

Keynote address: Annual Labour Law & Compliance Summit: 7 May

2026. Theme: Celebrating 30 Years of the Constitution: Advancing

Labour Law Reform, workplace Justice, and Institutional

Accountability in South Africa. Delivered by Dr Judge Graham

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1. Introduction

Madam Programme Director; distinguished guests; and Ladies and Gentlemen, greetings to you all. It is truly a privilege and a singular honour to stand before you and address you on this auspicious second instalment of the Annual Labour Law & Compliance Summit. This is a paramount gathering happening under the theme: *Celebrating 30 years of the Constitution advancing Labour Law Reform, workplace Justice, and Institutional Accountability in South Africa.*

The theme is carefully pruned and symbiotically loaded with needful crucial aspects; namely; (a) Labour Law Reform; (b) Workplace justice; (c) Institutional Accountability. This is thematic par excellence. It is par to the course. It is tantalising for the attendees of this propitious Annual Summit.

Labour law reform remains a needful aspect for economic advancement. Workplace justice is the biggest cog in the democratisation of the workplace machine. Institutional Accountability is not only a buzzword, but another crucial cog in the machine of economic advancement. A distinguished author and a winner of the Nobel prize, Josephe Stiglitz in his book, *The Road to Freedom, Economics and the Good Society* aptly stated the following:

“Consider what will happen without rules delineating which side of the road to drive on. Some will drive on the left, others on the right. There will be chaos and gridlock, as can happen in a

developing country where economic growth has outpaced the development of the necessary regulatory framework¹

Ladies and gentlemen; Labour Law forms an integral part of South Africa's constitutional and regulatory framework. It gives effect to section 23 of the Constitution and reflects a legislative and judicial commitment to regulating the inherently unequal relationship between employer and employee in a manner that promotes and enhances dignity, equality, and fairness.

Recent jurisprudence confirms that, notwithstanding changing patterns of work and economic pressures, Labour Law remains anchored in constitutional principles. The Courts and other dispute resolution bodies have continued to approach labour disputes with attentiveness to context, while preserving the protective purpose of labour legislations.

¹ Chapter 4 page 70.

Ladies and gentlemen, in the course of this momentous summit, delegates will be examining Labour Law as a constitutional project. Just to buttress this point, it is important to briefly reflect on one ground breaking judgment of *MISA and Another v Great South Autobody CC as well as Solidarity obo Strydom and others v SITA*. There, the Court considered the legal consequences of an employer permitting employees to continue working beyond an agreed retirement age. The Court held that a subsequent termination, based on age, may fall within the scope of automatically unfair dismissal within the contemplation of s 187(1)(f) of the LRA.

Ladies and gentlemen this judgment underscores a consistent principle that contractual autonomy does not displace constitutional protection. Where continued employment is permitted, termination decisions must withstand constitutional and statutory scrutiny. Although, the decision of the apex court is a disunited one, in all the separate judgments, the reasoning

reflects an insistence on substance over form, and fairness over convenience. Substance and fairness are the very key ingredients of economic advancement and workplace democratisation.

Ladies and gentlemen, we cannot recoil from the fact that we are now in the paradigm shift of the world of work. The imminent Labour Law amendments seek to advance this quintessential clarion call. The changing organisation of work has presented new challenges concerning classification, accountability, and jurisdiction. In the past, Courts were required to address these issues without undermining the essential purpose of labour legislations. The enduring enquiry remains whether the worker is placed in a position of economic vulnerability warranting protection. Ladies and gentlemen, without any shilly-shallying, I do state that a kaleidoscopic approach is clearly warranted.

These challenges, raise a question of the evolving role of trade unions in advancing workers' rights and shaping the future of work. In the 1960s, John F Kennedy said the following:

“Our labour unions are not narrow, self-seeking groups. They have raised wages, shortened hours, and provided supplemental benefits. Through collective bargaining and grievance procedures, they brought justice and democracy to the shop floor.”

Ladies and gentlemen, we are all aware of the gig economy and non-standardised type of work. These types of work are gradually gaining recognition and are accorded the necessary traction they deserve. With the imminent Labour Law amendments, trade unions will be authorised to organise workers in these new space of work. This perspicuously calls for innovation and evolution in the valuable work of trade unions

in South Africa. Labour rights of the workers in that space require protection considering their obvious vulnerability.

Ladies and gentlemen and distinguished guests, whilst at it we cannot turn a blind eye on ensuring whistle-blowers' protection, taking into account the new era of accountability in the workplace. Our democracy is predicated on the unshakeable principles of accountability and openness. Employers have a constitutional duty to afford absolute protection to whistleblowers. In interpreting the current legislation seeking to protect whistleblowers, courts must be resolute in ensuring that the legislation is interpreted purposively; contextually; and within the prism of the Constitution.

Certainly, Ladies and gentlemen, I believe that you will agree with me that South African employees deserve to be treated with dignity and are entitled to decent work and decent living

wages. The disabled are the most vulnerable class of the South African workforce. Our Constitution protects everyone's dignity. Dignity is an innate right of every human being. The Employment Equity Act is the most progressive and transformative piece of legislation. South African Courts are alive to the importance of these types of legislation. Recently, the High Court of South Africa refused to interdict the implementation of employment equity targets in the case of *NEASA and another v Minister of Labour*.

Ladies and gentlemen, collective bargaining is the backbone of the South African workplace. It is a constitutionally guaranteed right in South Africa. In many countries, government is the biggest employer. The public sector is undoubtedly a labour-intensive sector. One of the principles enshrined in section 195 of the Constitution is a high standard of professional ethics that must not only be promoted but must be maintained. Owing to that constitutional principle, Labour disputes in the public

sector must be managed efficiently and quickly. It is an antithesis of efficiency to observe a deluge of public sector employees being placed on precautionary suspensions for years without any effective and efficient disciplinary steps being taken. According to the latest statistics there are more than 670 employees in the national and provincial government who are on suspension and costing the public purse almost R800 million annually. The majority of such suspensions are over the 90 day period. Section 1(d)(iv) of the LRA states that the purpose of the LRA is to promote the effective resolution of labour disputes.

Ladies and gentlemen, section 195(1)(f) of the Constitution is unapologetic. It states that public administration must be accountable. Accountability and professionalism in the public sector are inextricably intertwined and are joined to the hip. Public sector employees have, as a constitutional duty, the obligation to respond to the needs of the people of South

Africa; be accountable; foster transparency; provide the public with timely, accessible, and accurate information. The concept of *Batho Pele* must be accelerated by all accounts as it remains pivotal to the constitutional project.

Ladies and gentlemen, we cannot ignore the role played by the mechanism of alternative dispute resolution (ADR) in the Labour law sphere. Bodies like the CCMA and Bargaining Councils continue to play a pivotal role in the constitutional project of the right to fair labour practice. It was with great melancholy to learn about the callous slaying of a legal representative who was *en route* to facilitate the constitutional project of the right to fair labour practices. May her beautiful soul continue to rest in eternal peace. There is a need to re-image the Alternative Dispute Resolution mechanism. In light of what happened to the innocent legal representative, there are growing and clarion calls to consider accelerating the use of virtual hearings as opposed to physical hearings. However, re-

imaging may call for consideration of innovative means of ensuring that ADR is invigorated given its pivotal role in the constitutional project.

Ladies and gentlemen gone are those days when trade unions are seen as the enemy of the employer. Both the trade union and the employer must collaborate to ensure workplace governance. Additionally, trade unions must exhibit impeccable and ethical leadership traits. As JF Kennedy aptly puts it in the 1960s, labour unions provide supplemental benefits in the workplace. Thus, ethical leadership is key. Of course, an employer must create an environment at the workplace which must enable collaboration and protection of worker rights.

Harry Bridges, a trade union leader once said:

“Labour cannot stand still; it must not retreat. It must go on or go under. The most important word in the language of the working class is solidarity.”

In a constitutional state like South Africa, employers must accept the pivotal role played by trade unions. President Theodore Roosevelt once said:

“No man can be good citizen unless he has a wage more than sufficient to cover the bare cost of living and hours of labour short enough so that after his day’s work is done he will have time and energy to bear his share in the management of the community, to help in carrying the general load.”

Courts, particularly the Labour Courts play a pivotal role in ensuring compliance with labour legislation as well as the constitutional duties of both employers and employees.

Compliance, in the labour-law context, is too often misunderstood as a narrow, technical obligation. In truth, it is a constitutional discipline, a manifestation of the rule of law and an indispensable condition for decent work, fair labour

practices, and sustainable enterprise. The Labour Courts, for their part, are not mere dispute-resolution forums. They are constitutional custodians charged with giving practical meaning to section 23 of the Constitution and ensuring that power in the workplace is exercised lawfully, reasonably and with dignity. In their work, the authors of the book: *The role of the Labour Court in the transformative age: The Namibian and South African Context*² stated that:

“The place of Labour Courts in a democratic society can be best understood by revisiting the social and economic inequalities, labour unrest, discrimination and deplorable living and working conditions experienced by employees during the colonial period.”

Ladies and gentlemen, distinguished guests allow me to say although there is still a lot of work to be done in order to

² By Marvin Awarab and Graham Moshona first published 2024 by Juta and Company.

achieve the constitutional project of the right to fair labour practice, the future of Labour Law in South Africa looks sunny and mouth-watering, when this type of summits are held and attended annually.

Thank you for having borrowed me your ears, figuratively and not literally, as God blessed me with a set of working ears.

Enjoy the summit.