attendant implications of the judgment for labour litigation in South Africa, it is hoped that a similar case will soon come to the attention of a superior court and that a definitive pronouncement will be made.

**KEYWORDS**

Employee; jurisdiction; sex workers; dismissal, sex industry, fair labour practice