BENSON SAMUDZIMU
versus
DAIRIBORD HOLDINGS LTD

HIGH COURT OF ZIMBABWE
CHIWESHE JP
HARARE, 1 September 2010 and 15 September 2010

I. Chagonda, for the applicant
S.V. Hwacha with Mr *Chigoma*, for the respondent

CHIWESHE JP: The legal issue that arises in this chamber application is whether the provisions of the Labour Act [*Cap 20:01*] exclude the jurisdiction of the High Court in areas where the Labour Court has jurisdiction.

Section 89 (6) of the Labour Act provides:-

> "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)."

Section 89 of the Labour Act spells out the functions, powers and jurisdiction of the Labour Court.

In *Tuso V City of Harare* 2004 (1) ZLR (H) BHUNU J had occasion to consider the legal import of s 89 (6) of the Labour Act. The learned judge concluded at p 3 F as follows:-

> "It is manifestily clear to me that the intention of the legislature was to expressly exclude the jurisdiction of all other courts in areas where the Labour Court has jurisdiction in the first instance."

I am in entire agreement with that conclusion. It is important to note the historical context in which the Labour Court was created. Its predecessor, the Labour Relations Tribunal, was limited in terms of its powers and jurisdiction. Its decisions were subject to review by the High Court in much the same way as the decisions of any other domestic tribunal would be. Even then this court always took the view that a litigant must first exhaust the internal remedies availed to it in terms of the Labour Act, before approaching it for relief.

The Labour Relations Tribunal was in 2003 transformed into a court whose powers of review were the same as those of the High Court subject to the provisions of s 89 (1) of the Labour Act. The intention of the legislature clearly was to establish a one stop shop for all labour matters and provide finality in litigation involving labour issues. Otherwise why

create a structure that is parallel to the High Court? However, this exclusive jurisdiction only exists for matters provided for in s 89 (I).

In the present application the applicant seeks to register an arbitral award with this court in terms of s 98 (14) of the Labour Act. The respondent opposes the application on the basis that the arbitral award offends public policy in terms of art (s) 34 and 36 of the Arbitration Act. It has incorporated by reference papers it filed under case number HC 5560/10, a separate application , and has argued that the present application and that filed under case HC 5560/10 be heard together. I agree with the applicant that the correct procedure would have been for the respondent to file a counter chamber application in terms of Rule 229 A which reads:-

> "Where a respondent files a notice of opposition and Opposing Affidavit , he may file, together with these documents, a counter application against the applicant, in the form, "*mutatis mutandis*" of a court application or a chamber application whichever is applicable."

In any event it would be improper to join the two applications because the time within which the second respondent under case number HC 5560/10 (the arbitrator) must file a notice of opposition has not expired. The second respondent's defence in that application is therefore not yet known.

I have however taken the liberty to consider the heads of argument filed by the respondent under case 5560/10 for purposes of determining the present application. I agree with the applicant that the extent to which the provisions of the Arbitration Act are applicable in labour matters is governed by s 98 of the Labour Act subsection 2 of which provides:-

> "Subject to this section the Arbitration Act [*Cap 7:15*] shall apply to a dispute referred to compulsory arbitration."

Section 98 provides for *inter alia* the referral of matters to compulsory arbitration, the appointment of arbitrators, appeals against decisions of arbitrators, reviews and other remedies. These provisions are detailed and comprehensive. Clearly it could not have been the intention of the legislature that parties aggrieved by the decision of an arbitrator in a labour dispute seek remedy in terms of s 34 or 36 of the Arbitration Act.

I agree with the applicant that the correct interpretation would be that, with regards the law, the Labour Act takes precedence over the Arbitration Act and any other enactment. The intention of the legislature was to have all labour matters initiated and resolved to finality in terms of the Labour Act. Equally, the legislature must have intended that such matters be dealt with by the Labour Court to the exclusion of any other court.

Sections 34 and 36 of the Arbitration Act are not applicable in cases where the award sought to be challenged relates to a labour dispute. The mechanisms for challenging such awards are provided for in the Labour Act and may be accessed through the medium of the Labour Court. No other court has jurisdiction to entertain such matters.

In the present case the respondent has lodged an appeal with the Labour Court. The appeal is still pending. Should the respondent wish to have the arbitrator's determination suspended pending appeal or dealt with in any other interim way, it is to that court that it must direct its application.

Accordingly, for as long as the arbitral award has not been suspended or set aside on review or appeal in terms of the Labour Act, there is no basis upon which this court may decline registration of the same.

It is therefore ordered as follows:-

1. The arbitral award issued by Mr A.J. Manase, an independent arbitrator, be and is hereby registered in terms of s 98(14) of the Labour Act [*Cap 28:01*].
2. In terms of the said arbitral award, the respondent shall pay the applicant an amount of US$287 491.00.
3. The respondent is to pay the costs of this application

Atherstone & Cook, applicant's legal practitioners
Dube, Manikai & Hwacha, respondent's legal practitioners