

BEMBA FARM (PVT) LTD
versus
ZIMBABWE HORTICULTURE AGROINDUSTRIES AND
GENERAL AGRICULTURE WORKERS UNION
and
GENERAL AGRICULTURE AND PLANTATION WORKERS
UNION
and
PHILIP MAHACHI
and
SHEPHERD TABLE
and
JONA GURAJENA
and
GUIDANCE KHUZE
and
WELLINGTON TAKAWIRA
and
CHANDAFIRA MAZAMBANE
and
R. CHIPERE

HIGH COURT OF ZIMBABWE
BHUNU J
HARARE, 13 January 2011 and 11 May 2011

G. Chikumbirike, for the applicant
D. Mwonzora, for the respondent

Urgent Chamber Application

BHUNU J: The applicant operates a farming enterprise trading under the style of Buckingham Farm, North road, Marondera.

The first and second respondents are trade unions in the agricultural industry whereas the third to fourth respondents are their respective office bearers. The fifth to ninth respondents are its employees and former members of the workers' committee.

The parties are embroiled in wage disputes concerning the classification of their enterprise. The applicant accuses the respondents of inciting its employees to engage in unlawful collective job action. In a bid to protect its business operations it has now

applied for a provisional order interdicting the respondents from communicating in any manner whatsoever with its employees upon pain of imprisonment.

The respondents have challenged the application on two cardinal preliminary legal points. Firstly, that this being a labour dispute, this Court has no jurisdiction to hear and determine the matter. And secondly, that the order sought is unlawful in so far as it seeks to violate the respondents' fundamental constitutional right of freedom of association and assembly and is in breach of s 4 of the Labour Act [*Cap 28:01*].

Section 21 of the Constitution protects the subject's right of assembly and association. It reads:

“21 Protection of freedom of assembly and association

- (1) Except with his own consent or by way of parental discipline, no person shall be hindered in his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to political parties or trade unions or other associations for the protection of interests.
- (2) The freedom referred to in subsection (1) shall include the right not to be compelled to belong to an association.
- (3) Nothing contained in or done under the authority of any law shall be held to be in contravention of subsection

(1) to the extent that the law in question makes provision –

- (a) in the interests of defence, public safety, public order, public morality or public health;
 - (b) for the purpose of protecting the rights or freedom of other persons;
 - (c) for the registration of companies, partnerships, societies or other associations of persons, other than political parties, trade unions or employers' organizations; or
 - (d) that imposes restrictions upon public officers; except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.
- (4) The provisions of subsection (1) shall not be held to confer on any person a right to exercise his freedom of assembly or association in or any road, street, lane, path, pavement, sidewalk, thoroughfare or similar place which exists for the free passage of persons or vehicles.”

Section 4 of the Labour Act provides for the fundamental right of employees to belong to trade unions and workers' committees of their choice. It provides as follows:

“4. Employees’ entitlement to membership of trade unions and workers committees

- (1) Notwithstanding anything contained in any other enactment, every employee shall, as between himself and his employer, have the following rights-
 - (a) the right, if he so desires, to be a member or an officer of a trade union;
 - (b) where he is a member or an officer of a trade, the right to engage in the lawful activities of such trade union for the advancement or protection of his interests;
 - (c) the right to take part in the formation and registration of a trade union;
 - (d) the same rights, *mutatis mutandis*, as are set out in paragraphs (a), (b), and (c) in relation to workers committees.
- (2) Every employee shall have the right to be a member of a trade union which is registered for the undertaking or industry in which he is employed if he complies with the condition of membership.
- (3) No term or condition of employment and no offer of employment shall include a requirement that an employee or prospective employee shall undertake-
 - (a) if he is a member or officer of a trade union or workers committee, to relinquish his membership or office of such trade union or workers committee; or
 - (b) not to take part in the formation of a trade union or workers committee; and any such requirement shall be void.
- (4) Without prejudice to any other remedy that may be available to him in any competent court, any person who is aggrieved by any infringement or threatened infringement of a right specified in subsection (1) shall be entitled to apply under Part XII for either or both of the following remedies-
 - (a) an order directing the employer or other party concerned to cease the infringement or threatened infringement, as the case may be;
 - (b) an order for damages for any loss or prospective loss caused either directly or indirectly, as a result of the infringement or threatened infringement, as the case may be.”

From the foregoing it is clear that both the Constitution and the Labour Act confer on the employee the fundamental universal rights of freedom of association and assembly which entail the right to belong to a trade union and, or workers’ committee of one’s choice without let or hindrance.

In the circumstances the court will hesitate to divest the respondents of their constitutional and statutory rights without a proper legal basis being laid down. If the

applicant's complaint is that the respondents are inciting its employees to embark on illegal collective job action, this becomes essentially a labour dispute subject to resolution in terms of the Labour Relations Act. It is now settled law that the High Court or any other Court for that matter has no jurisdiction to hear and determine labour disputes which are subject to resolution in terms of the Labour Act see *Tuso v City of Harare* 2004 (1) ZLR 1 and *Border Timbers (Pvt) Ltd v Export Processing Zones Labour Board and Others* S – 46 – 09.

Section 106 of the Labour Act provides elaborate procedures for the resolution of on going or threatened illegal strikes in terms of the Act. Resort to the High Court and the criminal law was therefore ill conceived, inappropriate and incompetent.

That being the case the application cannot succeed. It is accordingly ordered that the application be and is hereby dismissed with costs.

Chikumbirike and Associates, the applicant's legal practitioners
Mwonzora and Associates, the Respondents' legal practitioners