

ASWEL NYANZARA  
versus  
MBADA DIAMONDS (PRIVATE) LIMITED

HIGH COURT OF ZIMBABWE  
CHITAPI J  
HARARE, 17 November 2015, 13 January 2016

### **Opposed Application**

*Ms B.T. Munjere*, for the applicant  
*A Marara*, for the respondent

CHITAPI J: The applicant is a former employee of the respondent. He was employed in the position of Asset Protection Officer. On 11 November 2014, the applicant was served with a notice to terminate his employment with the respondent. The notice period which the applicant was given was three (3) months effective from 11 November 2014, to be served from home i.e. the applicant was not to report for work but would nonetheless be paid his salary.

In the aforesaid notice to terminate the applicants' employment contract the respondent stated:

“..... the corporate hereby undertakes to pay the notice period and all outstanding payments due to you on a monthly basis spreading over a period of four months through the corporate's payroll until all such is extinguished in full. These payments shall be made subject to such statutory deductions as are applicable. A statement of account denoting how much you are entitled to shall be availed to you by the 30<sup>th</sup> November 2014. Kindly approach the human resources department for your termination clearances and statement of account, and affix your signature to the tear off below to signal your receipt of this letter .....

The letter of notice was delivered upon the applicant who refused to sign the tear off slip. Nothing turns upon the applicant's refusal to sign the tear off slip because the validity of the termination being a unilateral act by the respondent (employer) would not require acceptance by the applicant (employee) through signing the letter. It is sufficient for its validity that the letter was conveyed upon the applicant.

By letter dated 29 November 2014, the respondent wrote to the applicant setting out the amounts which it acknowledged to be owing by it to the applicant. The letter referred to is attached as annexure 'C' to the applicant's founding affidavit and reads in material part as follows:

Re: Statement of account for Aswell Nyanzara EC No. BD 1013

"We refer to the above matter.

Please be advised that Mbada Diamonds acknowledges owing you a total amount of USD\$9 695-02 which was calculated starting from 1 February 2010 being the date of engagement. The detailed breakdown is as follows

<b>Item</b>	<b>Value</b>
1. Gratuity payable	\$1 331-95
2. 90 days of CILL payable	\$3 073-85
3. 0.00 months historic overtime	\$-
4. April & May 2014 overtime @ 1.5	\$-
5. April & May 2014 overtime @ 2.0	\$102-46
6. Back pay for June & July 2014	\$576-00
7. Salary for September, October & November	\$2 305-38
8. 3 months using current work arrangement	\$2 305-38
<b>Grand Total</b>	<b>\$9 695-02</b>

Please note that all the above amounts are gross figures and as such, are subject to applicable statutory deductions. Mbada Diamonds will deduct any loans or amounts advanced to you from the net amount.....

A Zindi (Mr)  
The Human Resources Manager  
For and on behalf of Mbada Diamonds"

As with the letter of termination of employment on notice which the applicant refused to sign, he also did not sign the letter setting out the statement of account. The applicant indicates in his answering affidavit that he did not sign his own copy of Annexure C but signed the one which the respondent retained. He attributes his failure to sign the letter to the fact that he is a layman and thought it unnecessary to sign the copy which he retained and has attached to his application. Although the respondent appears to take issue with the failure by the applicant to sign the statement of account in acknowledgment, it is in my view a matter or omission of no great moment because the authenticity of annexure 'C' is common cause between the parties. I shall advert to analysing its contents later when I consider the jurisdictional issues raised by the respondent.

On 5 May 2015, the applicant filed the present court application whose heading reads ‘COURT APPLICATION FOR PAYMENT OF MONEY’. The application is supported by the applicant’s brief affidavit consisting of 7 paragraphs, the material ones which read as follows:

4. On 11 November 2014, the respondent terminated my contract of employment on notice. A copy of letter of termination of contract of employment is attached hereto marked “B”.
5. On 29 November 2014, the respondent marked out my terminal benefits which amounted to \$9 695-02. A copy of the statement of account from the Human Resources Manager is attached hereto marked ‘C’.
- 6.1. Apart from the \$9 695-02, the respondent owed me the following amounts;
  - (a) Night Allowances - \$1 941-10 Annexure ‘D’
  - (b) Unrefunded portion of the pension fund - \$7 99-20 Annexure “E”
- 6.2. Therefore the total amount of money which I am claiming from the respondent is \$12 435-32 arrived at as follows;

(a) Terminal Benefits as worked out by the respondent	\$9 695-02
(b) Night Allowances	\$1 941-01
(c) Unrefunded portion of the Pension Fund	\$ 799-20
<b>Total Due</b>	<b>\$12 435-32</b>
7. I have not been paid a single cent from these moneys that are due to me despite demand on several occasions. The respondent has simply neglected, failed and/or refused to pay. I am applying for an order granting me the aforesaid sum for purposes of enforcement (own underlining).

WHEREFORE I pray for an order in terms of the Draft

Thus sworn to at Harare this 5<sup>th</sup> day of May, 2015

Signed                      Aswell Nyanzara

Annexures ‘D’ and ‘E’ referred to in para 6.1 (a) and 6.1. (b) of the applicant’s founding affidavit are respectively, a letter whose date is not clear but is headed TERMINAL BENEFITS FOR ASWELL NYANZARA ..... NIGHT ALLOWANCE. Annexure D is

addressed to the respondent and is purportedly written by one E Munongerwa representing NUMQUI SWZ. There is a date stamp embossed National Union of Mines Quarrying Iron and Steel Workers of Zimbabwe. It appears that NUMQUISWZ is the abbreviation for the union. The letter purports to calculate the applicant's; night allowance at \$1 941-00 as the amount due to the applicant by the respondent. Annexure E is a letter whose origins are not clear nor stated except that it is dated 4 March, 2015, is addressed to the respondents Principal Officer, a Mr Kennedy Bingwa and is signed by or on behalf of Alackias Gavure – Administration Manager. The letter is headed Mbada Diamonds Pension Fund: Retirement – Nyanzara Aswell (BD 1013). The author of Annexure E states in the letter that the sum of \$1 834-58 was transferred into the “members” NMB Bank account number 290073502 on 2 March 2015. The payment represents the full commutation due to the member (comprising member and employer contributions together with interest thereon). The writer further states in the letter that the ‘balance retirement capital could not secure the statutory minimum monthly pension currently pegged at \$30-00. The last paragraph of the letter reads as follows:

‘The member has been refunded the ‘funded portion’ of his contributions made up to 30 November 2013. The unfunded portion amounting \$799-20 has not been refunded pending receipt of the outstanding contributions relating to the period 1 December 2013 to 31 May , 2014’

In the draft order, the applicant prays for an order as follows:

“IT IS ORDERED THAT

1. “Respondent shall pay applicant \$12 435-32 together with interest thereon at the rate of 5% calculated from the date of service of the Court Application on Respondent to the date of payment together with costs of suit on attorney – client scale”.

The respondent in opposing the application and as shown upon a reading of its opposing affidavit has raised two issues. The first issue is that the dispute between the parties is purely a labour matter for which this court has no jurisdiction to determine as the dispute is covered under s 13 of the Labour Act, [*Chapter 28:01*]. As such, so the respondent asserts, the disputes should be dealt with in terms of s93 of the Labour Act. The second issue raised by the respondent is in two parts, namely that the applicant cannot rely on a document which he has refused to sign in acknowledgment of its contents and which document was written on a without prejudice basis and marked so. The second part of the second issue raised by the respondent is that the computations which the applicant has set out are disputed and have not been acknowledged by the respondent save for the computations presented by the respondent on condition they are accepted by the applicant.

The applicant in the answering affidavit averred that the jurisdiction of this court arises from the fact that the respondent acknowledged its indebtedness to the applicant by letter dated 29 November, 2014 i.e. annexure 'C' to the applicant's founding affidavit. The applicant further stated that it was not necessary for him to acknowledge annexure 'C' by signing it since it is the creditor (respondent) who should acknowledge the debt and not the applicant to the applicants' founding affidavit. The applicant further stated that there was no prejudice to be suffered by the Respondent if Annexure C was admitted because albeit it being marked "without prejudice", he accepted the respondent's computations and signed the copy which he left at the respondent's office but omitted to sign the one which he retained.

The issue of jurisdiction of this court in Labour matter remains unsettled with judgments delivered by this court not being uniform or agreed. It is not my intention or function to rationalize or harmonize conflicting decisions of this court. I will therefore confine myself to arguments raised herein. The crisp issue before me is that, the applicant whose employment contract with the respondent was terminated, seeks the intervention of this court that he be granted an order suffering or ordering the respondent to pay him his terminal benefits which have remained unpaid since the date of termination of employment. The applicant appreciates and accepts that the dispute before me is labour related. He however argues that this court should rule in his favour because there is no labour dispute to be determined but an enforcement of payment of terminal benefits. He argues that where the employer has acknowledged itself to be indebted to the employee, then the employee can seek relief from this court since the action would derive from an acknowledgment of debt, so to speak.

This court has ruled that the jurisdiction of this court has not been ousted in matters involving an admitted indebtedness by the employer to an employee even if such indebtedness arises from a labour relationship. There is extensive discussion on the issue by Kudya J in *McCosh v Pioneer Corporation. Africa Limited* HH 164/10. See also *Madinda Ndhlobu v Highlanders Football* HB 95/11; *Wellington Takawira v CZI Incorporated (Pvt) Ltd* HH 586/13. Kudya J did accept and quite rightly so that an acknowledgment of debt can found a cause of action. He cited the cases *Chimutanda Motor Spares (Pvt) Ltd v Musare and Anor* 1994(1) ZLR 310(H) at 311G; *Gondwe v Bangajena* 1988(1) ZLR 1(H) at 2A and *Salisbury Municipality v Partington & Anor* 1961 (3)SA Z18 (SR) at 222A. The learned judge however found against the plaintiff that in his declaration, the plaintiff based his claim

on unpaid arrear salary and not upon an acknowledgment of debt. That being so, he dismissed the claim on the basis that its determination was one for the Labour Court consequent upon the provisions of s 89(6) of the Labour Act [*Chapter 28:01*]. In the *Madinda Ndhlovu and Wellington Takawira* cases, the learned judges Cheda and Uchena JJ (as the latter then was) granted the claims for payment of outstanding salaries/benefits after holding that the employers in both cases had acknowledged the debts and that therefore there was no labour dispute for determination under the Labour Act. In *casu*, this is the applicants' line of reasoning.

If I follow the decisions of this court which have held that where the employer has acknowledged itself to be indebted to the employee in a liquidated amount, the employee can properly sue for relief in this court on the basis of such acknowledgment of debt, I do not however find that in the present matter, the employer executed an acknowledgment of debt. The documents relied upon by the applicant do not pass for a valid acknowledgment of debt.

By definition, an acknowledgment of debt is a document which contains an unequivocal admission of liability by the debtor. The amount owed by the debtor must be specified and so should the manner and time of payment. In essence, an acknowledgment of debt must pass the test of a liquid document, i.e a document which proves the debtor's indebtedness without extraneous or outside evidence. In *casu*, the applicant relied on annexure C as herein before quoted. The said annexure states that the sum of USD\$9 695-02 is a gross figure from which statutory deductions, loans and advances will have to be calculated and deducted. In my view, the document does not therefore pass the test of an acknowledgment. It is arguable whether an order for payment subject to the stated deductions would not be appropriate. The applicant does not however ask the court to grant such an order but prays for payment to him of the whole amount of USD \$9 695-02. To make matters worse for the applicant, he also seeks payment of USD\$1 941-01 in night allowances. This amount was not acknowledged by the respondent and is disputed in the opposing affidavit by the respondent. The applicant does not in the answering affidavit address the respondent's denial. The same applies with regards the further sum of USD 799-20 coined unrefunded portion of Pension Fund which the applicant claims. Quite clearly therefore, the respondent cannot in the light of the definition of an acknowledgment of debt be held to have acknowledged itself to be indebted to the applicant in the sum of USD\$12 435-32 or in any of the individual sums of money which add up to the said USD\$12 435-32 claimed in the draft order.

In passing, I considered the argument raised by the respondent that annexure ‘C’ setting out how the figure of USD\$9 695-02 was arrived at is marked ‘Without Prejudice’ and therefore should not be relied upon by the applicant as it is inadmissible. It is not correct that in the law of evidence, it is a rule of thumb that a letter marked “without prejudice” cannot be disclosed or used in proceedings. The words “without prejudice” ought to be considered as protecting the rights of the writer of the letter. In other words, the without prejudice statement or letter should not prejudice the applicant from adopting a contrary position from that it would have adopted in the without prejudice statement letter or communication. I do not intend however to labour the issue because of the view which I have taken of the matter, which view or position is favourable and therefore not prejudicial to the applicant, that the letter in issue does not pass for an acknowledgment of debt since the amounts set out therein are subject to deductions which are not stated nor agreed to by the parties. I have also considered the judgment of Hungwe J in *Mhangura Copper mines Limited v Tayengwa Dugmore Muskwe* HH 443/15 and also took into account the fact that the respondent did not advance the issue of the admissibility of annexure ‘C’ in its heads of argument nor indeed during oral argument. The respondent was concerned more with the issue of the jurisdiction of this court to hear the matter.

Since the applicant’s claim was essentially a claim for payment of terminal benefits arising from a terminated contract of employment, I asked the applicants legal practitioner Mrs *Munjere* to address me on her understanding and interpretation of s 13 of the Labour Act, [*Chapter 28:01*]. She submitted that whilst she noted that the section dealt with payment of wages and benefits upon termination of employment and the procedure to be followed, the applicant had proceeded on the basis of an acknowledgment of debt as there was no longer an Employer/Employee relationship between the parties.

Section 13 of the Labour Act reads as follows:

**“13. Wages and benefits upon termination of employment**

- (1) Subject to this Act or any regulations made in terms of this Act, whether any person;
- (a) Is dismissed from his employment or his employment is otherwise terminated, or(own emphasis)
  - (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 the wages and benefits due to him up to the time of such dismissal, termination, resignation, incapacitation or death as the case maybe, including benefits with respect to 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” (own emphasis)

A simple reading of the section shows that the legislature has codified the cause of action involving a failure by an Employer to pay within a reasonable time post termination of employment, wages and other benefits as set out in the section to the ex-employee. The legislature has defined the cause of action. A failure by an Employer to pay shall constitute an unfair labour practice. It appears to me therefore that if the wrong of failure to pay the wages and benefits has been done to or suffered by the employee, his/her remedy lies in what the Labour Act provides as the corrective remedy to be followed and implemented when an unfair labour practice has been committed. In the definition section of the Labour Act, an unfair labour practice is defined as “unfair labour practice” means an unfair labour practice specified in Part III or declared to be so in terms of any other provision of this Act. (own emphasis). Section 13 of the Labour Act albeit falling under Part IV of the Labour Act, nonetheless forms part of the Act and is therefore “any other provision of this Act”. The respondent’s legal practitioner Mr Ndudzo correctly submitted that the procedure for dealing with unfair labour practices is provided for in s 93 of the Labour Act.

In my analysis, the applicant’s claim involved the failure by his ex-employer to pay the applicant wages and benefits to which he is entitled. It matters not in my view that the employer may have acknowledged itself to be indebted to the employee nor signed a document to that effect by whatever name called. The fact is that what would have been admitted to in such a document will be unpaid wages or benefits. For as long as the acknowledgment involves non-payment of wages and benefits as listed in s 13 of the Labour Act, then the wrong done to the employee is as defined in the section, i.e. an unfair labour practice. It being an unfair labour practice, it must be dealt with in terms of the Labour Act.

Section 89(1) of the Labour Act provides for the hearing by the Labour Court of applications as set out therein and in particular for the referral of a dispute to a labour officer. Section 89(6) of the Labour Act provides that only the Labour Court should act as the court of first instance in hearing and determining matters set out in s 89 (1) of the said Act. In this case, the applicant has brought an application before the High Court to remedy an unfair labour dispute. I hold that the applicant has brought his application before the wrong court and should have filed the same before the Labour Court. The High Court in my view has had its jurisdiction in respect of this matter ousted by s 89(6) of the Labour Act i.e. to bring such an application to this court as a court of first instance. It appears to me that the Labour Court

is the correct forum for an Employee to seek a remedy as a court of first instance where the Employer has breached s 13 of the Labour Act. The fact that the Employer may have acknowledged its obligations arising from its statutory obligations to an ex-employee in a separate document which may be in the form of an acknowledgment of debt does not detract from the fact that what is acknowledged to be owing are the terminal benefits. The employee should not go forum shopping to the High Court or Magistrates Court seeking to sue on an acknowledgment of debt which in essence will be a case for enforcement of payment of terminal benefits. The relationship of Employer/Employee can loosely be said to continue after termination of employment as envisaged in s 13(1) of the Labour Act but only for the purposes of giving effect to or enforcement of payment of terminal benefits.

The Labour Act further provides as follows in the ensuing sections

“13(2) Any employer who without the Ministers’ 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 to both such fine and such imprisonment.

- (3) A court convicting an employer of an offence in terms of subsection (2) may order him to pay –
- (a) to the employee concerned; or
  - (b) to any person specified by it for the benefit of the employee concerned;
- in addition to any other penalty which it may impose, an amount which, in its opinion, will adequately compensate the employee concerned for any prejudice or loss he had suffered as a result of the contravention concerned, within such period and in such instalments as may be fixed by such court.
- (4) The court may at any time on the application of the employer employee or specified person concerned for good cause shown, vary on order made in terms of subsection (3).
- (5) Sections 348 and 349 of the Criminal Procedure and Evidence Act [*Chapter 9:07*] shall apply, *mutatis mutandis*, in relation to the amount specified in an order in terms of subsection (3) as if such amount were a fine referred to in those sections.
- (6) Nothing in this section shall be construed as precluding a person referred to in subsection (1) or his representative or the executor of his estate, as the case may be, from claiming over and above any wages or benefits to which he or his estate is entitled in terms of subsection (1) damages for any prejudice or loss suffered in connection with such dismissal, termination, resignation, incapacitation or death, as the case may be.

Section 347 of the Criminal Procedure & Evidence Act provides for the imposition of imprisonment or community service in default of payment of a fine as more fully provided for therein. Section 348 of the same Act, empowers and gives a discretion to the High Court or Magistrates Court where such court has sentenced an offender to pay a fine, to issue a warrant or writ addressed to the Sheriff or Messenger of Court as the

case may be authorizing him to levy the amount of a fine by “attachment and sale of any movable property belonging to the offender,” notwithstanding that, “ the sentence directs that in default of payment of the fine, the offender shall be imprisoned or shall be permitted to render community service”

In summary therefore, apart from an ex-Employee taking steps to remedy the wrong committed by his ex-Employer in not paying the former his wages and benefits as provided for in s 13(1) of the Labour Act through the unfair labour practice route, the employee can also report such defaulting ex-employer to the police to be dealt with by the Criminal courts since the failure to pay wages and benefits without Ministerial permission or reasonable grounds is criminalized. The criminal court upon convicting a defaulting ex-Employer will act in terms of sections 347 and 348 of the Criminal Procedure and Evidence Act.

At the hearing of this application, I asked counsel for the applicant whether she had ever thought of using the criminal route to enforce her client’s (the Employee’s) claim. Counsel readily admitted that she had not thought of utilizing the option. There is a growing trend by Employee representatives to rush to the High Court with labour matters involving non-payment of terminal benefits by Employers to Employees whose contracts of employment would have been terminated. Ingenious arguments are raised to persuade the High Court to agree to exercise jurisdiction. Such ingenuity involves arguing as in the present application that the cause of action arose from an acknowledgment of debt which strictly speaking would not be true. The argument in some cases has found favour with this court and jurisdiction has been exercised.

In my view and as already stated, the non-payment of wages and benefits as set out in section 13(1) of the Labour Act whether reduced to writing or acknowledged in an acknowledgment of debt should not change the true facts. If for example the argument that non-payment of wages and benefits which is clearly an unfair labour practice and a crime changes its character once reduced into an acknowledgment of debt is accepted and that it is no longer a labour dispute, it means that the Employee can no longer report the Employer to be dealt with in terms of s 13(2) of the Labour Act i.e. to be prosecuted.

The intention of the legislature in enacting ss 13(1) and 13(2) of the Labour Act was clearly to enable an Employee who is owed terminal benefits by his Employer to use those provisions to enforce payment. The legislature created the necessary machinery in the Labour Act to deal with the issues of non-payment by either leaving it to the Employee to invoke the

unfair labour practice route or the criminal route. I will leave it to be determined another day whether it would be a defence for an Employer to argue that a breach of ss 13 (1) and 13(2) of the Labour Act can be defeated by a defence that the parties (Employer/Employee) are now governed by an acknowledgment of debt in their relationship. I however hold that in my reading of the provisions of the Labour Act, such a defence would not hold sway.

The last issue which I address is the impact of s 171 of the Constitution of Zimbabwe Amendment (No 20) Act 2013. The section reads as follows:

**171. Jurisdiction of High Court**

- (1) The High Court –
  - (a) has original jurisdiction over all civil and criminal matter in Zimbabwe;
  - (b) has jurisdiction to supervise magistrates courts and other subordinate courts and to review their decisions.

I am aware of some decisions of this court like for example *Confederation of Zimbabwe Industries v Rita Marque Mbatha HH 125/15 and Water and Allied Workers Union of Zimbabwe vs City of Harare HH 238/15* in which this court has held that the effect of s 171(1)(a) of the Constitution is to restore the jurisdiction of the High Court in labour matters because the section gives the High Court original jurisdiction over all civil and criminal matters. Labour matters constitute a species of civil matters and hence the High Court has original jurisdiction over them. The interpretation given by this court in these matters is therefore to the effect that s 89(6) of the Labour Act has been overridden by s 171(1)(a) of the Constitution and that the original jurisdiction of the High Court extends to these civil matters of a labour nature in which the Labour Court exercised exclusive jurisdiction prior to the new constitution being promulgated.

I find myself in respectful disagreement with the interpretation which has been placed upon s 17(1)(a) of the constitution to the extent that it should be read granting the High Court jurisdiction over labour matters and as overriding s 89(6) of the Labour Act.

The constitution creates in ss 163 and 172, a labour court which is a special court. The sections read;

**163 The judiciary**

- (1) The judiciary of Zimbabwe consists of –
  - (a) The Chief Justice, the Deputy Chief Justice and the other judges of the constitutional court

- (b) The judges of the Supreme court;
- (c) The Judge President of the high Court and the other judges of the court
- (d) The Judge President of the Labour Court and the other judges of that court
- (e) The Judge President of the Administrative Court and the other judges of that court; and
- (f) Persons presiding over magistrates courts, customary law courts and other courts established by or under an Act of Parliament.

The Constitutional Court, Supreme Court and High Court are respectively in sections 166, 168 and 170 described as “superior courts of record”. These three courts in terms of s 176 of the constitution have inherent powers to protect and regulate their own processes and to develop the common law or the customary law taking into account the interests of justice and the provisions of this constitution. The Labour Court is simply described as a court of record as with the Administrative Court in terms of ss 172 and 173 respectively. The two courts do not enjoy original jurisdiction over all civil and criminal matters unlike the High Court. On the contrary, the jurisdiction of these other courts and their powers are provided for by Acts of Parliament. Their jurisdictions then become limited to what the Acts of Parliament will have provided for.

In the case of the Labour Court, s 172 provides as follows:

- (1) The Labour Court is a court of record and consists of –
  - (a).....
- (2) The Labour Court has such jurisdiction over matters of labour and employment as may be conferred upon it by an Act of Parliament.
- (3) An Act of Parliament may provide for the exercise of jurisdiction by the Labour Court and for that purpose may confer the power to make rules of court.

My reading of s 172 (2) and (3) leads me to the conclusion that s 171(1)(a) of the constitution has not altered s 89(6) of the Labour Act. Sections (2) and (3) of s 172 of the constitution provides that an Act of Parliament should provide for the jurisdiction of the Labour Court in Labour Matters. The current Labour Act has done so and in s 89 (6) has provided for such over matters stated therein exclusively to the Labour Court. Section 89(6) of Labour Court reads that:

“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).”

What the legislature has done and acting by virtue of powers granted to it by the constitution is to circumscribe matters of labour over which the Labour Court shall exercise exclusive jurisdiction in the first instance to the exclusion of other courts which of necessity must include the High Court. I do not read s 171(1) (a) of the constitution which provides for original jurisdiction of the High Court over all civil matters as conflicting with s 89(6) of the Labour Act. In my reasoning an exercise of original jurisdiction over a matter does not mean that the exercise of such jurisdiction, original as it may be called is to be exercised in a manner which usurps or defeats the intention of the legislature where the legislature will have passed a law by virtue of powers given to it by the same constitution.

The purposive interpretation approach is in the circumstances to be preferred. The labour court is a special court created to deal with matters of employment and does so through exercising powers granted under an Act of Parliament. The constitution does not limit the powers which the legislature can give to the Labour Court and the giving of exclusive jurisdiction to the Labour Court in specified matters by the legislature, thus excluding other courts from exercising such exclusive powers is proper. The Labour Act in s 89 (6) provides that the Labour Court should be the court of first instance in the matters listed in that section. The High Court in my judgment should exercise its original jurisdiction taking into account existing legislative provisions in place unless the same are unconstitutional or adjudged to be so. For example, the High Court in the exercise of its original jurisdiction in a labour matter falling under s 89(1) of the Labour Act would properly refuse to deal with a Labour matter as a court of first instance on the basis that an enactment provides for the Labour Court as the first forum which should be petitioned. Any other interpretation would have unintended consequences whereby the Labour Court will be rendered redundant as a special court with litigants petitioning the high Court in respect of every labour dispute. Original jurisdiction over civil matters should not be construed to mean that the High Court will agree to exercise jurisdiction over all matters irrespective of the fact there would be existing legislation governing the procedure, conduct or determination of particular matters. The constitution recognises the existence of subordinate and special courts and creates them. I do not read anything in s 171(a) of the constitution which provides that the legislature cannot in providing for the jurisdiction of the Labour Court give exclusive jurisdiction over certain matters to that court and by implication thus limiting or excluding jurisdictional powers of other courts to deal with such matters. It would not in my view amount to defeating the exercise of original jurisdiction over a matter where a litigant makes a direct approach to

the High Court in respect of a matter listed in s 89 (1) of the Labour Act and the High Court Rules that the litigant should by virtue of s 89 (6) of the Labour Act direct his matter to the Labour Court as the court of first instance. Approaching the Labour Court first as required by s 89 (6) would be the domestic remedy which a party must first seek.

#### Disposition

In view of the position which I have taken of the matter and the conclusions I have reached on the jurisdiction of this court *vis- a- vis* the provisions of the Labour Act and the Constitution I would accordingly rule as follows;

This application is dismissed with no order as to costs.

*Hungwe & Partners*, applicant's legal practitioners  
*Mutamangira & Associates*, respondent's legal practitioners