MAKHULUBOY DUBE
versus
ZVIMBA RURAL DISTRICT COUNCIL
and
MINISTER OF LOCAL GOVERNMENT
AND PUBLIC WORKS

HIGH COURT OF ZIMBABWE
TAKUVA J
HARARE; 26 November 2024 and 8 April 2025

Opposed Application for A Declarator

T Nyamucherera, for the Applicant
N Mandevere and J Mandevere, for the 1st Respondent
No appearance from the 2nd Respondent

TAKUVA J: This is an opposed application for a declarator aimed at determining the Applicant's entitlement to a proper grade classification relating to his work position as an internal auditor.

FACTUAL BACKGROUND

Applicant's case

The Applicant, employed by the first Respondent since 2007, claims he progressed from accounts clerk to internal auditor in 2017. He argues his position should be classified as Grade 10, as internal auditors were previously classified as such under SI 144 of 2007, although SI 87/2017 is silent on the matter. Despite repeated requests, the first Respondent has not upgraded his position, instead placing him in a Grade 9 role, contrary to the Collective Bargaining Agreement and a 2018 resolution to place him in Grade 10. The Applicant alleges an attempt by the first Respondent to terminate his employment in December 2021 and claims the first and second Respondents have neglected to address the grading issue, leaving him without legal protection. He seeks a court order to confirm his right to be upgraded to Grade 10.

Point *in limine*

The Applicant contends that the first Respondent has no *locus standi* as he did not attach a resolution authorizing him to represent the council in this matter.

The first point *in limine* explains that when a corporate entity is involved in litigation, the person swearing to an affidavit on its behalf must establish two things: that the company is involved in the case, and that they have the authority to represent the company. To prove this, the person must attach a resolution from the company's directors, which demonstrates that the company is aware of the legal proceedings and has authorized them, and that the individual has been granted the necessary authority to act on its behalf.

In *First Mutual Investment (Pvt) Ltd* v *Roussaland Enterprises (Pvt) Ltd and Ors* HH 301/17 at pg.3, the court noted the following:

> "A company, as a legal person, has no mouth through which it articulates its intentions. It has no ears with which to hear. It has no sense of sight or smell. It has no mind of its own. It speaks to no one except through directors, not individually but collectively, through resolutions which they pass when they are assembled in one room for the purpose of transacting the business of the company."

A person who represents a legal entity, when challenged, must show that he is duly authorized to represent the entity. He cannot claim being authorized by the company to represent it by virtue of the position he holds in the company. This position was emphasized in *Madzivire* v *Zvarivadza & Another* 2006 (1) ZLR 514 (S) at pg. 515 where it was stated that:

> "It is clear from the above that a company, being a separate legal person from its directors, cannot be represented in a legal suit by a person who has not been authorised to do so. This is a well-established legal principle, which the courts cannot ignore. It does not depend on the pleadings by either party. The fact that the first appellant is the managing director of the fourth appellant does not clothe him with the authority to sue on behalf of the company in the absence of any resolution authorising him to do so."

In my view, a deponent cannot approach the court to represent a legal entity in a matter without due authorization. However, in some cases, all the court is required to do is to satisfy itself that enough evidence has been placed before it to show that it is indeed the company which is litigating and not an unauthorized person. In *casu*, the Applicant has not produced any tangible evidence as to why he alleges that the deponent has no authority. For this reason, I would dismiss the first point *in limine.*

First Respondent's case

The first Respondent acknowledges the Applicant's position as internal auditor, classified as Grade 9, and argues that this aligns with the position offered and accepted by the

Applicant. It dismisses the Applicant's documents as irrelevant, claiming they pertain to Urban Local Authorities, not Rural Local Authorities. The first Respondent states that the Applicant failed to meet the required experience for an upgrade and had been found guilty of serious offenses, though resolved through a settlement. It contends that under SI 27/2017, the Applicant's position remains Grade 9, as there are no managerial classifications. The first Respondent also highlights the Applicant's union membership as evidence of his non-managerial status.

Regarding a new position, the first Respondent created an Internal Audit Manager role (Grade 10) after a 2021 review. The Applicant was offered this position but declined it twice, making it impossible for him to be appointed. The first Respondent rejects the Applicant's claim of industry standards for a Grade 10 role, stating the position is new and requires interviews. Additionally, it explains that a prior resolution for the Applicant's upgrade was not implemented due to legal conflicts. The first Respondent argues that the Applicant's claim is meritless and should be dismissed with costs.

Points *in limine*

Lack of jurisdiction

The first Respondent argues that the court lacks jurisdiction to hear the case, asserting that the matter is strictly a labour dispute that falls within the purview of the Labour Court. They maintain that the applicant should have pursued the issue of his grade upgrade in terms of the Labour Act [*Chapter 28:01*]. According to the first Respondent, the applicant should have approached a labour officer to determine whether the upgrade from Grade 9 to Grade 10 was warranted, rather than bypassing the proper procedures. To support the claim that this is a labour matter, the first Respondent points to the parties' reference to the Collective Bargaining Agreement, which is designed to set employment rules over a defined period.

In *Stanley Nhari* v *Robert Gabriel Mugabe & Ors* SC 161/20 it was held that the High Court does not have jurisdiction to deal with labour matters. Reference is given to paragraph 47 of the judgment which reads as follows;

` "On a careful interpretation of the Constitution, it is clear that the High Court does not, in fact, have unlimited jurisdiction over all civil and criminal cases in Zimbabwe. The general jurisdiction of the High Court is restricted by the very Constitution itself which has created specialised courts to handle specific areas of the law. The High Court has no jurisdiction to determine unfair labour practices which, in terms of the Labour Act, should more properly be handled by labour officers appointed in terms of that Act."

In *casu*, the applicant is claiming that he is unlawfully being deprived of an upgrade from Grade 9 to Grade 10. With reference to para 42 of the *Nhari* judgment, the procedure for dealing with an unfair labour practice is to be found in s 93 (5) of the Labour Act. Paragraph 42 provides:

> "The procedure for dealing with an unfair labour practice is to be found in s 93 of the Labour Act. The unfair labour practice is handled by a labour officer who attempts conciliation. The officer may, by consent of the parties, refer the matter to arbitration or that failing, proceed in terms of s 93 (5) of the Labour Act."

The case of *Chingombe & Anor* v *City of Harare & Ors* SC 177-20 pg. 6 puts to rest this issue, and is more relevant to the matter before this Court. In the *Chingombe* case, the Supreme Court made it clear that;

> "The High Court has no jurisdiction to issue a declarator in respect of issues of labour and employment. The Supreme Court recognized that the Labour Court is not only a creature of statute, namely, the Labour Act. The Constitution in the broader sense provides for the Labour Court as a specialized court exclusively tasked with dealing with labour matters. Therefore, where the essence of the dispute is one where the Labour Court has jurisdiction, then it would be improper to approach the High Court for a declarator in such a matter." [my emphasis].

At the heart of the dispute between the parties lies the issue of whether the High Court—now vested with original jurisdiction over all civil and criminal matters in Zimbabwe under s171 of the 2013 Constitution—also has jurisdiction to hear all matters, including those related to labour and employment. Upon careful consideration of the relevant legal provisions and applicable case law, I am satisfied that the High Court's jurisdiction is not unlimited. Specifically, in matters concerning labour and employment law, the High Court does not have the authority to adjudicate such issues as a court of first instance. The first point *in limine* is therefore upheld.

No cause of action

The Applicant bases his argument for an upgrade from Grade 9 to Grade 10 on the repealed SI 144 of 2007 which was repealed and replaced by SI 87/2017 which is silent on the grading of an internal auditor. The court cannot, in its discretion, grant an order based on a repealed law as it would now be considered non-existent and giving an order in terms of it would be illegal and the order would be regarded as *null* and *void.*

In *Andrew Ranganai Chigovera* v *Minister of Energy and Power Development* SC 609/19 pg. 5, it was stated as follows.

> "It is clear to me that as of 1 June 2018 when SI 44A was repealed, the section complained of ceased to be of legal validity. Thus, as at 3 September 2018 when applicant filed this application he was seeking to have a nullity (sic) declared *ultra vires* the enabling Act. There was virtually nothing for this court to declare as *ultra vires* the enabling Act. In as far as the fulcrum of the applicant's application was for an order declaring s 3 of SI 44A of 2013 *ultra vires* the Electricity Act and thus null and void I am of the view that such an application was improper as that SI had already been repealed by the time applicant filed this application." [my emphasis].

Consequently, the applicant cannot find a cause of action on the non-existent enactment nor, thereafter, seek a declarator against it. This court therefore declines to exercise its discretion in favour of the Applicant on the basis that the impugned section ceased to exist in 2017 when SI 87/2017 came into force. This point *in limine* is therefore upheld.

Disposition

The court has no jurisdiction to deal with labour matters which should be referred to the Labour Court as a court of first instance. Secondly, the applicant cannot properly seek a declarator against a repealed enactment. He can seek such a declarator against the continuing effects arising from the rights or obligations accrued or acquired or imposed by the disannulled enactment. He cannot do so by predicating such relief on a defective cause of action for the disannulment of a repealed enactment. A right or obligation accrues under s 17 (1) (c) of the Interpretation Act accrues only when the beneficiary takes active steps to assert the right or obligation before the repeal of the Act and is preserved if the repealing Act does not in context oust the provisions of s 17 (1) (c) of the Interpretation Act. The applicant therefore failed to discharge the onus, on a balance of probabilities, of his entitlement to the declarator that he is seeking.

Accordingly, it is ordered that:

1. The application be and is hereby dismissed.
2. Applicant to pay costs on the ordinary scale.

TAKUVA J .....

Lawman, applicant's legal practitioners
Kadzere, Hungwe and Mandevere, first respondent's legal practitioners