

Judgment No. HB 31/07
Case No. HC 2074/05
Xref HC 263/06, 262/06, 2075/05

DR HEZEKIEL MAFU

Versus

MDUDUZI MKANDLA N.O

AND

PROFESSOR NORMAN MAPHOSA N.O

AND

DR ELDEN KAMWENDO N.O

AND

SOLUSI UNIVERSITY

IN THE HIGH COURT OF ZIMBABWE

BERE J

BULAWAYO 27TH JULY 2006 AND 15TH FEBRUARY 2007

Ms S M Masuku, for the applicant

Mr W Ncube (instructed by J Tshuma) for respondent

Opposed Court Application

BERE J: After hearing arguments from both counsel on the preliminary point as to whether or not this court had jurisdiction to hear this matter I declined jurisdiction to entertain the matter and made the following order on 27th July 2006;

“It is ordered: -

- (1) That this court declines jurisdiction.
- (2) That this matter be and is hereby referred to the Labour Court for determination.
- (3) That the applicant bears the costs for this application.”

I indicated then that my reasons would follow. Here are my reasons.

Background:

The applicant was employed by the Fourth Respondent as an Associate Professor with the added responsibility of Acting Dean of the Faculty of Theology and Religion with effect from the 1st of January 2004.

By its letter of 5th September of 2005 the Fourth Respondent through the First Respondent wrote to the Applicant advising him of the termination of his employment with the Fourth Respondent with effect of 23rd of January 2006.

The Applicant was aggrieved by the manner in which his employment was terminated. He sought the intervention of this court by filing an application for review in this same court. On page 3 of the Application filed the grounds for review were clearly stated as:

- “1. The termination procedure adopted by the Respondents was irregular as it did not comply with S.1. 130/03 which applied to the Applicant.
2. The termination of the Applicant’s contract of employment was therefore wrongful and in violation of the laws of this country.”

On the 27th of July 2006, when the parties appeared before me for argument, and fully cognisant of what I perceived to be fundamental changes to the Labour laws of this country, I invited both counsel to address me on the issue of the jurisdiction of this court to hear this matter.

Applicant’s counsel Mr S M Masuku was brief in his submissions. The thrust of his submissions was that, whereas the Labour Act deals with labour related matters the High Court has overriding jurisdiction because of its inherent powers. He further submitted that it would in his view create an anomalous situation if the High Court were to be ousted in its jurisdiction by a subordinated court like the Labour Court. His reading of Section 89(6) of the Labour Court was that that section did not amount to ousting the

jurisdiction of the High Court. In summary counsel's view was that the matter for review was properly before the court.

Mr W Ncube for the Respondents concurred with the view by his colleague, Mr Masuku that in his view Section 89(6) of the Labour Act did not in fact amount to ousting the inherent jurisdiction of the High Court. He was of the view that it was incumbent upon the Applicant to justify his presence in this Court as opposed to being in the Labour Court. He further submitted this was so because in his opinion the intention of Section 89(6) of the Labour Act was to channel all labour related matters through the Labour Court unless there were special reasons not to do so in the instant case.

Following the brief submissions, the issue which the Court had to determine before dealing with the matter on merits was whether or not the High Court had jurisdiction to deal with this review matter.

To fully understand the issues involved one must revert back to the relevant sections of the Labour Act itself. The functions, powers and jurisdiction of the Labour Court are well defined in Section 89 of the Labour Act as amended by the Labour Amendment Act 17 of 2002 and 7 of 2005.

Section 89(1) of the Labour Act states in detail the functions of the Labour Court. It will be noted that Subsection (d1) of the same section confers on the Labour Court the power to:

“(d1) exercise the same powers of review as would be exercisable by the High Court in respect of Labour matters.”

Section 89(2) specifically deals with the various options open to the Labour Court in the discharge of its functions.

But perhaps the most revealing section of the Labour Act is Section 89(6) which has the following sweeping provision: -

“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).”

In my view, the Legislature could not have been clearer than this in its quest to give exclusive jurisdiction to the Labour Court in those matters falling under Section 89(1) of the Act.

I have been privileged to put my hands on two High Court decisions which do fortify this interpretation. Justice Bhunu in a fairly detailed decision of *Thomas Tusso vs City of Harare* HH1/2004 concluded that Section 89(6) of the Labour Act had the effect of ousting the inherent review powers of the High Court in Labour matters. Justice Makarau, in an equally well reasoned decision of *Martin Sibanda and Godfrey Moyo vs Benson Chinemhute N.O and Martindale Trading (Private) Limited t/a Lyons* HH 131/04 was also of a similar view that jurisdiction in the first instance had been ousted from all other courts (the High Court included) in matters where the Labour Court has jurisdiction in terms of the Act.

In the instant case it is clear that what was sought was a review of the decision made in a labour related dispute. That dispute in my view falls squarely with the purview of the Labour Act hence only the Labour Court has jurisdiction to entertain the review sought.

It was for these reasons that I felt on balanced feet to decline jurisdiction and granted the order that I pronounced.

Ben Baron and Partners, the applicant's legal practitioners
Webb, Low and Barry, the respondents' legal practitioners.