

ZIMBABWE BANKS AND ALLIED WORKERS UNION
versus
OFFICER COMMANDING POLICE,
HARARE SURBABAN DISTRICT CHIEF SUPRITENDENT CHITEKWE
and
COMMISSIONER GENERAL POLICE
and
MINISTER OF HOME AFFAIRS
and
ECONET WIRELESS ZIMBABWE LIMITED

HIGH COURT OF ZIMBABWE
FOROMA J
HARARE, 23 June 2016

Ruling

F Girach, for the applicant
H Mugadure, for the 1st – 3rd respondents
B Mtetwa, for the 4th respondent

FOROMA J: The applicant a registered trade union in the Banking and Financial Services Sector filed this application in terms of which it urgently was seeking a provisional order effectively for permission to make a demonstration at fourth respondent's premises at No. 2 Old Mutare Road Msasa Harare on the 22, 23 and 24 June 2016. The demonstrations are not intended against Steward Bank Ltd but against Steward Bank Limited's majority shareholder (fourth respondent) in the hope that the fourth respondent can be compelled to influence positively Steward Bank Ltd's treatment of its employees perceived to be subject of unfair treatment by reason of the said employees having been compelled to take a significant reduction of their remuneration. The applicant does not dispute that Steward Bank Ltd employees have consented to the significant salary cut that they (applicant) complain about.

On more than two previous occasions the applicant approached the first respondent seeking its authority to demonstrate against the fourth respondent which authority was declined. After realising that police was not relenting on the issue the applicant resolved to approach the court for the requisite permission even though the applicant's position at the

hearing seemed to have shifted to one where they considered that they did not need anyone's permission to demonstrate.

The fourth respondent sought to be joined to these proceedings and it was joined by consent of all other parties as fourth respondent at the hearing. The joinder of the fourth respondent as an interested party seeking to oppose the applicant's application was therefore granted by consent.

At the hearing of the matter the fourth respondent which had filed a notice of opposition and opposing affidavit raised two preliminary points which I considered needed to be decided upon before considering the merits of the matter. The two points *in limine* were:

1. Authority of the applicant to bring the application on behalf of Steward Bank Ltd employees who were affected by the reduction of their salaries and
2. Whether this matter was urgent to deserved jumping the queue of other litigants awaiting consideration by the court of their cases on the normal roll.

In addressing argument on the issue of authority Ms *Mtewa* appearing for the fourth respondent basically argued (through her heads of argument which she expanded on through her submissions) that the applicant had not shown on its papers (founding affidavit) that the applicant had obtained the authority of the Steward Bank Ltd employees as its members to mount this application on their behalf. In the absence of such authority by Steward Bank Ltd employees there is no mandate on the part of the applicant to purport to represent the said employees' interest so she argued. Ms *Mtewa* further argued that the applicant did not produce its constitution to prove any other basis on which it could claim that it was authorised to bring this application in the absence of express authority by the Steward Bank Ltd employees. She also argued that the applicant is a creature statute (the Labour Act Chapter 28:01) and its activities are regulated in terms of its constitution. The fourth respondent relied heavily on the authority of the case of *National Air Workers Union and Another v Air Zimbabwe Holdings P/L & Others* CA NO SC 14/15 where the court observed-

"Further in terms of s 29 of Labour Act [Chapter 28:01] a registered trade union acts in terms of its constitution. It is the constitution which must make provision regarding person(s) authorised to institute proceedings on its behalf and the manner in which such authority is to be given. Because the constitutions of Trade Unions may differ it is important to refer to the constitution in each case in order to determine whether authority to institute or defend proceedings has been properly granted. The appellants placed no reliance on the constitution nor did they attach a copy thereof to the application."

In casu the applicant did not rely on its constitution for the source of its authority either. Neither did the applicant attach a copy of its constitution for the court to peruse in search of its authority.

Section 35 of the Labour Act provides as follows÷

“The constitution of every registered trade union or employers’ organisation or federation shall in addition to matters referred to in section 28 provide for

(a) Consultation between the various governing bodies or branches of the trade union or employers organisations and members thereof before such trade union or employers’ organisation or federation recommends collective job action.”

It is mandatory to include for this consultation in the trade union’s constitution as can be gleaned from the use of the word shall in the section. The applicant does not aver in its founding affidavit that consultations with its members’ took place before the decision to resort to the proposed collective job action i.e. the demonstration. It is not difficult to understand why the need for this consultation had to be entrenched in the constitution through s 35 of the Labour Act-it was to prevent the trade union going on a frolic of its own yet purporting to champion the interest of its members and yet to the serious detriment of the members. *In casu* the applicant’s members in Steward Bank Ltd in their majority if not all of them took the decision to accept a reduction in salary. It must be assumed that the decision to take a salary cut was seriously and properly considered before being taken and yet despite this applicant without consultation decides to take a collective job action on behalf of these members involving the very same decision. Nowhere in its papers does the applicant indicate that it consulted the members concerned before mounting this application. At best the applicant presumed it had the members’ support in the proposed demonstration.

Ms *Mtewa* submitted that the resolution on p 17 clearly shows that the decision to approach the High Court with this application was that of ZIBAWU National Executive Committee and not that of its members. Mr *Girach* sought to argue that the applicant in seeking to demonstrate is seeking to protect the general membership of the applicant from the consequences of the acceptance by its Steward Bank Ltd membership of a cut in their salaries. Even this does not excuse the mandatory requirement of the need to consult with the various governing bodies or branches and members of the trade union before recommending or adopting a collective job action. Collective job action is defined in the definition Section of the Labour Act as – “Industrial action calculated to persuade or cause a party to an employment relationship to accede to demand related to employment and includes a strike, boycott, lock out, sit in or sit expressed out or other such concerted action”. The proposed

demonstration by its very nature and purpose as perceived by the applicant is a collective job action and it could not be embarked upon by the applicant without consultation with its members.

Having found that the applicant has not established that it had authority members' to institute this application the resolution on p17 of the application cannot therefore be considered as *intra vires*. I accordingly find that the applicant has no *locus standi* to institute or prosecute this application or demonstrate at Econet Wireless Zimbabwe Limited Registered Offices on behalf of its Steward Bank Ltd membership. In view of the finding I have come to on the issue of whether or not the applicant has authority to institute this application it will not be necessary to decide on whether the matter is urgent. There is no proper cause before me.

In the result I order as follows:

1. The application is hereby dismissed with costs.

Tamuka Moyo Associates, applicant's legal practitioners
Civil Division, 1st to 3rd respondent's legal practitioners
Mtewa & Nyambira, 4th respondent's legal practitioners