

Coca-Cola Beverages Africa (Pty) Ltd v Competition Commission and Another

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(CCT 192/22) [2024] ZACC 3; 2024 (6) BCLR 771 (CC); [2024] 7 BLLR 665 (CC); (2024) 45 ILJ 1507 (CC); 2024 (4) SA 391 (CC) (17 April 2024)

INTRODUCTION

On 17 April 2024, the Constitutional Court delivered a landmark judgment in *Coca-Cola Beverages Africa (Pty) Ltd v Competition Commission* regarding enforcement of employment-related merger conditions. The dispute originated from a large-scale merger approved by the Competition Tribunal on 10 May 2016, which consolidated four previously independent authorised bottlers into a single bottling entity. The 2016 merger was subject to conditions designed to protect employment, as contemplated in section 12A of the Competition Act¹.

The core employment-related conditions mandated:

1. Maintenance of aggregate employee numbers for three years post-merger;
2. A prohibition on retrenchments of bargaining unit employees “as a result of the merger”; and
3. An exception permitting retrenchments for operational requirements occurring in the ordinary course of business, provided such retrenchments were not merger-specific.

ECONOMIC CONTEXT AND RETRENCHMENTS

Commencing on 1 April 2018, the Health Promotion Levy on Sugary Beverages (“sugar tax”) was imposed, significantly impacting Coca-Cola’s (“the company”) operational environment. This led to increased input costs, declining sales volumes, and intensified competition, collectively reducing the company’s profitability and market share.

In 2019, the company notified the Competition Commission that retrenchments for operational requirements might be necessary to address these economic pressures.

In compliance with section 189(3) of the Labour Relations Act², the company issued notices to various trade unions, initiating a restructuring process.

LEGAL DISPUTE HISTORY

The Competition Commission issued a Notice of Apparent Breach alleging that the company’s retrenchments violated the merger conditions relating to employee retention. The company applied to the Competition Tribunal for review seeking a determination that it had substantially complied with the conditions. The Tribunal found that the retrenchments were justified by external economic factors and not by the merger itself, and held that the company had substantially complied.

The Competition Appeal Court overturned the Tribunal’s decision, applying a more lenient “some nexus” test requiring only a minimal connection between the merger and the retrenchments to establish breach.

CONSTITUTIONAL COURT’S RULING

The Constitutional Court held that the Competition Tribunal must objectively determine whether the company has substantially complied with merger conditions. The Tribunal’s role is not limited to reviewing the reasonableness of the Competition Commission’s decision to issue a Notice of Apparent Breach but rather includes an independent factual assessment of compliance.

The Court rejected the “some nexus” test endorsed by the Competition Appeal Court as inconsistent with the language and purpose of merger conditions requiring retrenchments to be “as a result of” or “merger-specific.” Instead, the Court confirmed that a rigorous causation analysis is required, applying accepted principles of factual and legal causation to identify the true reason for retrenchments.

CONCLUSION

The Constitutional Court’s judgment sets a definitive legal standard for enforcing merger conditions relating to employee retention. This judgment clarifies the legal standards applicable to disputes over alleged breaches of such merger conditions.

This balanced approach aligns with South Africa's legal framework, ensuring merger oversight is fair, evidence-driven, and reflective of the country's complex economic landscape.

189 of 1998.

266 of 1995.



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