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CASES / VONNISSE

THE REVOLUTION OF OUR UNDERSTANDING OF DOMESTIC WORK: THE CONSTITUTIONAL CASE OF

Mahlangu v Minister of Labour [2020] ZACC 24

1 Introduction

This case note studies the effects of the case of *Mahlangu v Minister of Labour* ([2020] ZACC 24) (*Mahlangu*) on domestic work. It argues that the historical and colonial understanding of domestic work is premised on slavery and servitude, and so the understanding of domestic work is one that for centuries has rendered Black women who perform this work invisible. This case note shows how the *Mahlangu* judgment has revolutionised our understanding of domestic work. It further argues that the exclusion of domestic work from the Compensation for Occupational Injuries and Diseases Act (130 of 1993) (COIDA) overlooked domestic work as a type of employment worthy of compensation. The *Mahlangu* judgment has effected changes to COIDA, allowing for the definition of "employee" to include domestic workers. Lastly, the case note shows that this inclusion is a step forward in regulating domestic work effectively as a form of legitimate employment and further humanising women who make up the large majority of those that do this work.

In the *Mahlangu* case, the Constitutional Court set out to look at the legality of the exclusion of domestic workers in the definition of "employee" in section 1 of COIDA. COIDA explicitly excluded domestic workers in its definition section and as a result, domestic workers were excluded from the social benefits flowing from it (COIDA s 1(xviii)(v) and s 22). In its judgment, the Constitutional Court held that the exclusion of domestic workers from the definition section was unconstitutional (*Mahlangu supra* par 131). It further held that domestic workers were entitled to social security as afforded by COIDA and thus should be included in the definition of "employee" in section 1 of COIDA as their work is crucial to their wellbeing (*Mahlangu supra* par 128).

This case note investigates the impact that the *Mahlangu* judgment has had in revolutionising our understanding of domestic work. It does so by setting out the historical understanding of domestic work. The aim of this historical understanding is to counteract our understanding of domestic work before the *Mahlangu* judgment and to demonstrate its impact in humanising domestic workers. It then lays out the facts of the case and the judgment

held by the court in the matter. This case note then lays out the purpose of COIDA and its effectiveness in protecting employees who get injured, contract diseases or even die during the course of their employment.

After setting out the historical understanding of domestic work, the case note looks at the importance of regulating domestic work, also taking into account the slave mentality associated with it. It argues that regulation of domestic work is in line with the international legal frameworks to which South Africa is party. Furthermore, it guarantees domestic workers social security and gives them better social standing. Lastly, the case note examines the introduction of COIDA to the regulatory framework and studies the impact of the *Mahlangu* judgment on COIDA and the livelihoods of domestic workers.

2 Historical understanding of domestic work

Colonialism has played a significant role in how we understand women in society. Colonial rule over women's bodies can be traced to the seventeenth century when African women were used as moles for the Caribbean (Soomer "The Manipulation of the Production and Reproduction of African Women in the Caribbean during Slavery" 2000 63 *Nigro History Bulletin* 1 6). This system of slavery was driven by capitalism and white patriarchal rule (Soomer 2000 *Nigro History Bulletin* 1 6), and reduced African woman to mere property whose sole existence was production for the white capitalist system (Soomer 2000 *Nigro History Bulletin* 1 6). Their exploitation was not limited to being property of capitalist society, but later, their reproductive labour would also be exploited (Soomer 2000 *Nigro History Bulletin* 3). The perception was that African women were strong and they would continue to labour despite pregnancy (Soomer 2000 *Nigro History Bulletin* 3).

The transatlantic slave trade had a great effect on the African diaspora (Manning "Contours of Slavery and Social Change in Africa" 1983 88 *The American History Review* 835 857); it devastatingly disrupted the African structure (Manning 1983 *The American History Review* 835 857). More women, especially in West African countries, were taken as domestic workers as their labour was understood to be more valuable than that of men (Manning 1983 *The American History Review* 841). The existence of domestic work had been prevalent until the industrial revolutions of the 1870s and 1880s (Gaitzkell, Kimble, Maconachie and Unterhalter "Class, Race and Gender: Domestic Workers in South Africa" 1983 27 *Review of African Political Economy* 86 108). Domestic work was institutionalised in South Africa by the Dutch settlement in 1652 (Jansen "Enslaved Women at the Cape: The First Domestic Workers" in Jansen (ed) *Like Family: Domestic Workers in South African History and Literature* (2019) 19). Such institutionalisation took the form of slavery in South Africa for the benefit of the Dutch East India Company (Vereenigde Oost-Indische Compagnie, or VOC). The Dutch settlement in the Cape saw the first enslavement of South Africans through the notion of domestic work (Jansen in Jansen (ed) *Like Family* 22).

The current nature of domestic work still resembles slavery. Initially, slaves were brought in for what was termed "hard labour" (Jansen in Jansen (ed) *Like Family* 31) – to wash, iron, cook, polish floors, carry water and

fetch food for their masters (Jansen in Jansen (ed) *Like Family* 22). Slaves were tasked with staying up at night until their master was asleep. This is similar to current conditions that we still witness in domestic work (for a discussion, see Muller "The Impact of Slavery on the Economic Development of South Africa" 1982 5 *Journal of Cape History* 1 24).

The experience of Black women with their work has been viewed as a triple oppression (Gaitzkell *et al* 1983 *Review of African Political Economy* 86) – based on being Black, women and poor (Gaitzkell *et al* 1983 *Review of African Political Economy* 86). This is also not foreign to other women doing domestic work but most domestic work is done by Black women (Gaitzkell *et al* 1983 *Review of African Political Economy* 86). The work also has a class character because the nature of the work makes women invisible, isolated and dependent on their employers, and they have very little labour protection and limited trade union organisation (Gaitzkell *et al* 1983 *Review of African Political Economy* 87).

Domestic work in South Africa is associated with the idea that it is work that comes naturally to women based on their gender (Gaitzkell *et al* 1983 *Review of African Political Economy* 88). Despite the work also being done by men, women are more associated with domestic work because the nature of the work is said to be house-like and attributed to marriage tasks (Gaitzkell *et al* 1983 *Review of African Political Economy* 88). Especially in South Africa, most of this work is done by Black women; Black women are serving White households (Gaitzkell *et al* 1983 *Review of African Political Economy* 88). The apartheid system, based on oppression, kept these women in an even more vulnerable position because of its exploitative nature, low wages and a lack of political organisation (Gaitzkell *et al* 1983 *Review of African Political Economy* 93).

The understanding of women's labour was confirmed in South Africa through much colonial legislation (Gaitzkell *et al* 1983 *Review of African Political Economy* 93; Johnson *Women on the Frontline* (1992) 21 33). Colonial rule shifted our understanding of African women's role in the African context, relegating her to a subhuman status below a man (Lues "The History of Professional African Women: A South African Perspective" 2005 4 *Interdisciplinary Journal* 103 123). Colonial rule further disrupted the African family unit, in that live-in domestic workers would devote most of their time to caring for their employer's homes (Maqubela "Mothering the 'Other': The Sacrificial Nature of Paid Domestic Work Within Black Families in the Post-Apartheid South Africa" 2016 14 *Gender and Behaviour* 7214 7224).

More than this, live-in domestic workers were not allowed to have intimate relations in their workplaces (Maqubela 2016 *Gender and Behaviour* 7215); they would be arrested when caught with their partners in their dwellings (Maqubela 2016 *Gender and Behaviour* 7215). This in turn disrupted family structures and life (Maqubela 2016 *Gender and Behaviour* 7215). Those domestic workers who could go home after every workday, were unable to spend sufficient time with their families as the hours they worked were long and they spent much of their time travelling (Maqubela 2016 *Gender and Behaviour* 7217 7218). The nature of domestic work points to its exploitative nature. Women involved in this line of work are not in control of their time and are also constrained in pursuing other livelihoods outside their work (Maqubela 2016 *Gender and Behaviour* 7219).

African women have over centuries been oppressed economically and socially (Lues 2005 *Interdisciplinary Journal* 103); based on their gender, they have been subjugated to their male counterparts (Lues 2005 *Interdisciplinary Journal* 104). They "naturally" occupied the position of caring for the home, which was the position they were automatically assigned in society (Lues 2005 *Interdisciplinary Journal* 104). Women who find themselves in the domestic work sector are usually Black women and, in most instances, they are household heads and earn less than their male counterparts (Lues 2005 *Interdisciplinary Journal* 104).

3 Facts of the case

The case concerns Ms Mahlangu who was employed as a domestic worker for 20 years in Pretoria (*Mahlangu supra* par 7). On 31 March 2012, in the course of her employment, Ms Mahlangu unfortunately drowned in a pool as she could not swim (*Mahlangu supra* par 7). After the incident, Ms Mahlangu's daughter, who was dependent on her mother, approached the Department of Labour, requesting compensation for her mother's death (*Mahlangu supra* par 8). She was however denied compensation and relief under COIDA on the basis that domestic workers do not fall under the definition of an "employee" in COIDA (*Mahlangu supra* par 8).

Ms Mahlangu's daughter, assisted by the South African Domestic Service and Allied Workers Union (SADSAWU), went to the High Court to have paragraph (v) of the "employee" definition in section 1 declared unconstitutional (*Mahlangu supra* par 6). The Commission for Gender Equality and the Women's Legal Centre Trust were admitted as *amici curiae* in the case (*Mahlangu supra* par 9). In 2019, the High Court in Pretoria held that paragraph (v) of the "employee" definition in section 1 of COIDA was unconstitutional (*Mahlangu supra* par 9). It did so on the basis that the section excluded domestic workers from its definition of "employee" (*Mahlangu supra* par 10).

The matter was referred in accordance with section 167(5) of the Constitution of the Republic of South Africa, 1996 (Constitution) to the Constitutional Court for the final decision on whether the provision was in fact unconstitutional. The Constitutional Court confirmed that paragraph (v) of the "employee" definition in section 1 of COIDA was unconstitutional. Most importantly, the court ruled that the order of constitutional invalidity has retrospective effect from 27 April 1994 (Socio-Economic Rights Institute "Constitutional Court Affirms the Rights of Domestic Workers" (19 November 2020) https://seri-sa.org/index.php/latest-news/1072-press-statement-constitutional-court-affirms-the-rights-of-domestic-workers (accessed 2022-01-28)). Domestic workers and their dependants were then given until November 2021 – a year after the judgment – to lodge any claims arising from 27 April 1994 (Socio-Economic Rights Institute https://seri-sa.org/index.php/latest-news/1072-press-statement-constitutional-court-affirms-the-rights-of-domestic-workers).

This ruling is of significance because not only are domestic workers and their dependants able to claim in terms of COIDA, but all domestic workers and their dependants with claims dating back to 27 April 1994 could now claim under COIDA (Matafa "Domestic Workers Need More Time to Lodge

Compensation Claims, Say Unions" (24 May 2021) https://www.groundup.org.za/article/domestic-workers-need-more-time-lodge-compensation-claims-say-unions/ (accessed 2022-01-28)). Civil society organisations have however raised concerns over the Department of Labour's failure to make domestic workers or their dependants aware that they were now able to claim under COIDA (Matafa https://www.groundup.org.za/article/domestic-workers-need-more-time-lodge-compensation-claims-say-unions/). This is because they were only given a year to do so and they could no longer claim once the time had lapsed (Matafa https://www.groundup.org.za/article/domestic-workers-need-more-time-lodge-compensation-claims-say-unions/).

The significance of the judgment was further reiterated by the words of Pinky Mashiane who is the president of the United Domestic Workers of South Africa (UDWSA). After the judgment, Pinky lamented:

> "I knew it from the start that the exclusion of domestic workers from COIDA was unconstitutional, that is why I persisted with this case and never lost hope. This is justice which has been denied domestic workers for years. It was long overdue. Now domestic workers who have been bitten by dogs, hurt themselves from falling from step ladders, and all workers who have been injured can claim for Compensation as far back as 27 April 1994. We at United Domestic Workers of South Africa are looking forward to engaging the Department of Employment and Labour about the next steps." (Matafa https://www.groundup.org.za/article/domestic-workers-need-more-time-lodge-compensation-claims-say-unions/)

This statement made by the president of the UDWSA is important for the humanisation of domestic workers, for recognising their work as employees and for moving away from the colonial gaze that treated housework as unpaid work – private work performed by women free of remuneration (Tamale *Decolonizing Family Law: The Case of Uganda Decolonisation and Afro Feminism* (2020) 285).

4 The relevance of COIDA and social security for domestic workers

In the following section, this case note studies the importance of COIDA. It does so against a backdrop of the underregulation of domestic work in South Africa. This section starts by laying out an understanding of COIDA with reference to the right to social security envisaged in the Constitution. It further lays out the dangers to which domestic workers are subjected in the course of their work and justifies their need for social security. Last, this section looks at why social security is important for domestic workers given the nature of their work and how their inclusion in the COIDA definition has revolutionised the manner in which we understand work insofar as domestic work is concerned.

5 Understanding COIDA

COIDA came into effect on 1 March 1994 (the Compensation for Occupational Injuries and Diseases Act (130 of 1993) (COIDA). It was enacted after the repeal of the Workmen's Compensation Act (30 of 1941). COIDA was enacted to give social security to workers who may be injured or

who lose their lives in the execution of their employment duties (Preamble of COIDA). The incapacity to work as a result of injury or disease is classified as the inability to work and earn income and thus falls under social security (Myburgh, Smit and Van der Nest "Social Security Aspects of Accident Compensation: COIDA and RAF as Examples" 2000 *4 Law, Democracy and Development* 43). The aim of COIDA was to provide social security for those who were no longer able to work owing to accidents or diseases (Myburgh *et al* 2000 *Law, Democracy and Development* 43). In the context of COIDA's exclusion of domestic workers, it is important to note the accidents that could also occur and the diseases that domestic workers could also contract in their employment. This is important because, as in the *Mahlangu* case, domestic workers spend a lot of their time at their places of work, but because these places are not necessarily their homes, they may not be familiar with all the utilities of these homes – an example being Ms Mahlangu drowning at work because she could not swim.

Under COIDA, the element of fault in common law is not considered in assessing claims by workers; instead liability is claimed from the insurance coverage (Myburgh 2000 *Law, Democracy and Development* 44). In harmonising COIDA to the Constitution, the court in *Jooste v Score Supermarket Trading (Pty) Ltd* ((1998) BCLR 1 106 (CC)) held that the prohibition against claiming from the employer (as in s 35 of COIDA) was not an infringement of the employee's rights, as COIDA was enacted as social legislation that would regulate relations between employer and employee, disposing of the need for employees to prove the fault requirement when claiming from COIDA (*Jooste v Score Supermarket Trading (Pty) Ltd* (*supra*)).

COIDA operates by workers contributing a portion of their salary to the compensation fund, the administration of which is the director-general's responsibility. Workers who can claim from the fund are workers who are defined as employees according to the Act's definition section. Employees who work from outside South Africa cannot claim from the scheme. However, they could claim if they incurred injuries while performing work in South Africa. The same applies to employees who perform work in South Africa but get temporary employment outside the country (s 23 of COIDA). In terms of the "employee" definition, COIDA (in contrast with the previous Act) does not exclude workers whose earnings exceed a certain amount of income, or who are homeowners. This is in accordance with article 1 of the International Labour Organization's Home Work Convention (C177 (1996) Adopted: 20/06/1996; EIF: 22/04/2000), which defines home work and stipulates that basic rights extend to everyone involved in home work. Article 7 further stipulates that this definition of home work will be extended to all the domestic laws of the countries party to the Convention.

Despite all attempts made by COIDA to include a broad spectrum of workers, prior to the *Mahlangu* judgment workers remained excluded from the definition of employees in the definitions section of the Act. This was despite their inclusion in the Basic Conditions of Employment Act (75 of 1997) and the Labour Relations Act (66 of 1995). COIDA has for years gotten away with discrimination against domestic workers (discussed below) on the basis of their gender and race. This conclusion is primarily because domestic workers are mostly Black women.

The introduction of COIDA has served an important role in protecting workers from injuries, diseases and death in the course of their employment (Myburgh *et al* 2000 *Law, Democracy & Development* 44). The Act further holds employers liable for the injuries that employees incur during the course of their employment (Myburgh *et al* 2000 *Law, Democracy & Development* 44). This is because the employee conducts economic activities for their employer (Myburgh *et al* 2000 *Law, Democracy & Development* 44). COIDA provides for benefits to be paid to employees who suffer temporary disablement, employees who are permanently disabled, and dependants of employees who die as a result of injuries sustained in accidents at work or as a result of an occupational disease (Preamble of COIDA). The Act specifies the occupational disablements that it covers (Schedule 3 of COIDA). However, it also provides for the possibility of proof that the disease was contracted at the place of employment should the disease not be in the list (Ch 7 of COIDA).

6 Importance of social security for domestic workers

The social security system that is often known as the welfare system flows from the international documents that seek to guarantee that each individual shall enjoy a certain minimum standard of living (this is in accordance with article 25(1) of the Universal Declaration of Human Rights and its subsequent documents). The idea of social security systems developed in Germany and over time spread to every part of the world (Van der Berg "South African Social Security Under Apartheid and Beyond" 1997 14 *Development Southern Africa* 482). The aim of the social security system was to provide social security protection for the industrial workforce and later for the entire population (Van der Berg 1997 *Development Southern Africa* 482). Different from the European social security system, the South African apartheid government introduced social security to protect White people from unwanted contingencies (Van der Berg 1997 *Development Southern Africa* 482).

It is argued that the exclusion of Black people from social security, more specifically the Black industrial workforce, was because the work that was done by Black people in apartheid South Africa was not considered as labour (Olivier "Critical Issues in South African Social Security: The Need for Creating a Social Security Paradigm for the Excluded and the Marginalized" 1999 2199 *Industrial Law Journal* 2203). As a result, with the introduction of occupational social security, the vast majority of Black workers who worked jobs such as farm work and domestic work were excluded from those employees who could claim social benefits (Olivier 1999 *Industrial Law Journal* 2203). These exclusions were not only archaic, but they were also laced with gender and race discrimination as the majority of people who worked as farm workers and domestic workers were Black women (Olivier 1999 *Industrial Law Journal* 2203).

As South Africa ushered in democracy in 1996, social security was expanded to all its citizens. Section 27(1)(*c*) of the Constitution states that everyone has the right to have access to:

> "social security, including, if they are unable to support themselves and their dependants, appropriate social assistance."

Section 27(2) provides that

> "[t]he state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights."

Social security has further evolved as it encompasses insurance for occupational diseases and injuries and social assistance (Van der Berg 1997 *Development Southern Africa* 485).

Social security is especially important in South Africa in balancing the scales between the races, given its apartheid history. For the longest period of time, White South Africans benefitted greatly from the economy while Black South Africans lived in abject poverty. Social security was then introduced as a means to assist in alleviating poverty (Woolard "The Evolution and Impact of Social Security in South Africa" (unpublished paper (2010)). South Africa has among the highest unemployment rates (the official unemployment rate was 34,9 per cent in the third quarter of 2021 according to Stats SA ("Quarterly Labour Force Survey (QLFS) – Q3:2021" (30 November 2021) https://www.statssa.gov.za/publications/P0211/Presentation%20QLFS%20Q3_2021.pdf (accessed 2024-02-06). With very limited employment opportunities and an ailing economy, it is difficult even for those employed to guarantee a lifetime of income (Business Tech "South Africa Jobs Bloodbath: Unemployment Rate Hits New Record" (30 November 2021) https://businesstech.co.za/news/business/542704/south-africa-jobs-bloodbath-unemployment-rate-hits-new-record/ (accessed 2022-02-01)). This shows the importance of COIDA in protecting those employed in the event that they contract diseases or are injured at work.

The role of social security in South Africa is wider than the alleviation of poverty (Kaseke "The Role of Social Security in South Africa" 2010 53 *International Social Work* 164). It is also important in the ascertainment of justice. This is so because South Africa remains one of the most unequal societies in the world (Kaseke 2010 *International Social Work* 164). In light of this divide, employees' risks are not minimised in the course of their employment; even with COIDA, there remains no reintegration system to integrate employees back into the system in case of diseases and injuries (Kaseke 2010 *International Social Work* 164). The limitations for domestic workers are even greater – despite their inclusion in COIDA. As previously discussed, a large number of these employees will remain left out because of the limited time they had to launch claims for their injuries and diseases, as mandated by the *Mahlangu* judgment.

7 Regulating domestic work in South Africa

The regulation of domestic work is important for a number of reasons. To begin with, regulating domestic work is important because it is an occupation that remains scarcely regulated despite its ever-present nature (Neetha "Regulating Domestic Work" 2008 43 *Economic and Political Weekly* 26 28). Secondly, domestic work is performed mostly by women and there is very

little legislation that regulates the nature of this work (Neetha 2008 *Economic and Political Weekly* 26 28). This is important to note because domestic workers usually work under employers who are likely to exploit their labour as they mostly come from disadvantaged backgrounds (Neetha 2008 *Economic and Political Weekly* 26 28). These women with the diverse nature in domestic work then need protection from this diversity (Neetha 2008 *Economic and Political Weekly* 28). Despite its ubiquitous nature, governments in different parts of the world including South Africa have failed to regulate domestic work. The case note below studies the importance of the regulation of domestic workers and how the amendment of COIDA is essential for this purpose.

Regulating domestic work in South Africa remains an important task because the recognition of domestic work as paid labour ought also to afford domestic workers social protection. Social protection refers to protecting workers economically, socially or in any other way from any risks (Smith and Mpedi "Decent Work and Domestic Workers in South Africa" 2011 27 *International Journal on Comparative Labour Law and Industrial Relations* 315 334). To effect social protection, different measures must be put in place. These measures can be public, using legislation to better protect domestic workers (Smith and Mpedi 2011 *International Journal on Comparative Labour Law and Industrial Relations* 315 334). With this understanding, the International Labour Organization (ILO) has since identified the importance of the promotion of decent work and for work to comply with all international standards regulating work. The ILO's Domestic Workers Convention (C189 (2011) Adopted: 16/06/2011) recognises that domestic workers need protection and that national institutions must be built and protected, and effective legislation and policy that would best protect domestic workers must be implemented.

Domestic work remains fundamental to most families in South Africa (Chen "Recognizing Domestic Workers, Regulating Domestic Work: Conceptual, Measurement, and Regulatory Challenges" 2011 23 *Canadian Journal of Women and the Law* 167 184). Domestic workers keep families afloat by performing tasks such as cleaning, cooking and laundry for pay (Chen 2011 *Canadian Journal of Women and the Law* 167 184). Yet, most domestic work performed by women is informal and falls outside the regulatory frameworks of work (Chen 2011 *Canadian Journal of Women and the Law* 167 184). This is because of the intimate nature of domestic work; domestic workers work very closely with families and most of their work is associated with their gender. It has since been difficult to completely regard this work as formal work (Chen 2011 *Canadian Journal of Women and the Law* 170). Heterogeneity in most instances has also been recognised as a contributing factor in the lack of formalisation of domestic work (Chen 2011 *Canadian Journal of Women and the Law* 172). In some instances, it is hard to ascertain the nature of the employment or even the employer of the domestic worker (Chen 2011 *Canadian Journal of Women and the Law* 172).

Domestic work was important for African women during the apartheid rule. The economy segregated Black women and these women were not able to perform skilled labour (Gaitzkell *et al* 1983 *Review of African Political Economy* 100). Domestic work thus allowed them some sort of an entrance

into the country's economy (Gaitzkell *et al* 1983 *Review of African Political Economy* 101).

The definitional exclusion can also be found elsewhere in different parts of the world. In America, domestic workers were excluded from the definition of "employee" in their National Labor Relations Act of 1935 and the Social Security Act of 1935 (Nilliasca "Some Women's Work: Domestic Work, Class, Race, Heteropatriarchy, and the Limits of Legal Reform" 2011 377 *Michigan Journal of Race & Law* 380). This is quite similar to South Africa as the exclusion of domestic workers was accompanied by that of agricultural workers, just as in South Africa. These exclusions excluded domestic workers from the market and denied them recognition as workers in matters that are important for market regulation (Nilliasca 2011 *Michigan Journal of Race & Law* 380).

The transition towards democracy brought some change to the regulation of paid domestic work. The Constitution as supreme law of the country was enacted in 1996 and provides for rights for all workers in South Africa, inclusive of domestic workers (s 23 of the Constitution). The Labour Relations Act (66 of 1995) also recognises the rights of domestic workers. The Basic Conditions of Employment Act (75 of 1997) further regulated domestic work, prescribing rights for domestic workers.

8 Conclusion

Domestic workers as employees have for centuries been excluded from the benefits of economic activities. This is so because, owing to slavery and colonialism, domestic work was not recognised as formal employment. As such, it was crucial for legislation to be enacted to protect domestic workers' rights. Despite the Labour Relations Act and the Basic Conditions of Employment Act, domestic workers enjoyed no insurance should they be injured or lose their lives in the course of their employment. This was so until the judgment in the *Mahlangu* case.

This case note has set out the importance of recognising domestic work and of including domestic workers in COIDA's definition of "employee" for purposes of insurance. It has set out the history of domestic work and how it has served to exclude these workers from the benefits of the country's economy, perpetuating their subjugation further. COIDA has been analysed to understand why it excludes domestic workers from the definition section of employees. Last, the case note maps out the importance of social security, especially for workers. It shows how the retrospective inclusion of domestic workers is set to revolutionise our historical understanding of domestic workers and their work.

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