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Judgment No. HB 27/07

Case No. HC 1559/05

Xref No. HC 324/06

**PLAZA HOTEL (PVT) LTD****Versus****GIFT MARIMBITA****And****L JOKONYA N.O**

IN THE HIGH COURT OF BULAWAYO

BERE J

BULAWAYO 16, 23 JUNE 2006 AND 14 FEBRUARY 2007 AND 15 FEBRUARY 2007

*J Sibanda* for applicant*M Munjanja* for respondentsBackground

**BERE J:** Following a labour dispute between the Applicant and the first Respondent, the second Respondent made an Arbitration Award in favour of the first Respondent. The Arbitrary Award was made in terms of the Labour Act [Chapter 28:01].

Subsequently the Arbitration Award was registered in this court to enable the first Respondent to execute the order.

Before the first Respondent had executed the order, the Applicant lodged in an application in this court seeking the following remedy:

- “1. That the purported Arbitration Award dated the 24<sup>th</sup> of November 2004 allegedly made by the second Respondent in a matter between the Applicant and the first Respondent in terms of which the first Respondent is entitled to receive the sum of \$213 082 329-00 from the Applicant be and is hereby declared to be null and void.
  2. The first Respondent pays the costs of this application.”
- The first Respondent opposed the application made by the Applicant and in doing so he inter alia raised a point in limine challenging the jurisdiction of this court in hearing the matter. The first Respondent’s position was brief and stated in the following words;

**“Point in Limine**

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I have been advised that procedurally the Applicant should not have approached this Honourable Court. He instead should have launched his application in the Labour Court, seeing as the dispute is Labour related and he has not exhausted all the avenues open to him under the Labour Act.”

I directed both counsel to restrict their arguments to the point raised in limine first as I felt it was possible for the matter to be disposed of by addressing that point only. Both counsels made fairly elaborate and instructive submissions on the legal position as perceived. I am grateful to them. I shall now restrict my determination to the point raised in limine.

In its application to this court, the Applicant had sought to challenge the basis upon which the Arbitration Award was made by the second Respondent. In essence what the Applicant sought to do was to re-visit the manner in which the second Respondent had arrived at the Arbitrary Award.

**Does the High Court have jurisdiction to entertain a Labour related matter covered under the Labour Act [Chapter 28:01]?**

It was argued by Mr Munjanja for the first Respondent that clearly the High Court has no jurisdiction to hear a Labour related matter falling within the purview of the Labour Act. This was so, so it was argued, in the light of the amendment to the Labour Act by the Labour Relations Amendment Act No. 17/2002.

In building his argument, Mr Munjanja was leaning on the views of my brother Judge Bhunu J in the case of *Thomas Tusso v City of Harare*<sup>1</sup> which dwelt at length with<sup>3</sup> among other issues the implications of section 89(6) of the Labour Amendment Act.

It was forcefully argued by Mr Sibanda for the Applicant that because the Labour Court does not have its own execution machinery, its orders have to be registered in the High Court and is governed by Order 40 of the High Court Rules, 1971.

The relevant order reads as follows:-

<sup>3</sup> Thomas Tusso vs City of Harare HH01/2004

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“The process for the execution of any judgment---shall be by writ of execution signed by the registrar----.”<sup>2</sup>

In counsel’s view “once registered with the High Court, a Labour order transmogrifies into a High Court process, subject to the powers and control of the High Court. To hold otherwise would make it impossible for the court to control its own process.”

The import of counsel’s argument was that this court can not register orders and then lose its jurisdiction when the validity of such orders are put into question.

It was counsel’s further view that it was quite in order that any challenge to such orders be heard in this court so that in a proper case the High Court would have the power to nullify its own writ although it would have emanated from the Labour Court.

There is no doubt in my mind that the position taken by the Applicant’s counsel is persuasive.

I have heard the privilege of following the arguments by my brother Judge Bhunu J in an extensively researched and well reasoned judgment which dealt with a number of Labour related issues in Thomas Tusso’s case (*supra*)

Perhaps the view adopted by the Applicant’s counsel in this matter would have been sustainable if section 89 of the Labour Act which deals with the functions, powers and jurisdiction of the Labour Court had not been amended.

<sup>3</sup> Order 40 rule 322 of High Court Rules, 1971

As correctly observed by Bhunu J in the Tusso case.

“The Labour Court is a special court established in terms of section 92 of the constitution.”

<sup>3</sup> Its functions, powers and jurisdiction are spelt out under section 89 of the Labour Act as modified by the Labour Amendment Act 17 of 2002 and 7 of 2005.

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For clarity's sake Section 89(1) of the Labour Act is now couched as follows:-

**“89 Functions, powers and jurisdiction of Labour Court**

- (1) The Labour Court shall exercise the following functions-
- (a) hearing and determining application and appeal in terms of this Act or any other enactment, and
  - (b) hearing and determining matters referred to it by the Minister in terms of this Act; and
  - (c) referring a dispute to a Labour Officer designated agent or a person appointed by the Labour Court to conciliate the dispute if the Labour Court considers it expedient to do so;
  - (d) appointing an arbitrator from the panel of arbitrator referred to in subsection (6) of section ninety-eight to hear and determine an application.
- (di) exercise the same powers of review as would be exercisable by the High Court in respect of Labour matters.
- (e) doing such other things as may be assigned to it in terms of this Act or any other enactment.”

It will be noted that section 89 of the Labour Act, as currently framed is fairly elaborate and exhaustive in dealing with the functions, powers and jurisdiction of the Labour Court.

In my view those powers require no interpretation. They are clear and wide. Section 89(2) focuses on how the Labour Court is supposed to deal with the issues presented to it.

Again, to crown it all and as observed by my brother Judge Bhunu J:-

“Having conferred what are admittedly very wide powers on the Labour Court the Lawmaker proceeded to restrict or exclude the jurisdiction of other courts in related matters under section 89(6) of the Amendment Act which provides 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.”<sup>4</sup>

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<sup>3</sup> Thomas Tusso (supra) p. 2

4. Thomas Tusso (supra) p. 3

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In my view, the Legislature could not have been more explicit in its quest to grant exclusive powers to the Labour Court in dealing with cases falling under its purview. To argue otherwise would be an abortive attempt to violate the clear intentions of the lawmaker.

Whilst accepting that the Labour Court in its present set up does not have its own execution machinery, and that its orders falling within the jurisdiction of this court have to be registered for execution in this same court I am nevertheless far from being convinced that the mere registration of such an order per se is tantamount to depriving the Labour Court of those powers that have been conferred on it by the Labour Act.

The matter brought before this court is clearly a Labour dispute falling within the purview of the Labour Act and must be dealt with in the Labour Court.

It was precisely for these reasons that on 23<sup>rd</sup> day of June 2006, I felt inclined to make the following order:-

“It is ordered;

- (a) that this Court declines jurisdiction.
- (b) That this matter be and is hereby referred to the Labour Court for a proper determination.
- (c) That the Applicant be and is hereby ordered to bear the costs of this Application.”

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

*Cheda and partners*, first respondent’s legal practitioners