

CHARLES MAWERE
and
5 OTHERS
versus
THE AGRICULTURAL FINANCE CORPORATION

HIGH COURT OF ZIMBABWE
MAKONI J
HARARE, 1 July 2005 and 29 March 2006

Mr *Mazonde*, for the plaintiffs
Mr *Dondo*, for the defendant

MAKONI J: This matter was brought before me by way of trial procedure and was set down on the continuous roll for the week beginning 27th June 2004. The trial had been set for the 1st July 2004 and before commencement of trial defendant raised a point *in limine* currently under consideration by this court. The preliminary point raised is that this court no longer had jurisdiction to determine disputes of a labour nature by virtue of s 86(6) of the Labour Relations Act as amended by the Labour Relations Act No. 17/2002 (The Act).

The background of the matter is that summons were issued on the 15th February 2001 and all pre-trial procedures were completed before the promulgation of legislation ousting the jurisdiction of the High Court in labour matters. The issue before the court is whether it has jurisdiction to commence the trial and determine the labour dispute in light of the provisions s 89(6) of the Act as amended. Section 89(6) as amended reads:-

“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.”

It is common cause that the dispute subject matter of the intended trial is a labour dispute in which plaintiffs seek:-

- (a) an order setting aside the retrenchment of the plaintiff's
- (b) an order compelling the defendant to reinstate the plaintiffs without loss of salaries and benefits, except setting off of the

amount taken by each plaintiff's as retrenchment package against the salaries and benefits owed to them.

(c) Costs of suit.

What is in dispute is whether this court can still make a valid determination if it is to proceed with the trial under the provisions of the current law.

The defendant contends that the court's jurisdiction has been ousted by the amending section which section the defendant classify as an amendment to procedure. On the other hand the plaintiffs argue that the litigation was instituted at a time when the court had jurisdiction over the matter and the court has powers to continue with the trial.as the amending section does not have retrospective effect. The plaintiffs also contend that all statutes must be taken to apply to the future and cannot operate retrospectively unless the statute specifically provides for the retrospective effect. It was further submitted on behalf of the plaintiff that s 47(5) of the Act confers limited retrospective effect for the sake of continuity and in order to avoid prejudice. Section 47(5) reads:-

"Any proceedings that were commenced in terms of Part XII of the Principal Act before the commencement of the Labour Relations Amendment Act, 2002, or were pending before the labour relations tribunal on that date, shall be deemed to have been commenced in terms of the appropriate provisions of the Principal Act as amended by the Labour Relations Amendment Act 2002, and shall be proceeded with accordingly."

Part XII relate to powers of labour relations officers, senior labour relations officers and determinations by the labour and senior labour relations officers, appeals to tribunal, reference matters for compulsory arbitration and employees codes of conduct.

The plaintiffs argue that unlike the provision of s 89 (6) as amended, provision of s 47 (5) provide limited retrospectivity. Section 89(6) was therefore not intended to have retrospective effect.

In determining the point in limine, the court accepts the general rule that all statutes must be taken to apply to the future and cannot be held to have retrospective effect in their operation unless that is specifically or impliedly provided in the statute itself. This general rule laid down in case law over the years is however only a starting point. A further consideration is at play in the current matter. The consideration is whether the section of Act under interpretation relates to procedural matters or not. There can be no doubt that issues relating to jurisdictional matters are procedural matters as these give power to the court as a legal body rather than individual rights or personal rights.

In view of this classification, I agree with defendant's submissions that the general presumption against retrospectivity becomes qualified as stated by INNES CJ in the case of *Curtis v Johannesburg Municipality* 1906 TS 308 at 312. It is the finding of this court that under the said qualification of the general rule, procedural statutes, as is the current section under interpretation, once they are in operation, necessarily govern the procedure in every suit which comes to trial after the date of promulgation. This is so even in relation to suits which were set in motion or were pending before the date on which the promulgation came into force. In the current matter, the court finds that all the pre-trial procedures that were done before the Act was amended were valid. The court however is not being required to preside over these past acts which were done in conformity with the procedure under the old law. The court is currently concerned whether the current power, under the amended provisions empower the court to commence the trial and determine the labour dispute. A court without jurisdiction to hear or determine a matter cannot give a valid judgment which can be executionable.

It is my finding that the court's jurisdiction was ousted by the amendment with effect from the date it came into force and the legislation stripped this court of its powers to commence, hear or determine labour matters.

In making the Labour Relations Amendment Act 17/2002, the legislature envisaged problems that would emanate from pending cases as a result of the jurisdiction ouster. To cater for such problems, the legislature provided jurisdictional savings in respect of specific matters, bodies and tribunals in s 47(5). In providing for the savings, after addressing its mind to the issue, the legislature did not list the High Court as one of the court where jurisdictional savings had been made in relation to any case pending or otherwise. The legislature's intention was therefore that with effect from the date from which the Labour Relations Amendment provisions became effective the High Court could not commence or continue with pending labour matters. Though the plaintiffs classified the effect of s 47(5) as giving limited retrospectivity, the court find that this classification is wrong as it should correctly be classified as savings of jurisdiction.

In the light of the above, it is the court's finding that it has no power to commence the hearing of labour dispute as its jurisdiction was ousted by the amendment. This court no longer has the jurisdiction in the first instance to pronounce a judgment in this matter.

It should however be noted that the ouster of jurisdiction does not affect the litigants right to institute proceedings in the proper forum which right is subject to other existing procedural laws. The court shall not make an order as to costs as the plaintiffs matter fails not on the facts but as a result of changes in the procedural laws for which non of the litigants carries the blame.

The point in *limine* is therefore upheld with no order as to costs.