

**VULINDLELA MOYO**

**Versus**

**DELTA CORPORATION LTD  
T/A DELTA BEVERAGES**

**And**

**LOVETT MABHUMBO**

IN THE HIGH COURT OF ZIMBABWE

BERE J

BULAWAYO 21 JULY 2006 & 15 FEBRUARY & 8 MARCH 2007

*J Tshuma*, for applicant  
Respondent in default

Labour Dispute

**BERE J:** The applicant who was employed by the first respondent as a Warehouse Manager had certain allegations preferred against him leading to his subsequent dismissal from the first respondent's organisation on 30 January 2004.

Aggrieved by his dismissal the applicant filed an application for review of the disciplinary proceedings that led to his dismissal. The grounds for the sought review are clearly laid down on page 2 of the consolidated papers.

When the matter came up for argument before me counsel for the applicant who had had the benefit of hearing me dismiss a similar matter for lack of jurisdiction anticipated the issue of the jurisdiction of the High Court being central to this matter. In his preliminary submission counsel sought to convince me that indeed the High Court had the jurisdiction to entertain the matter. The thrust of his preliminary submissions was to convince me that this court was properly seized with the matter. Both respondents and their counsel were in default.

It was argued by counsel for the applicant that despite the wording of section 89 of the Labour Court as amended by Act 17 of 2002, this court still retained its

inherent jurisdiction to review a labour related matter. In counsel's view the inherent review powers of the High Court had not been ousted by the amendments to the Labour Act and as such the High Court was properly seized with the matter.

It was further contended by counsel that it was incumbent upon the applicant to demonstrate on a balance of convenience that the matter be dealt with by the High Court as opposed to the Labour Court.

I must hasten to mention that the arguments raised by counsel are not genuine in this matter. The same arguments have been recycled in this court and firm positions taken. The issues raised by counsel have been dealt with in this same court on a number of occasions and there appears to be agreement that the Labour Amendment Act 17 of 2002 fundamentally altered the law relating to the role of the Labour Court *vis-à-vis* that of other courts the High Court inclusive in labour related matters.

Commenting on section 89(6) of the Labour Act as currently worded, BHUNU J commented as follows:

"It is, manifestly clear to me that the intention of the legislator was to expressly exclude the jurisdiction of all other courts in areas where the Labour Court has jurisdiction in the first instance."<sup>1</sup>

MAKARAU J, commenting on the same section had the following to say:

"The words used in this section of the statute appear quite clear to me. They do not admit of doubt and therefore do not need to be interpreted. It appears to me that the intention of the section, discerned from the language that it has used, is to take away jurisdiction from all other courts in the first instance in all applications, appeals and matters referred to in subsection (1) of the section."<sup>2</sup>

The section referred to was section 89(1) of the Labour Act as amended by the Labour Amendment Act 17 of 2002.

It will be noted that this section deals exclusively with the functions, powers and jurisdiction of the Labour Act as presently constituted.

<sup>1</sup> Thomas Tusso vs City of Harare, HH-1-2004 p 3

<sup>2</sup> Martin Sibanda and Godfrey Moyo vs Benson Chinemhute NO, HH-131-04

It will be noted that the Labour Amendment Act 7 of 2005 brought further fundamental changes to the Labour Act by introducing section 89(1)(d1) which confers on the Labour Court the power to:

“(d1) exercise the same powers of review as would be exercised by the High Court in respect of Labour matters;”<sup>3</sup>

It does seem to me as has been observed by other judges that, a reading of this section in conjunction with section 89(6) of the same Act was clearly calculated to give the Labour Court exclusive jurisdiction to deal with those labour matters falling under its purview.

In my view, MAKARAU J’s decision to deal with the case of *Martin Sibanda and Another (supra)* must not be read out of context. The learned judge reasoned that in that particular case the relief sought by the applicant was a declaratory order which she opined only the High Court could grant. Thus she stated;

“Thus, the power to issue a declaratory order is not available in all courts that apply common law. It is specific to this court.

It is common cause that the Labour Court has not been specifically empowered to issue declaratory orders as this court has been. It cannot create such a relief as it is not a court of inherent jurisdiction.”<sup>4</sup>

It is quite clear to me that in both the above cited authorities both learned judges were in agreement that the inherent jurisdiction of the High Court to review a

labour related matter as a court of first instance had been ousted by the clear provisions of section 89(6) of the Labour Act.

In this regard the learned judge MAKARAU J stated:

“They have not approached this court by way of a review, in which case the decision by BHUNU J, in *Thomas Tusso v City of Harare* HH-1-2004 might have been used against this court having jurisdiction.”<sup>5</sup>

<sup>3</sup> Section 89(1)(d1) of the Labour Act

<sup>4</sup> *Martin Sibanda and Anor (supra)* p 7

<sup>5</sup> *Martin Sibanda and Anor (supra)* p 6

In the instant case, what is sought is a review. In my view that clearly falls within the purview of section 89(1) of the Labour Act and only the Labour Court has exclusive jurisdiction to entertain the application.

That being the case, I decline to hear the matter and refer it to the Labour Court for a determination.

It is accordingly ordered:

1. That this court declines jurisdiction;
2. That this matter be and is hereby referred to the Labour Court for a determination;
3. That the respondents having been in default, there be no order as to costs.

*Webb, Law & Barry*, applicant's legal practitioners