

# WIKUS VAN RENSBURG

## ATTORNEYS

### Labour Law Practitioner & Attorneys

36 Western Road, CENTRAL, PORT ELIZABETH, 6001 P O Box 12339, CENTRAHIL, 6006  
Tel: +(27) 41 582-2205 / 582-2737, Fax: +(27) 41 582-3131  
eMail: wvrat@web.co.za

### NEWSLETTER 21

#### **Tao Ying Metal Industry (Pty) Ltd v Pooe NO & others [2007] 7 BLLR 583 (SCA)**

Appeal – Distinguished from review – Focus of inquiry in appeal is whether decision was right or wrong, while focus on review is how arbitrator arrived at challenged conclusion.

Arbitration – Role of arbitrator – Arbitrators confined to deciding issues placed before them by parties – Decisions falling outside ambit of such issues constituting reviewable misconduct.

Bargaining councils – Exemptions – Council purporting to exempt employer from both current main agreement and future agreements – Council lacking power to authorise exemption from future agreements under 1956 LRA, but has such power under current LRA only if so authorised by council constitution.

Bargaining councils – Role – Role of councils in labour dispute resolution considered.

Commission for Conciliation, Mediation and Arbitration – Arbitration award – Review – Commissioner basing award on incorrect assumption that particular matter was common cause – Error rendering conclusion unjustifiable and award reviewable.

Commission for Conciliation, Mediation and Arbitration – Arbitration proceedings – Commissioner may not decide matters parties were not given opportunity to address during hearing.

Labour Appeal Court – Powers – Court incorrectly assuming in review proceedings that it was required to decide whether arbitrator's conclusion was correct – Error leading court to ignore whether arbitrator had properly exercised powers in reaching conclusion – Court's ruling on merits set aside.

Labour Court – Review – Although court empowered to substitute its own decision after setting aside award, court should not pronounce on issues not before arbitrator – Court declining to make any order other than setting aside award.

Review – Distinguished from appeal – Focus of inquiry in review is how arbitrator arrived at challenged conclusion, while focus on appeal is whether decision was right or wrong.

Senior Attorney: Lodewikus van Rensburg, B. Proc, MA in Conflict and Conflict Resolution

Attorney: Julius B Pauw, LLB

Candidate Attorneys: J Forbes, LLB; D Gondoza, LLB, LLM in Labour Law

Consultant: Martinus Jacobs, ND: HRM

Office Manager: Amy Stone