ALEC KABICHI
versus
MINERALS MARKETING CORPORATION OF ZIMBABWE

HIGH COURT OF ZIMBABWE
CHAREWA J
HARARE, 28 November 2017 & 31 January 2018

Opposed Matter- Special Plea

Mr B Ngwenya, for the plaintiff
Mr M.G. Bumhira, for defendant

CHAREWA J: Plaintiff issued summons against the defendant claiming payment of 80% of the market value of a 3litre engine Chevrolet Trailblazer motor vehicle in lieu of an executive perk allegedly due to him consequent upon an employment relationship.

Defendant raised the special plea that this court had no jurisdiction as this claim was a labour issue.

I delivered an *ex temporae* judgment in which I upheld the special plea. The plaintiff having appealed my decision, hereunder are my written reasons for the judgment.

The facts

The plaintiff was employed by the defendant as an internal audit executive in 2008. He was subsequently retrenched in 2016. In terms of his contract of employment, he was entitled to purchase, after four years, the defendant's vehicle allocated to him for his use, at a percentage of market value.

Accordingly, upon completion of the first four years of his employment, plaintiff purchased the vehicle allocated to him for his use, and was allocated a Toyota Fortuner Registration number ABF 6714 for use pending the purchase of a replacement vehicle. However, the replacement vehicle was never purchased such that the plaintiff continued to use the Toyota Fortuner until his retrenchment.

The Toyota Fortuner ought to have been sold to the plaintiff in May 2016 when it fell due for replacement, but defendant declined to sell it to him. Further, defendant did not provide

a replacement vehicle for the Toyota Fortuner. His colleagues in the same grade received Chevrolet Trailblazers.

The issue

The issue is therefore whether plaintiff's claim is an employment dispute which ought to fall under the exclusive jurisdiction of the Labour Court, or a non-labour matter which the High Court has jurisdiction to deal with. Further, if it is a labour matter, the court is required to determine whether in terms of s171 (1) (a) of the Constitution, the High Court has jurisdiction to deal with the matter.

The Law

It is trite that the Labour Court's jurisdiction is exclusively for labour matters. It cannot deal with any dispute which does not arise out of an employment relationship as it is not a court of inherent jurisdiction. [1] However, it is also true that matters arising out of an employment relationship which are of a purely civil or common law bent are still subject to the jurisdiction of a court of inherent jurisdiction, viz; a claim for *rei vindicatio* or interdict.[2]

Further, it is also trite that the High Court is a court of original jurisdiction, with inherent power to deal with any civil or criminal matter throughout Zimbabwe.[3] As a consequence, the court has interpreted its powers so widely as to be unnecessarily fettered by the powers of other courts with similar jurisdiction.[4]

However, the court has also recognised that it should not willy nilly usurp the powers of specialized courts specifically established to deal with certain categories of matters. In that regard, the High Court is ever loathe to infringe upon the jurisdiction of the Labour Court, or other subordinate courts, preferring, when deciding to deal with matters within the jurisdiction of specialised or subordinate courts, to resort to certain legal principles, including the doctrine of exhaustion of local remedies and the principle of "the best interests of justice". For these reasons, whether or not it has inherent jurisdiction, the court does not normally deal with any labour matters as prescribed by the Labour Act, unless it is in the best interests of the administration of justice or the remedies provided by Labour Court are inaccessible or will take too long.

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[1] See s 172(2) of the Constitution as read with s89 (1) of the Labour Act, Cap.28:01.
[2] See Nyahora v CFI Holdings (Pvt) Ltd SC 81/04.
[3] See s 171(1)(a) of the Constitution as read with s 13 and s 23 of the High Court Act Cap. 7:06
[4] *Homodza v Chitungwiza Municipality* HC 2947/13. See also *Confederation of Zimbabwe Industries v Mbatha* HH125-15 and *Water and Allied Workers Union v City of Harare* HH238-15

Analysis

The plaintiff claims that in terms of his contract of employment with the defendant, he is entitled to have received a Chevrolet Trailblazer for his use just like other executives in a similar grade to him. It seems to me therefore, that his claim to 80% of the value of the Chevrolet Trailblazer is in terms of an employment relationship wherein he claims a benefit which he was entitled to as an employee and which he was deprived of. Thus, plaintiff's claim is squarely a labour dispute within the purview of the Labour Court.

The jurisdiction of the Labour Court is not ousted merely because he has chosen to call his claim a compelling order. After all, he must first establish whether his employment relationship entitled him to the benefit he claims before he can compel his former employer to pay it. And if he is entitled to such benefit, refusal or failure by his erstwhile employer to pay such benefit is an unfair labour practice for which he must receive a remedy. Such remedy is thus not a common law remedy despite pretences to the contrary.

In any event, I do not agree with plaintiff that the Labour Court has no jurisdiction to grant a compelling order. An order of re-instatement is in the nature of a compelling order, so is an order to pay any benefits due on an employment contract. Besides, as correctly pointed out by the defendant, "a compelling order" is not a cause of action, grounding any claim. One must perforce look at the circumstances giving rise to the request for a compelling order. In this case, it is obvious that the basis of plaintiff's claim is an unfair labour practice: that defendant failed to adhere to a contract of employment and discriminated against plaintiff *vis-a-viz* his colleagues.

The question that then arises is whether the plaintiff can elect to seek relief in this court rather than the Labour Court, on the basis that firstly, this court has inherent jurisdiction, and secondly, that in any case, s89 (6) of the Labour Act is inconsistent with s 171(1) (b) of the Constitution and is thus *ultra vires* and of no force and effect.

It is my view that whether or not s171(1)(a) of the Constitution provides that this court now has concurrent jurisdiction with the Labour Court, the specific jurisdiction of the Labour Court on labour matters is not ousted. Rather, the principle of exhaustion of local remedies comes into play. The law has seen it fit to create a court to specifically deal, at the first instance, with labour matters.

The doctrine of exhaustion of exhaustion of local remedies requires that a party follows and exhausts the specifically available channels and remedies for resolving labour disputes,

and this is by resort to the Labour Court. Otherwise might as well have either have made the Labour Court a division of the High Court or dispensed with it altogether.

It can hardly be in the best interests of the administration of justice that a party should, without reasonable cause, by pass a court specifically created to address his problem and bring it to the High Court merely because the latter has concurrent or inherent jurisdiction. Such a course has the effect of nullifying the intention of the legislature: that labour matters should be dealt with, in the first instance, by the Labour Court and thus reduce the burden on the High Court arising from its inherent jurisdiction.

The interests of effective and efficient administration of justice demand that resort must be had thereto before any approach to this court in order not to overload the High Court and make the administration of justice cumbersome and ineffective. The contrary view has the effect of bringing into question the very existence of the Labour Court: if it is not necessary to bring labour matters before a labour court at the first instance, why should that court be maintained on the hierarchy of our courts? It might as well be declared redundant.

That plaintiff's argument is untenable may be exemplified by the argument that a person should be allowed to elect to be tried in the High Court where a matter is within the jurisdiction of the Magistrate Court since the High Court has inherent jurisdiction over all matters. In my view, that would be an absurd position which is a recipe for chaos in the administration of justice. It is therefore necessary, for purposes of ease of administration of justice that a specialised court dealing with labour matters must be allowed to exercise its jurisdiction.

Nor do I agree that s89 (6) of the Labour Act is *ultra vires* the Constitution. Section 171(2) of the Constitution provides that an act of parliament may provide for the exercise of jurisdiction by the High Court. It seems to me that this section provides for the opportunity to derogate from the wide powers provided for by s171 (1). In that respect, the Labour Court Act and even the Magistrates Court Act, impute that in the exercise of the High Court's inherent jurisdiction in terms of s171(1), limitations may exist as necessitated by the demands of the interests of justice. One of the obvious demands must be to limit the number of cases coming to the High Court so as to avoid overloading the court, by creating other specialised and subordinate courts which may assume part of the burden of the High Court's inherent jurisdiction. In my view, this is an eminently reasonable approach which fosters effective justice delivery.

In addition, s172(2) of the Constitution, in conferring jurisdiction over labour matters to the Labour Court, is in line with the limitation placed on the power of the High Court by s 171(2). I therefore cannot agree with the interpretation moved by the plaintiff, or the decisions of this court which support his position. It seems to me that plaintiffs stance places inadequate attention on the provisions of s171(2) and s172(2) which limit the jurisdictional powers conferred on the High Court by s171(1)(a). Consequently, I agree with the interpretation stated in *Nyanzara v Mbada Diamonds*[5] that

> "The High Court…….should exercise its original jurisdiction taking into account existing legislative provisions unless the same are unconstitutional or are adjudged to be so."

I therefore find that the plaintiff has brought his claim before the wrong court as the Labour Act provides that the Labour Court shall be the exclusive court of first instance to remedy any unfair labour practice. The jurisdiction of the High Court, as a court of first instance in labour matters, is thus ousted by operation of the law, [s171(2) and s172(2) of the Constitution as read with s89 (6) of the Labour Act]. This law is necessary in a democratic society for effective administration of justice and achieves the necessary balance between the protection of an individual's rights and the general interests of justice as plaintiff is not left without a remedy.

Disposition

CONSEQUENTLY, IT IS ORDERED THAT

1. The special plea be and is hereby upheld with costs

J Mambara & Partners, plaintiff's legal practitioners
Chinawa Law Chambers, respondent's legal practitioners

[5] Nyanzara v Mbada Diamonds (Pvt) Ltd HH63-16