

COLD STORAGE COMPANY NATIONAL WORKERS COMMITTEE

versus

COLD STORAGE COMPANY LIMITED

HIGH COURT OF ZIMBABWE

KAMOCHA J

BULAWAYO, 5 OCTOBER 2001 & 14 FEBRUARY 2002

Opposed application

N. Mazibuko, for the applicants

A.K. Maguchu, for the respondent

KAMOCHA J: The workers of the Cold Storage Company Limited – “the respondent” – elected a Workers’ Committee in terms of the provisions of s 23 of the Labour Relations Act [*Chapter 28:01*] “the Act”. Their workers committee – hereinafter called “the applicant” – filed this application on an urgent basis and a judge of this court directed that the matter be argued in court as soon as possible. The applicant sought for an order in these terms:

“That it be and is hereby declared that the termination of employment of all the respondent’s employees in terms of the Voluntary Mutual Separation Agreement is illegal and invalid.

All the employees of the respondent whose employment was terminated in terms of the aforesaid Voluntary Mutual Separation Agreement be and are hereby reinstated to their employment with the respondent with immediate effect.

That the aforesaid employees be paid their salary and other benefits by the respondent to which they are entitled until such time they are retrenched in terms of the applicable regulations.

That the respondent pays the costs of suit.”

The respondent raised the question of whether or not the workers committee has the legal capacity to institute these proceedings. The functions of a workers committee are laid down in section 24 of the Act. *Inter alia* a workers’ committee is entitled to represent the employees in any matter affecting their rights and interest. It has power to negotiate with the employer a collective bargaining agreement relating to the terms and conditions of employment of the employees. It can elect some of its members to represent employees on the works council.

Does s 24(1)(a) of the Act enjoin a workers’ committee with the power to litigate in this court on behalf of the employees? The section reads as follows:

“24. Functions of Workers’ Committees

(1) A workers’ committee shall –

(a) subject to this Act, represent the employee concerned in any matter affecting their rights

and interest, and ...”

The legislature did not give the workers’ committee the right to sue and to be sued like it did to the employment council. In s 60 of the Act, employment councils were made bodies corporate, capable of suing and being sued. It seems to me that if the intention of the legislature was to make workers committees legal *personae* it would have said so.

The applicant, however, argued that it derived its authority from the provisions of the Act quoted *supra*. It seems to me that the argument ignores the fact that in the event of the case going in favour of the other party with costs such party would have no one to recover its costs from, as the applicant is not capable of suing and being sued. There would also be no one to execute the order against.

Another issue raised by the respondent before dealing with the merits was whether or not the applicant had approached the right forum. The applicant’s complaint is that the employer i.e the respondent in this case committed an unfair labour practice as defined by s 8 of the Act. The Act provides in s 93 that matters of unfair labour practices be dealt with by a labour relations officer. However, where good cause is shown such a case may be heard by this court. In *Rushwaya vs Enbee Stores (Pvt) Ltd S-79-00* the need for litigants to use the right forum when mounting their claims was stressed. The court held that the appellant, who had argued that she had signed resignation forms under duress, should have taken her matter before the labour relations officer. Her argument was that there was a large backlog of cases in the Labour Relations Tribunal that was why she had instituted proceedings in the High Court. The Supreme Court rejected that explanation, saying it did not justify taking labour disputes to the High Court fearing that such practice would turn the High Court into a labour relations court. *In casu* no attempt was made by the applicant why it chose to launch its application in this court instead of taking the matter to the labour relations officer. Therefore, no good cause has been shown at all why this matter was brought to this court.

Having found that the workers committee lacked authority to sue and be sued and that it brought this matter to this court without any good cause for doing so, I find no need to deal with the merits of the case.

The issue of costs is clearly going to cause problems but it seems to me that the employer could recover its costs from the particular employees who instructed the workers committee to represent them in court.

The order of this court is that the application be and is hereby dismissed with costs.

Calderwood, Bryce Hendrie & Partners, applicant’s legal practitioners
Dube, Manikai & Hwacha, respondent’s legal practitioners