



Recent case law with OHS implications – key considerations

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Overview and key cases for discussion

LEGAL INTERPRETATION
DEPENDS ON DEVELOPMENT
THROUGH THE COURTS

- RELEVANCY AND REFLECTIVE
OF THE NEEDS OF SOCIETY
- CERTAINTY WHERE
DIFFERENT INTERPRETATIONS
MAY EXIST

Introduction

- Moving away from perceived reticence to have Courts intervene in matters of occupational health and safety
- **Positive implications** of this – reciprocal accountability, relevance and certainty
- **Development of the law** on aspects that Statutes alone cannot be expected to cater for.
- 2025:
 - many new sets of regulations (OHSA and MHSA)
 - new mandatory codes of practice (MHSA)
 - proposed new regulations subject to public participation
 - awaiting promulgation of amended legislation (COIDA)
 - proposed amendments to principal legislation and awaiting publication
 - case law developments [**two key judgments for discussion today**]

Case 1: Truworths Limited v Chief Inspector: Occupational Health and Safety (2025)

Background and Parties

Truworths Limited was the **appellant** in this case. The case involved two of Truworths' stores located in a shopping Mall in Emalahleni - the Truworths store and the Identity store.

The Inspections and Contraventions

Truworths Store Inspection: On 9 September 2021, an inspector conducted an inspection of the Truworths store and issued a Contravention Notice along with an inspection report. The notice stipulated that Truworths had failed to comply with section 8(b) of the Facilities Regulations and directed the company to "*Provide seats with back rests at the cash desk*". The inspection report recorded that "*There were no seating facilities provided at the cash desk for opportunity siting*" and directed Truworths to provide seating facilities to permit an employee whose work is performed while standing the ability to sit.

Identity Store Inspection: On 14 October 2021, a different inspector carried out an inspection at the Identity store, resulting in similar findings. They issued a Contravention Notice directing Truworths to "*Permit an employee whose work is normally performed standing to take advantage of any sitting opportunity that may occur and for this purpose, provide seats at the tellers*". The inspection report noted that "*There were no seats at the tellers and during the walkthrough with the manager he explained how they get so tired as there are no chairs to take advantage of seating if opportunity occurs*".

Case 1: Truworths Limited v Chief Inspector: Occupational Health and Safety (2025)

Truworths' Position and Appeals

Truworths was dissatisfied with the Notices and noted written appeals to the chief inspector on 16 September 2021 and 14 October 2021 respectively. In their appeals, **Truworths disputed non-compliance** with section 8(b) of the Facilities Regulations, arguing that *"It is not practicable to have seats behind the cash desks, not only because staff are not able to properly serve customers from a seated position, but to have chairs behind the desk will cause an obstruction to staff being able to move freely behind or in/out of the cash desk area"*. Truworths further stated: *"We do provide seating facilities elsewhere in the workplace for staff to use **and can therefore can show compliance with the subsection**"*.

Chief Inspector's Decision

On 20 October 2021, the (then) chief inspector **refused both appeals**, giving the following reasons: *"The employer has not provided that it is reasonably practicable, in terms of the definition in the Occupational Health and Safety Act, act 85 of 1993, as amended, for seating facilities not to be provided for employees working at the cash desk; and The risk assessment provided by the employer does not assess the hazard of the cash desk employee having to stand for periods of their shift"*.

Inspector Certification Issue

A crucial issue emerged during the appeal process when Truworths called for the respondents to produce the certificates issued to the inspectors under section 28(2) of OHSA. The respondents **were unable to produce such certificates, despite undertaking to do so in their heads of argument**. Instead, the respondents produced identity cards of the inspectors, which reflected that they were appointed as inspectors in terms of section 63(1) of the BCEA, not as designated inspectors under section 28(2) of OHSA.

Case 2: Andrew Matthys v Minister of Defence and Military Veterans (2025)

Background and Parties

Andrew Matthys was a military employee who brought an urgent application against the Minister of Defence and Military Veterans. The case concerned an order for Matthys and his co-employees to relocate their office to a dangerous, fire-damaged building.

The Relocation Order

On 3 February 2025, Matthys received a verbal instruction that their office would be relocated to the “Bester Building”, in Pretoria. The building had **no basic human amenities** such as electricity, water and sanitation (there are **no functional toilets in the building**) and was described as “a dilapidated building similar to buildings in a war-torn zone”. The building had not been used since 2013 and was severely damaged by fire.

As recent as 3 February 2025, a report was received about the building which concluded “*All hazards identified in this report and displayed in photos are regarded as non-compliance with the Occupational Health and Safety Act, 58 of 1993*” and “...[the auditor] hereby recommends that all the above-listed hazards that may pose a risk to the occupants **must be attended to before occupants can occupy the building**”. To the day of the hearing, nothing had been done to restore the building and make it compliant with the OHSA. From the photos attached to Matthys' founding affidavit, the building was not by any world standards suitable for human habitation.

Constitutional Rights Claims

Matthys contended that occupation of the building in its current state would violate his and his co-workers' **constitutional rights to human dignity, right to life, privacy, and a healthy working environment that is not harmful to human health and well-being**, as enshrined in the Constitution of the Republic of South Africa Act 108 of 1996.

Inspector Certification Requirements - Truworths

Critical Development:

The Labour Court established that inspections carried out without proper OHSA section 28(2) certificates are "*invalid and unauthorised*" creating a fundamental compliance requirement for OHSA enforcement.

Practical Impact:

Employers may justifiably decline inspector access if no certificate can be produced.

Identity cards showing appointment under other legislation (such as BCEA section 63(1)) are not valid OHSA certificates.

This creates a significant procedural defence for employers facing OHSA enforcement

"Wide Appeals" Under Section 35(3) - Truworths

New Precedent:

Appeals under section 35(3) of OHSA are "**wide appeals**" allowing **complete re-hearing with or without additional evidence**

Significance:

Appellants are entitled to raise any issue as part of the appeal, and may even introduce new grounds and new evidence

This provides enhanced protection for employers and significantly broadens appeal rights

First judgment to clarify the scope of section 35(3) appeals

Constitutional Rights Integration - Matthys v Minister of Defence

Emerging Trend:

The High Court recognised that OHSA violations can constitute breaches of constitutional rights to human dignity, right to life, privacy, and a healthy working environment

Significance:

The court specifically referenced "non-compliance with the Occupational Health and Safety Act" as creating health hazards

The court emphasised that no reasonable authority should allow personnel to occupy premises that are "non-compliant with the Occupational Health and Safety Act"

This creates a constitutional dimension to OHSA enforcement

[Note: this is also then precedent for OHSA compliance being a business and human rights issue. ESG compliance and statement of ESG protection made by companies must then also consider health and safety compliance]

Urgent Relief for OHSA Violations - Matthys

New Development:

The court held that "applications involving deprivations of human life, human liberties, threats to human health and well-being" in the context of workplace safety "*in all probabilities enjoys urgency*"

Practical Impact:

Courts may grant interim interdicts preventing employees from being required to work in OHSA non-compliant premises

This establishes urgent relief as available for serious OHSA violations

Burden of Proof Clarification - Truworths

Important Correction:

The Chief Inspector erroneously required the appellant to prove it was not reasonably practicable to provide seating at cash desks, when the **burden should be on inspectors to show non-compliance**.

Significance:

This clarifies that the burden remains on inspectors to establish contraventions, not on employers to prove compliance.

Underscores the principle of “he who alleges must prove” and “innocent until proven guilty”. It is not acceptable for the burden of proof to be reversed in health and safety matters

TRUWORTHS V CHIEF INSPECTOR OHS

Cost Considerations in OHSA Appeals - Truworths

Precedent:

The court exercised discretion not to award costs, noting this was the first appeal under section 35(3) of OHSA, the **novel issues deserved court attention**, and **costs should not be readily awarded against functionaries fulfilling their tasks**

Impact: This suggests courts may be reluctant to award costs in novel OHSA appeals, encouraging proper judicial oversight.

TRUWORTHS V CHIEF INSPECTOR OHS

Summary of key points from these two cases

These developments represent significant advances in OHSa jurisprudence:

- **Procedural Protections:** Enhanced inspector certification requirements and broad appeal rights
- **Substantive Standards:** Clarified "reasonably practicable" test and burden of proof
- **Constitutional Integration:** Recognition of constitutional dimensions to workplace safety
- **Urgent Relief:** Availability of interim protection for serious safety violations
- **Cost Considerations:** Judicial reluctance to penalise novel legal challenges

Both judgments demonstrate increased judicial scrutiny of OHSa enforcement and enhanced protection for affected parties, while maintaining the importance of workplace safety compliance.



Questions



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