

Speaking Up Against Racism in the Workplace: A Significant LAC Ruling

INTRODUCTION

On 8 April 2026, the Labour Appeal Court (LAC) handed down an important judgment confirming that, in context, an employee who accuses another of racism does not thereby engage in racist conduct. The Court held that the dismissal of Mr Vuyani Qomoyi for “displaying racist behaviour” was substantively unfair.¹

FACTS OF THE CASE

Mr Vuyani Qomoyi, a general worker and shop steward at Namaqua Wines, was summoned by white bottling manager Mr Albrie Meyer to accompany him to the Human Resources Office, ostensibly to witness an unspecified matter. Qomoyi had no prior involvement in the process leading to what transpired. Upon arrival, he learned for the first time that a black colleague, Mr Maimane, had been dismissed. In the heated debate that followed, Qomoyi said in a raised voice, referring to Mr Meyer: “you are a racist, stop being a racist you are firing black people.” He was subsequently suspended and dismissed for “displaying racist behaviour.” Both the CCMA and the Labour Court upheld the dismissal.²

THE BESTER TEST

The LAC applied the test formulated by the Labour Appeal Court and approved by the Constitutional Court in *Rustenburg Platinum Mine v SAEWA obo Bester*, namely whether a reasonable, objective, and informed person, on the correct facts, would perceive the words as racist or derogatory.³ The Court found that neither the CCMA commissioner nor the Labour Court had properly applied that test. The LAC also rejected the approach in *SA Chemical Workers Union v NCP Chlorchem*, which suggested that mere accusations of racism imply racist conduct, holding that this approach is inconsistent with the *Bester* test.⁴

OUTCOME

The LAC upheld the appeal, set aside the Labour Court’s order, and held that Qomoyi’s dismissal was substantively unfair. Namaqua Wines was ordered to reinstate him retrospectively from the date of his dismissal. No order as to costs was made.

By **Pierre van der Merwe** (Partner),
Lindelwa Magwaza (Associate), and
Christiaan Krog (Candidate Attorney)

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CONCLUSION

This judgment reinforces that workplace allegations of racism must be assessed in context, with due regard to the surrounding facts and the power dynamics between the parties. An employee who raises a genuine concern about racist conduct does not, without more, engage in racist behaviour. Employers should not treat the mere use of the word “racist” as misconduct without considering the circumstances in which the statement was made.

Please note: this article is for general public information and use. It is not to be considered or construed as legal advice. Each matter must be dealt with on a case-by-case basis and you should consult an attorney before taking any action contemplated herein.

¹ *Commercial Stevedoring Agricultural Allied Workers Unions obo Qomoyi v Commission for Conciliation, Mediation and Arbitration and Others* ZALAC 15 2026.

² *Commercial Stevedoring Agricultural Allied Workers Unions obo Qomoyi v Commission for Conciliation, Mediation and Arbitration and Others* ZALAC 15 2026 para 9.

³ [2018] 8 BLLR 735 (CC) para 38.

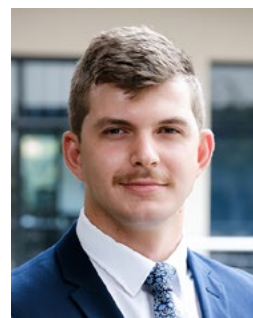
⁴ (2007) 28 ILJ 1308 (LC) para 21.



Pierre van der Merwe
(Partner)



Lindelwa Magwaza
(Associate)



Christiaan Krog
(Candidate Attorney)