

**ZANELE NDEBELE**

**versus**

**INTERNATIONAL CROPS RESEARCH INSTITUTE FOR SEMI ARID TROPICS**

IN THE HIGH COURT OF ZIMBABWE

CHIWESHE J

BULAWAYO 14 & 20 JUNE 2002

*J Sibanda* for the applicant

*J Tshuma* for the respondent

Opposed Matter

**CHIWESHE J:** On or about 15 March 2001 respondent engaged applicant as its purchasing and stores officer. The engagement was for a period of one year, renewable upon certain conditions. In January 2002, two months before the engagement period prescribed, applicant obtained a loan from respondent in the sum of \$225 000.00. This loan was payable over a period of twelve months or alternatively on termination of the contract of employment. Subsequently by letter dated 28 February 2002 respondent advised applicant that her contract of employment would not be renewed.

Respondent withheld applicant's March 2002 salary and other benefits. These monies were channelled towards liquidating applicant's indebtedness to respondent on account of the outstanding moneys loaned to applicant. In doing so respondent in effect invoked the doctrine of set off. It is not in dispute that the applicant owes this money nor is it in dispute that the debt became due and payable upon termination of the contract of employment. The sole source of contention is whether respondent is entitled to withhold payment of applicant's March 2002 salary and other benefits without a court order and without her consent in order to set off a loan advanced by respondent to applicant. It is argued on behalf of applicant that the relationship between her and respondent was that of employee and employer and therefore subject to the provisions of the Labour Relations Act [*Chapter 28:01*]. As such any agreement that may be reached between the employer and the employee is to the extent that it may be in conflict with the provisions of that Act, null and void. Section 13 of the Act provides that where a person's employment contract is terminated, he shall be entitled to the

wages and benefits due to him up to the time of termination and “the employer concerned shall pay such entitlements” as soon as reasonably practicable. Further section 13(2) of the Act provides that an employer who without Ministerial authority withholds or unreasonably delays payment of such entitlements shall be guilty of an offence. In this case, so it is argued, because no ministerial authority was obtained by the respondent, a criminal act has been committed and that the court should censure the respondent. The court is asked to order and direct respondent to release the monies so withheld and allow applicant to liquidate the loan at a monthly rate. Further that costs be awarded as between attorney and client against the respondent.

This application is without merit. I agree with respondent’s submissions at paragraph 8 of their heads of argument wherein it is stated:

“It is submitted that the reliance on section 13 is misplaced. The provision does not outlaw the common law doctrine of set off. Where an employer’s indebtedness to an employee has been extinguished (or reduced) by operation of set off, the wages or benefits concerned are no longer due or owing to the employee as contemplated in section 13.”

The two subsections provide:

“(1) Subject to this Act or any regulations made in terms of the Act, whether any person –

- (a) is dismissed from his employment or his employment is otherwise terminated; or
- (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 may be, 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.

(2) Any employer who without the Minister’s 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 two thousand dollars or to imprisonment for a period not exceeding one year or to both such fine and such

imprisonment.”

Now if it had been intended by means of these provisions to alter the existing common law with regards the doctrine of set off, the legislature would have declared such an intention in clear and unequivocal language. There is nothing in section 13 of the Act that suggests that to have been the intention of the legislature. The section is only operative where wages or benefits are due or owing to the employee. Where such wages or benefits are no longer due or owing on account of the employee’s indebtedness to the employer, the section cannot be evoked. In my view the intention of the legislature was to proscribe unfair labour practices and to rein in errant employers. It is clear to me that by these provisions the legislature intended to protect the employee against employers who may be acting “*mala fides*”. It cannot be said that an employer such as the respondent engages in an unfair labour practice or acts unreasonably or in bad faith when he withholds a liquidated amount in wages or benefits in order to set off an equally liquidated debt due to him by an employee.

In the premises I would dismiss the application with costs.

*Job Sibanda & Associates*, applicant’s legal practitioners

*Messrs Webb, Low & Barry*, respondent’s legal practitioners