COSTLY ARBITRATION CLAUSES

Category: Commercial Law
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AB Company and Bob conclude a settlement Agreement ("**the Agreement**") and his employment relationship with AB Company terminates. The Agreement includes an arbitration clause which provides as follows:

"Any controversy / claim arising in terms of this Agreement shall be resolved in terms of binding arbitration by a sole arbitrator in Durban in terms of the Labour Relations Act."

Should any disputes arise in connection with the Agreement, the parties would be bound in terms of the Agreement to settle the dispute by way of arbitration. The CCMA would however in this instance above not have jurisdiction in the matter as it deals with disputes relating to unfair dismissal and in this case, as there was a mutual termination of the employment relationship.

The parties would therefore be required to enter into another Agreement consenting to the jurisdiction of a specific dispute resolution forum. In the event that the aggrieved party initiating the arbitration proceedings fails to obtain the consent from the other party to the Agreement, he would need to make an application for a declaratory order allocating jurisdiction to a specific dispute settlement forum to adjudicate the matter.

This does not only lead to unnecessary delays in getting the matter resolved but is also costly as the aggrieved party will therefore bear the costs of bringing the application in court for the allocation of jurisdiction.

Clear arbitration clauses should be incorporated in Agreements where parties wish to resolve matters arising thereof by way of arbitration rather than through the court system. Such a clause should for instance state the arbitration body to adjudicate the matter, the rules in terms of which the matter will be adjudicated, the place at which it should be held, manner in which the arbitration proceedings are to be conducted, the appointment of arbitrators, the times frames etc.

A badly drafted arbitration clause in any Agreement can prove fatal. It creates unnecessary costs and delays which could have been avoided by simply incorporating a clear and precise arbitration clause in the Agreement which protects the interests of the parties to the Agreement.