

STEELMAKERS ZIMBABWE (PVT) LTD  
versus  
MICHAEL MANDIVEYI

HIGH COURT OF ZIMBABWE  
MATHONSI J  
HARARE, 20 April and 27 May 2015

### **Opposed Application**

*J. Masango*, for the applicant  
*D. Mwonzora*, for the respondent

MATHONSI J: The respondent was employed by the applicant as a Public Relations Manager on 8 December 2011, and held that position for a period of about 2 years before his employment contract was terminated on 19 February 2014. He could not take the dismissal lying down and has been to the Labour Court seeking redress without success. After the Labour Court turned down his appeal, he sought leave to appeal to the Supreme Court which application is yet to be determined.

Meanwhile, during the tenure of his employment, the respondent had been afforded the use of a company vehicle, a Nissan Hardbody, registration number AAJ 7705, a Lenovo laptop and an office at the company premises at Stand 17030 Calton Road, Graniteside, Harare, all of which are the property of the applicant.

The applicant complains that when the respondent's employment contract was terminated by reason of serious misconduct, he refused to surrender the property in question. The office has remained locked up with the applicant unable to access it for well over a year and the respondent continues to enjoy the use of the vehicle and laptop without authority. The applicant has brought this application on the basis of *rei vindicatio* as owner of the property seeking an order for the return of the property. Alternatively, the applicant would want the respondent to pay US\$17 730-00 being the cost of the property.

The respondent has opposed the application stating in his opposing affidavit that the deponent of the founding affidavit, Alexander Johnson, has not shown that he has authority to bring the application as the company resolution attached to the application instead authorises

one Haresh Dalal to do so. The respondent asserts that he is still entitled to use the vehicle as his employment contract was not lawfully terminated. He is appealing to the Supreme Court against the decision of the Labour Court which upheld his dismissal. As the matter involves a purely labour issue this court has no jurisdiction whatsoever to entertain it. It should have been brought before the Labour Court, where the respondent suffered grief.

In its answering affidavit, the applicant rectified the error relating to the attachment of a wrong company resolution explaining that it had arisen because the applicant had initially been represented by its General Manager, Haresh Dalal when it sought to recover the property by urgent application because Alexander Johnson, the Group General Manager was away at the time. The urgent application was refused and now having proceeded by ordinary application, they switched the documents. A proper resolution has since been filed.

Mr *Mwonzora*, who appeared for the respondent would not relent. He submitted that the application must stand or fall on its founding papers. While that may be true, in my view that cannot possibly defeat the application. Even if no resolution had been attached as opposed to a wrong one, a deponent of the founding affidavit who has stated that he has authority to represent the company, should generally be believed by the court. Where he is challenged to produce proof of such authority by a respondent sceptical of its existence, he would be allowed to do so in the answering affidavit.

The requirement that a company representative should produce the resolution giving authority is to satisfy the court that it is the company that is litigating and not an unauthorised person. Nothing more and nothing less: *African Banking Corporation of Zimbabwe Ltd t/a Banck ABC v PWC Motors (Pvt) Ltd & Ors* HH 123/13; *Kettex Holdings (Pvt) Ltd v Kencor Management Services (Pvt) Ltd* HH 236/15.

Mr *Mwonzora* cannot be allowed to take a forfeit for a mistake in submitting a wrong resolution even when the correct one has now been submitted. This is not a game of chess. In the absence of evidence pointing to the fact that Alexander Johnson is not litigating for the company, the objection raised remains without merit and is accordingly dismissed.

Mr *Mwonzora* also objected to the application on the basis that this court has no jurisdiction over the matter as it is purely a labour dispute in which the Labour Court enjoys exclusive jurisdiction in terms of s 89(6) of the Labour Act [*Chapter 28:01*]. He submitted that all the authorities relied upon by Mr *Masango* for the applicant in asserting the jurisdiction of this court are merely persuasive and not binding on me and should be departed from in favour of a refusal to exercise jurisdiction. He maintained that the test to be applied in

determining whether to decline jurisdiction is whether the matter is one which, if placed before the Labour Court, that court would exercise jurisdiction. If so, then jurisdiction should be declined.

I have had occasion to pronounce on that argument before in the case of *William Bains & Co. Holdings (Pvt) Ltd v Nyamukunda* HH 309/13 where at p 2 of the cyclostyled judgment I stated:

“Regarding the issue of jurisdiction this court has stated on times without number that its jurisdiction has been ousted by the provisions of s 89(6) of the Labour Act [*Chapter 28:01*] only in those matters where the Labour Court is granted specific jurisdiction by s 89(1) of the Act: *Medical Investments Ltd v Pedzisayi* 2010 (1) ZLR 111(H) 114C; *DHL International Ltd v Madzikanda* 2010(1) ZLR 201 (H) 204 B-D; *Moyo v Gwindingwi N.O & Anor* 2011 (2) ZLR 368 (H) 374 A; *P G Industries (Zimbabwe) Ltd v Machawira* 2012(1) ZLR 552 (H) 556B. The Labour Court enjoys exclusivity in all matters where the cause of action and the remedy are all provided for in the Act. Outside that, for instance where the cause of action and the remedy are located in the common law, the ouster provision in the Labour Act has no application and this court will exercise jurisdiction”.

I still stand by that position and Mr *Mwonzora* has not said anything that would persuade me to shift. In fact in *Confederation of Zimbabwe Industries v Mbatha* HH 125/15 I was prepared to take the point further and said that s 171(1)(a) of the new constitution, which came into effect after the introduction of s 89(6) of the Labour Act, has reinstated this court’s jurisdiction on labour matters.

In any event the *rei vindicatio* is not a cause of action whose remedy can be granted in terms of the Labour Act as a stand alone remedy in the absence of a dispute that is specifically provided for under that Act: *Medical Investments Ltd v Pedzisayi*, *supra*, at 114 F-H, 115A.

I will therefore exercise jurisdiction.

Outside those supposedly preliminary points, Mr *Mwonzora* had nothing to say. It is common cause that the property in dispute belongs to the applicant, that it was issued to the respondent by virtue of his employment by the applicant as a Public Relations Manager for use in the discharge of his duties as such and that he has since lost that employment. The respondent has not even attempted to allege any other right over the property outside his employment. He has argued that he is entitled to hold onto the property because his employment contract was not lawfully terminated and that he has appealed to the Supreme Court.

Mr *Masango* submitted that the respondent’s challenge of his dismissal was dismissed by the Labour Court. He has now applied for leave to appeal which has not been granted yet.

The authorities I have cited above make it clear that an employer is entitled to vindicate against a former employee behaving like the respondent because he has no legal basis to hold onto the property of the employer. His desire to appeal has no significance to the issue at hand.

To those cases I should add the remarks of Gowora J (as she then was) in *Zimbabwe Broadcasting Holdings v Gono* 2010(1) ZLR 8 (H) 9 G, 10 A-C that:

“Our law is to the effect that once an employee has been suspended or dismissed from employment, any benefits extended to such employee from that relationship cease. In *Chisipite Schools Trust (Pvt) Ltd v Clark* 1992(2) ZLR 324 (S) Gubbay CJ stated:

‘Pending the removal of the suspension, the respondent was not entitled to the continued enjoyment of the benefits comprising the free occupation of the Headmistress’s house and the continued use of the motor vehicle. A labour relations officer cannot order the respondent to surrender these particular benefits. Consequently, the applicant being unable to resort to self-help approached the High Court for relief. I consider it was justified in doing so’.

I respectfully associate myself with the remarks of the learned Chief Justice. The respondent stands dismissed and a conciliator has ruled in favour of the applicant. The respondent has noted an appeal to the Labour Court, but the noting of the appeal cannot give her the right to retain the property that she had possession of as a result of the contract of employment which is currently terminated. She has to return the property in the absence of a recognisable defence to the claim by the applicant for the return of its property. See *Stanbic Finance Zimbabwe Ltd v Chivhunga* 1999(1) ZLR 262 (H); *Mashave v Standard Bank of SA* 1998(1) ZLR 436(S)”.

The respondent in the present case has no recognisable defence to the applicant’s claim for the return of its property. Perhaps that is the reason why he has based his opposition only on technicalities which however do not favour him either.

Mr *Masango* conceded that the applicant had not proved the alternative claim for damages. It is an issue the applicant may have to pursue outside this application.

In the result, it is ordered that:

1. It be and is hereby declared that the Maroon Nissan Hardbody double cab motor vehicle registration number AAJ 7705, the Lenovo laptop, serial number CBQ 4385 027 and 2 keys for the office of the Public Relations Manager situated at Stand number 17030 Calton Road Graniteside, Harare are owned by the applicant which has all rights to their possession and use.
2. The respondent shall forthwith surrender that property to the applicant.

3. The respondent and any other person acting on his instructions shall not take that property or interfere with the applicant's right of ownership, possession and use of that property.
4. The respondent shall bear the costs of this application on a legal practitioner and client scale.

*I. Murambasvina, Tizirai-Chapwanya, applicant's legal practitioners*  
*Mwonzora & Associates, respondent's legal practitioners*