

REPORTABLE (ZLR) 12

CT BOLTS (PVT) LTD v WORKERS COMMITTEE

SUPREME COURT OF ZIMBABWE
GARWE JA, OMERJEE AJA & GOWORA AJA
HARARE, MARCH 12 & 27, 2012

Mrs *R Matsika*, for the appellant

B Makururu, for the respondent

GARWE JA: This is an appeal against the decision of the Labour Court remitting the matter to an arbitrator for the determination of the salary increment to be awarded to employees of the applicant.

At the hearing of this matter, it appeared to this Court that the respondent, simply cited as “Workers Committee”, was not a legal *persona*, capable of being sued. Accordingly both counsel were asked to address the Court on the matter. Both counsel accepted that the respondent, which is a workers committee appointed by workers of the appellant company, is not a legal *persona* and cannot therefore be sued.

Section 23(1) of the Labour Act [*Cap. 28:01*] (“the Act”) provides that employees employed by any one employer may appoint or elect a workers committee to represent their interests. On the functions of the workers committee s 24 of the Act provides in subs (1) as follows:

- “(1) A workers committee shall –
(a) Subject to this Act, represent the employees concerned in any matter affecting their rights and interests; and

- (b) Subject to subsection (3), be entitled to negotiate with the employer concerned a collective bargaining agreement relating to the terms and conditions of employment of the employees concerned; and
- (c) Subject to Part XIII, be entitled to recommend collective job action to the employees concerned; and
- (d) Where a works council is or is to be constituted at any workplace, elect some of its members to represent employees on the works council.”

It is clear from the above provision that it is the function of the workers committee to represent the employees in any matter affecting their rights and interests and to negotiate with the employer a collective bargaining relating to the terms and conditions of the employees concerned. The Act has not made provision for the workers committee to operate as a legal *persona*. Had this been the intention, the Act would no doubt have said so.

The issue of the legal status of the respondent assumes greater significance in a case such as this one where there could be issues of costs involved.

Under the common law, an unincorporated association, not being a legal *persona*, cannot as a general rule, sue or be sued in its name apart from the individual members, whose names have to be cited in the summons. A *universitas* on the other hand has the capacity, apart from the rights of the individuals forming it, to acquire rights and incur obligations. The position is also established that a body that has no constitution is not a *universitas* for it is the constitution that determines whether an association is or is not a *universitas*.

On a proper interpretation of s 24 of the Act, it is clear that a workers committee exists to safeguard and champion the interests and welfare of the workers at the work place. It has no other function. There is no provision in the Act requiring a workers committee to adopt a constitution. There is also no requirement for a workers committee to

acquire rights apart from the rights of the individuals forming it and the employees they represent. There is also no provision for a workers committee to acquire assets in its own name.

In contrast, s 29 of the Act has provided that upon registration, every trade union, employers' organisation or federation shall become a body corporate and in its corporate name shall be capable of suing and being sued. Such bodies are required by s 28 to adopt a written constitution.

Had the intention of Parliament been to clothe a workers committee with some legal status, the Act would no doubt have said so. The fact that it did not do so suggests that the intention was not to give the committee any other additional rights.

I am aware that in cases such as *Thomas Meikles Centre (Pvt) Ltd v (1) TM National Workers Committee* (2) *D Myududu N.O.* (3) *The Minister of Public Service, Labour and Social Welfare SC 77/02* and *Olivine Industries (Pvt) Ltd v Olivine Workers Committee* 2000(2) ZLR 200(S) this Court proceeded on the basis that the workers committee cited in the appeal proceedings was properly before it. The issue of the legal status of the workers committee had not, however, been raised and consequently a determination of the legal status of the workers committee never became necessary.

However in *Cold Storage Company National Workers Committee v Cold Storage Company Limited* HB-8-02, the legal capacity of the workers committee to institute the proceedings in that matter was raised. In dismissing the application, the court remarked at p 2 of the cyclostyled judgment:

“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 committee 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.”

I would agree with the above remarks.

The respondent, not being a legal *persona*, is not properly before this Court. The proceedings before the Labour Court and prior to that, the arbitrator, were similarly void.

On the issue of costs, it seems to me that, regard being had to the fact that there is no respondent before this Court, an order that there be no order as to costs would meet the justice of the case.

The proceedings are accordingly struck off the roll with no order as to costs.

OMERJEE AJA: I agree

GOWORA AJA: I agree

Wintertons, appellant’s legal practitioners

Guni & Guni, respondent’s legal practitioner