

CHARLES WARIKANDWA  
and  
FREDY USAYI TIGERE  
and  
DAVID E MAKONI  
and  
STEPHEN MAGWAZA  
versus  
LAFARGE CEMENT (PRIVATE) LIMITED

HIGH COURT OF ZIMBABWE  
NDEWERE J  
HARARE, 14 January 2014 and 21 May 2014

Advocate *E.K. Mushore*, for the applicants  
Advocate *L. Uriri*, for the defendant

NDEWERE J: The plaintiffs are former employees of the defendant. Their contracts of employment stated that they would be retired at the age of 65 years but the defendant retired them before they reached 65 years, on 31 August, 2001. The plaintiffs took issue with this development and approached the High Court for a declaratory order declaring their termination null and void.

On 10 July, 2002, their matter was dealt with as an opposed matter by the High Court and the following order was issued:

“It is ordered that:-

1. The termination of the Applicants’ contract of employment be and is hereby declared null and void and the applicants are reinstated to their employment with the respondent without loss of benefits (including salary increments, bonus and leave days.)
2. Should either party wish to terminate the said contract then and in that event they should proceed in terms of the Labour Relations (Retrenchment Regulations). That parties be referred to the Labour Relations Tribunal in terms of the Act to cause the matter to be set down for terminal benefits to be calculated in accordance with the original Pension Regulations to which the applicants are bound.
3. The Respondent is ordered to pay costs of suit.”

It is not clear what happened from the date of the order, 10 July 2002, to 26 April, 2012, when the matter once again surfaced in court, this time at the Labour Court. On 26 April, 2012, the matter appeared at the Labour Court seeking the same declaratory order granted by the High Court on 10 July, 2002. Needless to say, the Labour Court said it had no jurisdiction to issue declaratory orders and that the matter had already been dealt with by the High Court on 10 July, 2002 and was therefore *res judicata*.

After the Labour Court declined jurisdiction on 26 April, 2012, the plaintiffs then issued summons against the defendant in the High Court on 23 October 2012, seeking the following relief;

- a) An order declaring null and void the purported termination of the employment contracts with the respondent
- b) An order that defendant shall pay 5 years salary and benefits (including salary increments, leave days and pensions) for each of the four plaintiffs at current rates *in lieu* of reinstatement.
- c) Costs of suit.

Although stated differently, the above relief is the same relief which the High court granted the plaintiffs on 10 July, 2002.

In its plea the defendant raised jurisdiction and prescription as issues. On the trial date, the parties agreed that the issues of jurisdiction and prescription be argued and determined first before any argument on the merits of the plaintiffs' action. In this regard, defendant's counsel submitted that the matter before the court was a labour dispute and consequently, the High Court had no jurisdiction over the case.

Plaintiffs' counsel submitted that the Labour Court had no jurisdiction to issue declaratory orders; such orders are for the High Court.

What seems to have escaped the minds of the plaintiffs is that the High Court issued a declaratory order on 10 July, 2002. It cannot be expected to continue issuing the same declaratory order over and over again. What plaintiffs ought to have done was to enforce the declaratory order of 10 July, 2002, not to seek a fresh declaratory order.

It is clear from para 2 of the declaratory order of 10 July, 2002 that the mechanism to enforce the declaratory order in para 1 lay in the Labour Act and Regulations. Para 2 of the declaratory Order of 10 July, 2002 is what the plaintiffs should have followed in order to give effect to what was declared in para 1. The reason why para 2 refers to the Labour Relations Tribunal is recognition by the High Court that after issuing a declaratory order in para 1, it

has no jurisdiction to delve into the substantive issues of labour law requirements on pensions and terminations indicated in para 2. That area was the preserve of the Labour Relations Tribunal; now, the Labour Court in terms of the Labour Act, [*Cap* 28:01].

Consequently, I agree with defendant's counsel that the High Court has no jurisdiction to deal with this matter because Plaintiffs' prayer is for an order that defendant shall pay 5 years salary and benefits, including salary increments, leave days and pensions at current rates. Such a prayer is a matter for the Labour Court to determine in terms of s 89 of the Labour Act, [*Cap* 28:01].

In addition the issue of a declaratory order is *res judicata*. The declaratory order which plaintiffs seek in para 1 of their prayer was given on 10 July, 2002; the High Court cannot give a second declaratory order.

There is also merit in the defendant's plea of prescription, the cause of action having arisen about ten years ago. The plaintiffs could not point to any valid interruption of prescription after the date of the declaratory order.

The plaintiffs' claims against the defendant are therefore dismissed with costs.

*Mabulala and Dembure*, plaintiffs' legal practitioners

*Messrs Hussein Ranchod and Company*, defendant's legal practitioners