

RESERVE BANK OF ZIMBABWE
versus
PRIVILEGE MATURURE

HIGH COURT OF ZIMBABWE
MATHONSI J
HARARE, 20 March 2014 and 2 April 2014

Civil trial

T.H. Chitapi, for the plaintiff
L.Uriri, for the defendant

MATHONSI J: The defendant was employed by the plaintiff as a driver attached to the advisor to the governor. He was issued with a Toyota Vigo motor vehicle registration number ABD7870 belonging to the employer for use in the discharge of his duties. He was retrenched from employment in January 2011 in terms of an approved retrenchment package which he signed in terms of which he is entitled to be paid a net sum of \$19 312-80.

The plaintiff has sued the defendant seeking an order directing him to return the Toyota Vigo motor vehicle he is holding on to and damages for unlawful use of the said vehicle. The suit is being contested by the defendant who alleges that the vehicle in question is part of his retrenchment package. He initially took a point *in limine* that the dispute involving the motor vehicle is a labour one in which this court has no jurisdiction. Mr *Uriri* for the defendant, abandoned that point *in limine*, correctly in my view, on the basis that it was not well taken given that the plaintiff's cause of action is the action *rei vindicatio*, a purely civil remedy in which this court's jurisdiction has not been ousted by s 89 (6) of the Labour Act [*Cap 28:01*].

The defendant has counter claimed seeking payment of \$19 312-80 being unpaid retrenchment package and delivery of the registration book of the motor vehicle he claims is part of his retrenchment package. The plaintiff objected to the defendant's counter claim on the basis that it is, in essence, a labour dispute which should be determined by the Labour Court enjoying exclusive jurisdiction by virtue of the ouster provision contained in s 89(6) of the Act.

Mr *Chitapi* for the plaintiff submitted that as the defendant's claim is for payment of a retrenchment package which is provided for in s 13(1) (b) and s 13 (2) of the Labour Act

[Cap 28:01], this court's jurisdiction has been ousted by s 89 (6). It is the Labour Court which enjoys exclusively. Mr *Uriri* submitted that this court should exercise jurisdiction because in the counter claim the defendant is seeking to enforce a civil debt. The fact that the debt arose out of an employment relationship is irrelevant. He maintained that the Labour Court has no jurisdiction to hear and determine civil disputes, the disposition of which does not involve the application of employment law expressly provided for by statute.

It was strongly argued on behalf of the defendant that the right of an individual to approach this court seeking relief other than that specifically set out in the Labour Act remains as s 89 (6) does not take away the right for civil relief premised on purely civil law principles.

Section 89 (6) provides;

“No court, other than the Labour Court, shall have jurisdiction in the first instance to hear and determine any application, appeal or matter referred to in subsection (1).”

Section 89 (1) states that:

“The Labour Court shall exercise the following functions:

- (a) hearing and determining applications and appeals in terms of this Act; and
- (b) hearing and determining matters referred to it by the Minister in terms of this Act; and
- (c) referring a dispute to a Labour Officer, designated agent or a person appointed by the Labour Court to conciliate the dispute if the Labour Court considers it expedient to do so;
- (d) appointing an arbitrator from the panel in subs (6) of section ninety-eight to hear and determine an application;
- (d 1) exercise the same powers of review as would be exercisable by the High court in respect of labour matters;
- (e) doing such other things as may be assigned to it in terms of this Act or any other enactment.”

The procedure for retrenchment of employees is provided for in s 12 C of the Act.

Section 13 provides:

“Wages and benefits upon termination of employment

- (1) Subject to this Act or any regulations made in terms of this Act, where any person-
 - (a) is dismissed from employment or his employment is otherwise terminated; or
 - (b) resigns from his employment; or
 - (c) is incapacitated from performing his work; or
 - (d) dies;

he or his estate, as the case may be, shall be entitled to wages and benefits due to him up to the time of such dismissal, termination, resignation, incapacity or death, as the case may be, including benefits in respect of any outstanding vacation and notice period, medical aid, social security and any pension and the employer

concerned shall pay such entitlements to such person or his estate as the case may be, as soon as reasonably practicable after such event, and failure to do so shall constitute an unfair labour practice.

(1a) Wages and benefits payable to any person or to his or her estate in terms of this section shall not form part of or be construed as a retrenchment package which an employee is entitled to where his or her employment has been terminated as a result of retrenchment in terms of s 12 C.

(2) Any employer who without the Minister's permission withholds or unreasonably delays the payment of any wages or benefits owed in terms of subsection (1) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or both such imprisonment."

In his supplementary heads of argument, Mr *Chitapi* conceded that s 13 specifically excludes retrenchment package which is included as an unfair labour practice by virtue of the all embracing s 8 (e) (iv) of the Act, which provides that an employer commits an unfair labour practice if he fails to comply with a determination or direction which is binding upon him in terms of the Act.

It is clear that a retrenchment package is provided for in the Act. It is an entitlement of an employee whose employment is terminated in terms of s 12 C. Where an employer does not pay a retrenchment package or delays making payment, an employee has a remedy including criminal sanction. Indeed failure to pay constitutes an unfair labour practice. There are remedies available for unfair labour practices.

I find myself having to repeat what was stated in *Matongo v Midlands State University* HH174-13 at p4 that:

"This court has, in a number of cases, interpreted that ouster provision to mean that the Labour Court has jurisdiction in all matters where the cause of action and remedy for that are provided for in the Act; *Medical Investments Ltd v Pedzisayi* 2010 (1) ZLR 111 (H) 114 C; *DHL International (Pvt) Ltd v Madzikanda* 2010 (1) ZLR 201 (H) 204A; *Tuso v City of Harare* 2004 (1) ZLR 1 (H); *Moyo v Gwindingwi N.O. & Anor* HB 168/11 at pp 5-6 (now reported in 2011 (2) ZLR 368); *Jambwa v GMB* HH 124/13 at p4; I am in agreement with the postulation of MAKARAU JP (as she then was) in *Medical Investment Ltd v Pedzisayi (supra)* at 114 C that:

'In interpreting these two sections of the Act (i.e. s 89 (1) and s 89 (6)) this court has in the authorities I have cited above, held that the Labour Court has exclusive jurisdiction in all applications and matters that are not only defined but are determinable in terms of the Act. In other words, the Labour court has jurisdiction in all matters where the cause of action and the remedy for that cause of action are all provided for in this Act.'

I have cited the provisions of s 13 of the Act which entitle an employee to wages

and benefits upon termination of the employment contract. In the event of a breach of those provisions the employee has remedies including criminal prosecution, against the employer.”

In *Chiwundo v Zimbabwe National Family Planning Council* HH212/13 at p 5 I made the point:

“To the extent that the applicant was entitled to appeal all the way to the Labour Court, it means that the substance of this application is in essence a labour dispute disguised as an application for a declarator. Section 89 (6) of the Labour Act [*Cap 28:01*] has ousted the jurisdiction of all other courts, in the first instance, to hear and determine any application, appeal or matter falling under the jurisdiction of the Labour Court. The present dispute clearly falls under the ouster provisions as it should be determined by the Labour Court.”

See also *William Bain & Company Holdings (Pvt) Ltd v Nyamukunda* HH 309/13.

In my view, the defendant’s cause of action, being the non-payment of a retrenchment package, is found in the Act. His remedy is also located in that Act. For that reason, the jurisdiction of this court has been ousted by s 89 (6) of the Act. It matters not that the package was agreed between the parties.

In fact it was approved by the relevant authorities namely, the Works Council and the Minister of Public Service, Labour and Social Welfare. This court will still not exercise jurisdiction.

1. The plaintiff’s point *in limine* is hereby upheld.
2. Jurisdiction in respect of the defendant’s counter claim is declined.
3. The matter shall proceed to trial in respect of the plaintiff’s claim.
4. The issue of costs is reserved until the end of trial.

T.H. Chitapi & Associates, plaintiff’s legal practitioners
Messrs Magaya - Mandizvidza, defendant’s legal practitioners