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FALSE ACCUSATIONS OF RACISM

It is by now well established that an employer may be held liable for acts of discrimination committed by its owner, managers or employees in the course and within the scope of their duties. In terms of the Employment Equity Act there is also an obligation on employees to report instances of discrimination to the employer to allow it to take the necessary corrective measures. Workplace discrimination can take many forms, but racism and sexual harassment are the two that occurs most frequently.

It is difficult for an employer to take the necessary steps if victims do not come forward or if there is insufficient evidence to prove the allegations. If the allegations cannot be proved, the alleged harasser will get the benefit of the doubt and no further action will follow against either the alleged harasser or the victim.

Sometimes, however, the allegation of discrimination is not simply incapable of being proved, but actually turns out to be false and motivated by, e.g. spite, vindictiveness and the like. Can the employer then institute action against the complainant?

The Labour Court has now held in SACWU v NCP Chlorchem that a false allegation of racism may lead to dismissal. In this case, the employee, an African man, was dismissed for calling his white supervisor a racist. The allegation was rooted in the employee's unhappiness at having been performance counselled.

The court held that while employees should be encouraged to bring instances of racism to the fore so that they can be dealt with, if they accuse others of being racist without justification or reasonable cause, disciplinary action against them will be justified. In most instances, said the court, unfounded allegations of racism will justify dismissal.

The court added that racial harmony in the workplace must be of paramount importance to each and every employer and employee alike. However, just as racist behaviour needs to be rooted out, allowing employees to willy-nilly accuse fellow employees of being a racist or displaying racist attitudes, must be addressed with equal fervour by employers if such allegations are baseless and made without reasonable cause therefore. Such allegations are equally destructive to racial harmony in the workplace. The court upheld the employee's dismissal.