

# WIKUS VAN RENSBURG ATTORNEYS

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### NEWSLETTER 13

#### Evans v Japanese School of Johannesburg [2006] 12 BLLR 1146 (LC)

*Dismissal – Automatically unfair – Age – Employee forced to retire two years before agreed retirement age – Dismissal automatically unfair.*

*Dismissal – Relief – Employee claiming relief for automatically unfair dismissal under LRA and unfair discrimination under EEA – Nothing precluding such dual claims – Employee awarded damages in addition to maximum compensation provided for by LRA.*

#### Summary

The services of the applicant were terminated when she reached the age of 63 years on the basis that she had passed what the respondent employer regarded as the normal retirement age. She claimed that the normal retirement age of the respondent's employees was 65, and that her dismissal was accordingly automatically unfair and that she was the victim of unfair discrimination. The respondent claimed that the applicant had been employed on a fixed-term contract after she reached the normal retirement age. She claimed compensation under the Labour Relations Act 66 of 1995 ("LRA") and damages under the Employment Equity Act 55 of 1998 ("EEA").

The **Court noted** that the applicant's contract of employment was silent on any retirement age, and that the respondent had no formal retirement policy. Since the respondent had led no evidence to prove a normal retirement age or that the applicant had not been assured that she would be employed until the age of 65, as she claimed, it had failed to discharge the onus of proving that the dismissal was not based on age. The applicant was accordingly entitled to the maximum compensation provided by the LRA for an automatically unfair dismissal – viz the equivalent of 24 months' remuneration.

Turning to the applicant's claim for damages under the EEA, **the Court noted** that there was a similarity between the prohibitions of discrimination under the EEA and the prohibition of automatically unfair dismissals in the LRA, which could result in duplicated claims. Unlike the LRA, the EEA placed no limit on damages for unfair discrimination. Since unfair discrimination is prohibited by the Constitution, the Court considered it just and equitable to award the applicant an additional R200 000 in damages.

The applicant was accordingly awarded compensation of R406 668.

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