



Anastasia Vatalidis

# Namibian ruling may influence SA labour broking

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A RECENT landmark ruling handed down by the Namibian Supreme Court, finding a total ban on labour broking unconstitutional, might have a far-reaching effect on the industry in SA, a labour law expert said yesterday.

Anastasia Vatalidis, a director in the employment law department at Werksmans, said: "The importance of the Namibian Supreme Court decision cannot be overlooked, as a similar ban on labour broking in SA could be subject to a similar challenge in the courts, given that the constitution similarly protects the right to carry on a trade or business."

Vatalidis said provided the legislators had regard to the ruling, it was unlikely SA would see an outright ban on labour broking.

Last year the government started the process of drafting new laws to govern the activities of labour brokers.

Labour Minister Membathisi Mdladlana initially called for an outright ban on the industry. Public hearings on labour broking were held before Parliament's labour portfolio committee.

With more than 6 000 recruitment centres nationwide, the industry had experienced increasing growth over the past decade. Valued at R26bn, it employs about 500 000 people annually.

Vatalidis said it was still in the air as to whether the proposed legislative changes would be aimed at enforcing tighter control of the industry or whether they would go so far as to ban labour broking outright.

In Namibia, the same debate on labour broking took place, resulting in an outright ban and making it a criminal offence.

Shortly after this ban, Africa Personnel Services, a labour broker operating in Namibia, challenged the criminalisation of labour broking. The matter ultimately came before the Namibian Supreme Court.

Legislators contended that labour broking was akin to slavery and oppression, and could be compared to the "running of a brothel". It further argued that labour broking was an "evil industry" and discriminatory.

The appeal court ruled that labour broking was an acceptable business practice, but one that warranted regulation.

If the South African government were to ban labour broking, the courts would be faced with similar arguments to those in Namibia on the legitimacy of the business, Vatalidis said.

If the South African legislature took note of the Namibian appeal court's findings, it would be able to redirect its energies to eliminating abuse and unsavoury practices by way of improved regulation rather than an outright ban, she said.

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