

GWERU WATER WORKER'S COMMITTEE
v
CITY OF GWERU

SUPREME COURT OF ZIMBABWE
HARARE, DECEMBER 3 & 9, 2013

A Mugandiwa, for the appellant

T Magwaliba, for the respondent

Before: ZIYAMBI JA, in chambers in terms of r 5 of the Supreme Court Rules.

The applicant seeks an order granting it leave to appeal against a judgment of the Labour Court as well as condonation of its failure to note an appeal on time and an extension of time within which to note the appeal.

The crux of the matter is that the Labour court dismissed the applicant's appeal on the preliminary point raised, namely, that the applicant as a workers committee has no *locus standi* to represent its members in a court of law. In arriving at this conclusion the Labour Court followed the judgment in *CT Bolts (Pvt) Ltd v Workers Committee* SC 16/12 where it was decided that a workers committee established in terms of s 23 of the Labour Act (*Cap 28:01*) ("the Act") is not empowered by the Act to act as a legal *persona*.

Mr *Mugandiwa*, however, submitted that the applicant is not a workers committee established in terms of the Act but a creature of its own constitution a copy of which was attached to the papers and which contains the following relevant clauses:

“2. Perpetual Succession

The organisation shall have perpetual succession and shall be entitled to sue or be sued in its own name.

3. Objects

The objects of the Organisation are

- (a) To promote the interests of its members in so far as their employment with the City of Gweru is concerned.
- (b) To represent its members in any matters and/ or disputes concerning their employment with the City of Gweru.
- (c) To undertake any activities that may be lawfully undertaken by any organisation such as this as per the provisions of the Labour Act (*Cap 28:01*) and the Regulations made there under and in terms of any other laws relevant to employment in Zimbabwe.”

The question to be determined is what are the prospects of success on appeal in view of the *CT Bolts* judgment. In that judgment it was said:

“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*.”

The applicant claims that by virtue of its constitution it is a *universitas* endowed with the attendant powers at law. While it was my initial view that the application should fail because of the decision in the *CT Bolts* case, upon further reflection I am now of the view that it is quite possible that the Court may take the view proffered by the applicant, namely, that by virtue of its constitution it is a *universitas* with the *locus standi* to represent its members. For this reason I am unable to hold that there are no reasonable prospects of success on appeal.

Accordingly the application is granted in terms of the draft order filed as amended.

Wintertons, appellant's legal practitioners

Danziger & Partners, respondent's legal practitioners