

Subject code – CSS:6

KULULA.COM, South Africa – A Case Study

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The world is still fascinated by South Africa's transition to democracy; what with stories of massacre (Sharpeville, etc) of those who dared challenge white supremacy and the battle for prominence between the African National Congress (ANC) and the Inkatha Freedom Party (IFP). Since gaining independence and becoming a democratic republic, South Africa has attracted investors from far and wide. South African based companies have also extended their presence to other African countries. While so much can be said to have transformed, not many people believe that the transformation process has been global within the broader South African community. Now and again, one reads and or listens to news stories that report about some form of disgruntlement and or entitlement attitude from whites and blacks respectively. In some quarters, you may hear stories that suggest that the white community has not completely gotten over their resentment of a black leadership. In some other quarters, you are likely to hear the blacks insist that the South African land space belongs to them and as a result they should be the ones in charge of the distribution of wealth. And one must understand that much of the wealth of the South African land still resides with the Whites.

In what is considered as a very fair attempt to integrate all the citizens of the republic, the new government of Nelson Mandela came up with a constitution that is hailed as perhaps the best constitution in the world. This constitution, carved out of the United Nations Human Rights Charter proposes a free society that recognizes all its inhabitants regardless of the colour of their skin and other appurtenances. The constitution reserves protection for all manners of legitimate players. Within the world of work, the constitution identifies seven very important statutes that not only give effect to and sustain the republic's membership of the International Labour Organisation (ILO), but also help to realize and regulate the fundamental rights of workers and employers. Essentially, these statutes recognize the following provisions of the constitution of the Republic of South Africa:

- Everyone has the right to fair labour practices
- Freedom of association
- Safe working conditions
- Remuneration due
- Enforcement of statutory rights

These statutes and some of their implications include:

Legislation	Purpose	Implication for HR / Organisation
Employment Equity Act (EEA) (55 of 1998)	<ul style="list-style-type: none">- Promotion of equal opportunity & fair treatment in employment through the elimination of unfair practice/discrimination- Implement Affirmative Action	<ul style="list-style-type: none">- Ensure that discrimination against employees (women, disabled, etc, etc) do not take place- Create employee structures at all job levels so that employee composition

	<p>(AA) measures to redress the disadvantages in employment experienced by designated groups</p> <ul style="list-style-type: none"> - Eliminate disparities in income, employment and occupation <p><i>It is not unfair discrimination to distinguish, exclude or prefer any person on the basis of an inherent requirement of the job</i></p>	<p>reflects SA's diversity</p> <ul style="list-style-type: none"> - Establish a culture that is conducive to employment equity - HR Direct Practice: Recruitment & Selection, Training & Development, Performance Management, Compensation Management, Staffing
Basic Conditions of Employment Act (BCEA) (75 of 1997)	<ul style="list-style-type: none"> - Advance economic development & social justice by establishing & enforcing basic conditions of employment 	<ul style="list-style-type: none"> - It is an offence on the part of the employer to ignore the minimum conditions stipulated in the Act and other Acts
Labour Relations Act (LRA) (66 of 1995)	<ul style="list-style-type: none"> - Give effect to the fundamental rights of all South Africans, as conferred by the Bill of Rights - To promote collective bargaining and collective agreements - To promote worker participation as well as dispute resolution 	<ul style="list-style-type: none"> - Advance economic development, social justice, labour peace and workplace democratisation - Establish the distinctions between an employee and an independent contractor
Occupational Health and Safety Act (OHSA) (85 of 1993)	<ul style="list-style-type: none"> - No party can agree that work will be conducted in unsafe conditions. 	<ul style="list-style-type: none"> - An employer's duty to provide a safe working environment that is without risk to the health of employees - All employees responsibility to maintain the good health of all equipment and keep working environment in safe and healthy states
Skills Development Act (SDA) (97 of 1998)	<ul style="list-style-type: none"> - Develop the skills of the South African workforce - Increase the levels of investment in education & training in the labour market - The Act provides a framework for the to devise and implement 	<ul style="list-style-type: none"> - Training must be seen as critical vehicle to economic development of persons and communities - Training must be seen as a vehicle for acquiring a sustainable competitive advantage - Through humans, an organisation can

	national, sector, and workplace strategies to develop and improve the skills of the SA workforce	secure immense reputation as an investor in people, an innovator and a creative adaptor to customer needs
Compensation for Occupational Injuries and Diseases Act (130 Of 1993)	<ul style="list-style-type: none"> - Compensation of employees who are injured in accidents which occur during their normal course of employment. - Employees are compensated irrespective of whether the injury is sustained through their own fault or not 	<ul style="list-style-type: none"> - Constant monitoring of work environment by employer to ensure that the condition remains safe and healthy - Registration with the compensation commissioner - Constant liaison with Dept of Labour in terms of reporting accidents within 7days and diseases with 14. - Claims to be lodged within 12months of death, accident or injury occurring
Unemployment Insurance (UI) Act (63 of 2001)	<ul style="list-style-type: none"> - Provides payments to unemployed who previously contributed to the fund - 	<ul style="list-style-type: none"> - Mandatory for employer and employee to contribute to the UI Fund - No cover for those employed for less than 24hrs per month - Register employees for UI - Voluntary retirees do not benefit

Thus, it was with profound confusion that most South Africans related to a story that broke in the media about a local airline.

Kulula.com (the South African based airline) was reportedly fined ZAR900K for defiling government's labour laws. Their offence was their lack of identification with Employment Equity Act (EEA) and Affirmative Action (AA) principles. It was essentially alleged that because 'blacks can't swim', *Kulula.com* could not hire them. This statement raised serious debates in all quarters – black and pale.

Com Air, operator of *Kulula.com* lines had since said the claims were 'blatantly false and defamatory.'

Xolani Gwala, news anchor and radio presenter with SAFM called for discussions on this on 19 November 2007. Some callers felt Xolani was too quick in asking for public opinion on an issue that was supposedly being processed by the relevant authorities. Others felt it was high time issues such as these were brought to public notice. A particular caller in fact asked if anything was wrong with having to refuse employment on the basis that someone did not possess the right qualifications. This particular

submission brought about serious venomous contributions. Another caller particularly asked 'if a company refuses to hire me because I am unable to drive, shouldn't it be a responsibility of theirs to see that I am able to drive?'

But the critical issue given Xolani's presentation was: should we not begin to consider certain qualifications (AA, EEO, requisite [ability] unnecessary in South Africa's new dispensation?

Given the above background, consider the following among yourselves:

- 1) Should *Kulula* not hire only those they consider qualified to work for them?
- 2) Should the inability to swim be seriously considered as a factor in the case of an airline hiring policy? Shouldn't refusal to hire/employ be based on operational requirements?
- 3) Is *Kulula's* action not an indication of an outright racial discrimination?
- 4) Against the background of the Labour Relations Act (1995), should companies ignore requisite credentials simply because they have to conform to governments laws? (the idea of lip service)
- 5) How serious is the ability to swim a major consideration in the airline industry?
- 6) Loosely argue: was it too soon for Xolani to rush to a discussion given that the matter was still being processed by the Labour Court?
- 7) If a firm hires those who do not qualify for a position, what costs might they incur?