ZIMBABWE CHEMICALS, PLASTISCS AND ALLIED WORKERS UNION (ZCPAWU)
versus
CHEMPLEX CORPORATION LIMITED
and
G & W INDUSTRIAL MINERALS (PVT) LTD
and
DOROWA MINERALS LIMITED
and
ZIMBABWE PHOSPHATE INDUSTRIES LIMITED
and
CHEMPLEX ANIMAL & PUBLIC HEALTH

Urgent chamber application

HIGH COURT OF ZIMBABWE
MUREMBA J
HARARE, 10 & 18 July 2024

K Tundu, for the applicant
R Matsikidze, for the respondents

MUREMBA J: The applicant is Zimbabwe Chemicals, Plastiscs and Allied Workers Union (ZCPAWU), a trade union registered in terms of the Labour Act [*Chapter 28:01*]. In terms of s 3 of its Constitution it is an independent body capable of suing and being sued on its own. It has the capacity to sue on behalf of its members. Members of the applicant are employees of the respondents. The first respondent is Chemplex Corporation Limited and it is the holding company of G & W Industrial Minerals (PVT) LTD; Dorowa Minerals Limited; Zimbabwe Phosphate Industries Limited; and Chemplex Animal & Public Health who are the second to the fifth respondent.

The respondents intended to retire their employees who have reached the age of 60 years on the 11th of July 2024 on the basis that they have reached normal retirement age. What prompted the filing of this urgent chamber application for an interdict on the 8th of July 2024 is that the applicant contends that the respondents 'employees who happen to be its members have not yet reached 65 years which is the normal retirement age in terms of the first respondent's pension fund rules which rules also govern all its subsidiary companies. The averment by the applicant is that the respondents are purporting to be using another

retirement policy which is alien to it and its members and which has not been agreed to by the parties. The applicant wants the respondents interdicted from retiring their employees pending the determination of the matter on the return date whereupon the applicant will be seeking a declaratur to the effect that the purported retirement of its members by the respondents is unlawful.

In response to the application the respondents raised five points *in limine* which I deal with hereunder.

The applicant has no locus standi

The respondents averred that the purported applicant has no *locus standi* to institute an interdict without the alleged aggrieved or affected employees as co-applicants or demonstrating that it is acting on a power of attorney. They averred that the applicant should point to a provision in its constitution that provides for authorization to institute such proceedings. They further averred that the applicant must also have cited its members as co-applicants. Additionally, the applicant ought to have been empowered to institute the present proceedings by the members' powers of attorney. At the hearing Mr. *Matsikidze* for the respondent, citing the case of *National Air Workers' Union & Anor* v *Air Zimbabwe Holdings (Private) Limited & 2 Ors* SC 14/15, submitted that there was no meeting that was held by the affected members or employees to pass a resolution that they wanted the applicant to institute the present proceedings. He further submitted that the applicant furnished no proof that shows that the respondents' 28 employees listed on the annexure attached to the application are its members. The application is therefore fatally defective and should be dismissed with costs on an attorney client scale.

In response to this point *in limine* the applicant's counsel, Mr. *Tundu* submitted that the applicant has authority to institute legal proceedings in terms of Clause 12(8)(f) of its constitution. Citing the case of *Chibatwa* v *Zimbabwe Catering and Workers Union & Anor* HH 563-19 Mr. *Tundu* argued that once the constitution allows the union to sue and that is pleaded in the founding affidavit, that is enough to give the Union *locus standi*. Clause 12(8)(f) of the applicant's constitution reads:

> "The National Executive Committee shall, subject to the provisions of this constitution have the power to institute or defend legal proceedings by or against the union or against individual members."

This means that the National Executive Committee (NEC) of the applicant has the authority to initiate legal actions on behalf of the trade union. The NEC can also represent the

union or individual members when they are involved in legal disputes. If the union or its members are sued or face legal challenges, the NEC can defend their interests in court. This provision therefore empowers the NEC to handle legal matters for the trade union, both by initiating legal actions and defending against them. With this, I am inclined to agree with Mr. *Tundu* that the applicant has *locus standi* in this matter by virtue of this clause. Its clause 3 also says, '*It shall be an independent body capable of suing and being sued on its own*.' When a trade union's constitution states that the union is an independent body capable of suing and being sued, it means that the union has legal standing in its own right. What this entails is that the union is recognized as a separate legal entity, distinct from its individual members. It can initiate legal actions (sue) or defend itself (be sued) independently, without requiring explicit authorization from its members for each case. However, this does not automatically grant the union the authority to act on behalf of its members without any limitations. The union's powers are still governed by its constitution. If the constitution specifies that the union can sue on behalf of its members, it can do so within those defined boundaries. Trade unions must comply with their own constitutions. If the constitution restricts the union's authority or requires member approval for specific actions such as filing lawsuits, the union must adhere to those provisions. In short, while the union can sue and be sued independently, it must still operate within the framework set by its constitution, which may include seeking member authorization for certain actions. The case of *National Air Workers' Union & Anor* v *Air Zimbabwe Holdings (Private) Limited & 2 Ors supra* buttresses this point. The Supreme Court held that:

> "In terms of s 29 of the Labour Act [*Chapter 28:01*] a registered trade union acts in terms of its constitution. It is the constitution which must make provision regarding the person(s) authorised to institute proceedings on its behalf and the manner in which such authority is to be given. Because the constitutions of Trade Unions may differ, it is important to refer to the constitution in each case in order to determine whether authority to institute or defend proceedings has been properly granted."

In that case the appellants lost the case both in this court and on appeal because the deponents to the appellants' applications had not established that they had authority either from the appellants (the two trade unions) or their membership to bring the proceedings. The Supreme Court said that the appellants had not placed reliance on the constitution nor did they attach a copy thereof to the application.

In *casu* the facts are different in the sense that the applicant attached its constitution as Annexure B and referred to it. In terms of Clause 12(8)(f), it is the National Executive

Committee of the applicant which has the authority to initiate legal actions on behalf of the trade union. The NEC can also represent the union or individual members when they are involved in legal disputes. In the present matter the applicant attached the National Executive Committee's resolution authorizing the institution of the present proceedings. The applicant's constitution does not require members approval for filing lawsuits. There was therefore no need for the applicant to seek member authorization or powers of attorney before filing this application. The applicant operated within the framework of its constitution and it is my finding that authority was properly granted by its National Executive Committee. The circumstances in *National Air Workers' Union & Anor* v *Air Zimbabwe Holdings (Private) Limited & 2 Ors* were different and the constitution of the appellants were not even placed before the court. Therefore, there is no basis for me to follow the determination that was made in *National Air Workers' Union & Anor* v *Air Zimbabwe Holdings (Private) Limited & 2 Ors*.

Since the applicant's constitution states that it is an independent body with legal standing in its own right, it means that it was not necessary to join its members in the present legal proceedings as co- applicants. The applicant is thus recognized as a separate legal entity, distinct from its individual members just like companies are separate entities, distinct from their shareholders. I will thus dismiss the first point *in limine*.

The applicant has no cause of action for an interdict to be granted.

The respondents argued that the facts presented by the applicant do not constitute a valid legal claim. They averred that the applicant's case is based on a misapplication or misinterpretation of the first respondent's pension fund rules, which the applicant attached to its application. they averred that according to Part 5, Rule 4 of these pension rules, the employer has the right to retire employees early at the age of 55 without seeking their consent. The respondents contended that the applicant has not proven that the affected employees cannot be retired early. They averred that all the affected employees, except for one Macmillian Skepa (who is 29 years old), are above 60 years. The respondents asserted that this young employee does not qualify for retirement and is not being retired. The respondents prayed that the application be dismissed with costs on a higher scale.

The respondents missed the point. The applicant's argument is that the first respondent's pension fund rules in Clause 2.27 specify a normal retirement age of 65 years. While these rules also allow for early retirement by the employer at age 55, the employees

currently due for retirement are not being retired based on early retirement provisions. Instead, they are being retired because they are being said to have reached the normal retirement age of 60 years yet the normal retirement age is 65 years in terms of the first respondent's pension rules. The applicant is thus alleging a breach of the pension fund rules. I am convinced that the applicant has a valid cause of action. Had the respondents explicitly stated in their notices of retirement to the employees that they were retiring them based on early retirement, the point in *limine* would have had merit. However, given the circumstances, I dismiss the point in *limine.*

There is no urgency in the matter

The respondents contended that this case involves self-created urgency. The applicant alleged that it was aware of the intention to retire some of its members as early as January 2024 but only acted to avoid the consequences on July 5, 2024. The respondents argue that there is no explanation for the applicant's lack of prompt action at that time. The rest of the averments on this point by the respondents are irrelevant to the issue of urgency and will not be addressed.

In its founding affidavit, the applicant asserted that the matter is urgent because it learnt of the respondents' intention to retire its members on 27 June, 2024, after engaging with the respondents. According to Mr. *Tundu*, when the applicant's members received letters from the respondents notifying them of their impending retirement on June 11, 2024, they failed to fully understand the implications. They believed the letters merely modified their employment contracts. Based on this misunderstanding, they approached the applicant seeking clarification. On May 15, 2024, the applicant wrote to the fourth respondent, requesting an urgent interface meeting to discuss the alleged variation in employees' contracts. A letter to that effect is attached to the respondent's notice of opposition. Mr. *Tundu* contended that this is when the respondents informed the applicant of their intention to retire its members by June 11, 2024. The applicant further averred that it promptly engaged its members and discovered that they had previously been informed of their impending retirement in December 2024. The applicant believes that the respondents' change of heart was driven by their desire to avoid paying salaries until December 2024 and to retrench employees under the pretext of retirement. The applicant contended that it acted promptly when the need arose, because it took a bit of time to engage its members—employees of the five respondents—and compile a list of affected employees.

I find no merit in this preliminary point. The respondents failed to provide any evidence that the applicant was aware of their intention to retire its members on June 11, 2024, back in January 2024. The notice of retirement served to Mr. Chiriseri, one of the affected employees, by the fourth respondent, is dated May 27, 2024. If the applicant's member only received the notice of retirement on May 27, 2024, how could the trade union have known about the intended retirement in January 2024? The respondents did not explain that aspect. What is clear from the founding affidavit is that the applicant's motivation for filing the present application was the knowledge that its members would be retired on July 11, 2024. It is undisputed that the applicant acquired this knowledge only on June 27, 2024. Subsequently, it took the applicant 10 days to engage its affected members across the five respondent companies, prepare, and file the application. Therefore, it cannot be said that the applicant failed to act promptly and waited until the day of reckoning. I dismiss the argument that the matter lacks urgency.

The relief sought is incompetent

The applicant is seeking the following relief: -

"TERMS OF THE FINAL ORDER SOUGHT

That you show cause to this Honourable Court why a final order should not be made in the following terms:-

1. That the purported retirement by the respondents of their employees be and is hereby

declared unlawful and set aside with the employees being reinstated to their respective positions without loss of salaries and benefits.

2. That the respondents shall pay costs of suit.

TERMS OF THE INTERIM ORDER GRANTED

Pending the confirmation or discharge of the provisional order, the applicant is granted the following relief:-

1. That the respondents be and are hereby interdicted from retiring their employees pending the finalization of this matter and also pending the finalization of their consultations with the applicant.
2. That the respondents be and are hereby interdicted from retiring their employees

without paying them their dues first.

3. That the respondents shall pay costs of suit."

The respondents averred that the relief that the applicant is seeking is incompetent because it is seeking an interdict which has the effect of a final and definitive order. A final order cannot be sought through an urgent chamber application. The applicant is seeking to effectively bar the first respondent from retiring its employees and an order of reinstatement through the present application and, provisionally, seeks to bar the first respondent from retiring its employees pending consultations. The respondents contended that in effect, this is the final and definitive pronouncement of the rights between the parties. This goes beyond the scope of an interdict which should only momentarily delay an event. The respondents further averred that the draft order is also incompetent in that it effectively sneaks in an order barring the first respondent from exercising the full scope of its rights as an employer in terms of the Pension Fund Policy on which the applicant's case rests. In arguing this point Mr. *Matsikidze* submitted that there is a final order in the second part of paragraph 1 of the interim relief being sought which reads '(1. That the respondents be and are hereby interdicted from retiring their employees pending the finalization of this matter and also) *pending the finalisation of their consultations with the applicant*.' He further submitted that the second paragraph of the interim relief which seeks payment of dues first before retirement of the employees is incompetent. He argued that what starts is retirement of employees and payment of dues happens later. The respondents prayed for the application to be dismissed with costs on a higher scale.

In response Mr. *Tundu* submitted on behalf of the applicant that the relief being sought is not incompetent. The applicant simply wants its members not to be retired before attaining 65 years since according to the respondents' pension fund rules, the normal age of retirement is 65 years. He further submitted that if the respondents are saying that there has been an amendment to the existing policy or rules reducing the retirement age to 60 years, then they should have attached the amended policy and not just a board resolution as they did. Mr *Tundu* submitted that the board resolution that the respondents attached shows that the respondents have not yet amended the pension rules. Acknowledging the errors in the applicant's draft order, Mr *Tundu* then applied to amend the wording of the draft order for the interim relief to read as follows.

> "Pending determination of the matter on the return date, the applicant be granted the following relief: - that the respondents be and are hereby interdicted from retiring their employees."

I had made it clear to Mr *Tundu* that costs would be dealt with on the return date. So, he did not persist with the issue of costs

With the amendment made to the interim relief that the applicant is seeking, I see no merit in the argument that the relief the applicant is seeking is incompetent. If it is true that the respondents' pension fund rules provide for a normal retirement age of 65 years for their employees, the applicant may certainly be entitled to an interdict which bars the respondents from retiring their employees pending determination of the matter on the return date. It will be unfair to allow the respondents to go ahead and retire the employees in the circumstances. The final order sought shows that on the return date the applicant will be seeking a declaratory order to the effect that the purported retirement of the employees by the respondents is unlawful. If the applicant manages to prove that the retirement of its members is contrary to the respondents' pension rules, a declaratory order may certainly be granted. There is no law which prohibits the granting of interdicts and declaratory orders in labour disputes between employers and employees. All that is needed is for the party seeking relief to prove that such reliefs are merited in the circumstances of their case. Employees do have certain rights regarding retirement. If an employer seeks to retire an employee at 60 years without amending the normal retirement age which is stated as 65 years in the rules, the employee certainly has grounds to challenge this action. The employee is allowed to pursue legal action to assert their rights and seek remedies. The employee may apply for an interdict to prevent the employer from enforcing the retirement decision until the matter is resolved. The law does not say that the employee must wait until they are retired by the employer before taking legal action as Mr *Matsikidze* argued. He argued that the affected employees can wait until they are retired and then pursue remedies in terms of the Labour Act. However, it must be appreciated that if the employee chooses not to pursue legal action to assert their rights and seek remedies before they are retired, there could be several potential prejudices. By waiting until the employer retires them, the employee may suffer financial losses such as loss of salary, receiving reduced benefits and missing out on other financial entitlements. This could also disrupt the employee's career plans. They may not have had sufficient time to achieve their professional goals or secure alternative employment. Retiring earlier than planned might also affect their social security contributions and eligibility for certain benefits.

Being forced into early retirement can be emotionally distressing. The employee may feel anxious about their future, or uncertain about their financial stability. Retiring early might affect the employee's access to healthcare benefits provided by the employer. They may need to find alternative health insurance. If the employee relies on employer-sponsored medical aid or life insurance, early retirement could impact their coverage. Essentially, not pursuing legal action could result in financial, emotional, and career-related disadvantages. Seeking legal remedies promptly allows the employee to protect their rights and mitigate potential harm. An employee can also apply for a declarator to assert that the retirement decision is unlawful. A declarator is a legal remedy sought from the court to clarify or declare the existence or non-existence of a legal right or status. In *casu*, the employees want both an interdict and a declarator. These are reliefs that can competently be granted by this court. I thus dismiss the point *in limine*.

This is purely a labour matter; domestic and alternative remedies must first be utelised

The respondents averred that the applicant by seeking a declarator that the retirement of the respondents' employees is unlawful and that they must be reinstated, the effect of this relief is to compel employers to keep employees against their will. Mr. *Matsikidze* submitted that this dispute being purely a labour dispute wherein the Labour Court has exclusive jurisdiction, the applicant's members should wait to pursue domestic remedies under the Labour Act after they have been retired. He submitted that s 89 of the Labour Act provides remedies for unfair labour practices such as unlawful termination of employment. He submitted that in the event of the employees succeeding in their claim after being retired, the Labour Court can order reinstatement or payment of damages in the event of the employers not being desirous of reinstating them. In arguing this point Mr *Matsikidze* was challenging the final relief that the applicant will be seeking on the return day. He further submitted that an interdict is not the only remedy that can be obtained in the circumstances of the case. He argued that the applicant did not aver that there is no alternative remedy to an interdict. Mr *Matsikidze* wrapped up the point by submitting that an urgent chamber application cannot be used as a backdoor to circumvent the legislative will in vesting exclusive jurisdiction in labour matters with the Labour Court.

Mr *Tundu* submitted that whilst the Labour Court has exclusive jurisdiction in labour matters, it does not have jurisdiction to grant interdicts. He further submitted that this is not the platform for the respondents to argue about the merits of the final order. For now, the

court should concentrate on the interim relief the applicant is seeking. While the dispute between the parties in the present matter is a labour dispute, the labour court has no jurisdiction to grant interdicts of the nature the applicant is seeking and declarators. See *Zimbabwe Petroleum & Allied Workers Union* v *National Employment Council for Zimbabwe* HH 148/2023; *National Railways of Zimbabwe* v *Zimbabwe Railway Artisans Union & Ors* SC 8/05; *Stylianou & Ors* v *Mubita & Ors* SC 7-17 and *Air Zimbabwe (Private) Limited* v *Mateko and Ors* SC 180/20. In *UZ-UCSF Collaborative Research Programme in Women's Health* v *David Shamuyarira* SC 10/10, it was held that nowhere in the Labour Act is the power granted to the Labour Court to grant an order of a declarator. As I have stated in the preliminary point above, the law does not bar the granting of interdicts and declaratory orders in labour disputes. The Labour legislation did not oust the jurisdiction of this court in dealing with interdicts or declarators in labour disputes. This court being a court of inherent jurisdiction it therefore has jurisdiction to deal with such matters and the applicant is entitled to protect the rights of its members. I thus find no merit in the preliminary point. It is hereby dismissed.

The merits

As stated elsewhere above the applicant wants the respondents interdicted from retiring the applicant's members pending determination of this matter on the return date. The argument is that these employees have not yet reached the normal retirement age of 65 years as stated in the first respondent's pension fund rules which govern all the five respondents.

In response to the merits the deponent to the respondent's notice of opposition averred that it is not correct that the retirement age rules of the first respondent that the applicant attached to its application apply to all the respondents. The second and third respondents are not governed by the Chemplex Pension Fund Rules but by the ZB Pension Fund Rules and the Mining Industry Pension Fund Rules. Further it was averred that the third respondent's employees do not fall under the applicant but under the Associated Mine Workers Union of Zimbabwe which is a trade union which is different from the applicant. The respondents also challenged the list of names of the applicant's members on the ground that it does not show the full identification particulars of some of them and that list is on the trade union letter head instead of the employers' letterheads. The respondents also averred that the conditions of employment were amended via a board resolution to reflect that the age of retirement is now 60 years instead of 65 years. It was averred that this board resolution was communicated to

all stakeholders including the applicant's members. All but one of the applicant's members are above the age of 60 years. It was averred that the applicant and its members were fully aware that the normal retirement age under the Pension Fund Policy had been varied from 65 years to 60 years. The respondents as board corporates are allowed to vary their internal policies via board resolution as they rightfully did and the variation is extant. The applicant's members were represented at the meeting that passed that resolution. On 6 January 2023 a letter was circulated to stakeholders including the applicant's members stating that the retirement age was 60 years. The policy was amended in December 2022. The applicant and its members cannot therefore seek to rely on an outdated policy. The respondents averred that the fact that the applicant's members were calling for a reconsideration of the variation of the retirement age through negotiations does not change the legal position that the retirement age remained effectively varied. The respondents averred that in the alternative assuming that the applicant is correct in relying on the Pension Fund Policy of the first respondent without taking into account the board resolution that varied the retirement age, the employer has unfettered discretion to retire any employee early at the age of 55 years. The respondents averred that the present application was made prematurely. There is no irreparable harm to the applicant's members as they have reached the acceptable minimum retirement age of 55. Mr *Matsikidze* submitted that in the application the applicant did not state which of its listed members is employed by which respondent. He submitted that overall, under the circumstances the court cannot grant an interdict in favour of the applicant.

Mr. *Tundu* submitted that the applicant managed to prove that it has a *prima facie* right by showing that the normal age for retirement as per the first respondent's Pension Fund Rules in rule 2:27 is 65 years. He argued that although the respondents attached an extract of the board resolution of the 6th of October 2022 by the Directors of the first respondent (Annexure E) which reduced the normal retirement age of employees from 65 years to 60 years, they did not show that the pension fund rules were then amended accordingly. The respondents attached minutes of the meeting held by the Board of Trustees of Chemplex Corporation Limited Pension Fund (Annexure J) on 10 May 2023 wherein it was stated in para 5.4 that members reported that it was expected that the reduction in retirement age would be effective for new employment contracts and those existing employment contracts with the 65 years retirement age would continue as such. This shows that the employees were challenging the board resolution to reduce the retirement age. After this nothing shows that the first respondent pension fund rules were then amended to reflect the new retirement

age. In fact in a letter dated 6 January 2023 (Annexure I), Mrs T Tadiwa who is the first respondent's development manager wrote to the chairperson of the Chemplex Pension Fund saying that the Chemplex Board adopted the IDCZ resolution on 5 October 2022 and resolved that the current Pension Fund Rules be changed to capture the retirement age of 60 years. She ended the letter by saying, "*You are requested to facilitate the change of the relevant pension fund rule to reflect the new retirement age*." As at the 1st of December 2023 the issue had not yet been resolved as evidenced by correspondence that was written by the Employee Trustees to the Chairman of Trustees (Annexure J). In that correspondence it was stated that the employees wanted to maintain the *status quo* and that the organisation needed to respect their retirement age as per their contract. The pension fund holders were requesting for a meeting with the proponent of this idea or the directors of the first respondent to discuss this matter further. On 28 February 2024, the Chemplex Pension Fund Board of Trustees wrote to the first respondent saying it was giving a response to the employers' proposed retirement age reduction. It stated that the employees were proposing to maintain the *status quo* for current employees and that the new rule be applied to new employees joining the organisation. All these annexures were attached by the respondents. Surprisingly, they did not attach any documents to show how the matter was eventually resolved by and between the parties and how the board resolution was then implemented to effect an amendment in the first respondent's pension fund policy/rules. This gives credence to the applicant's averment that the pension fund rules of the first respondent had not yet been amended and that discussions between the parties were still ongoing when the employees were then served with notices of retirement effective 11 July 2024. I am satisfied that the applicant managed to prove that it has a *prima facie* right that is based on the violation of the normal retirement age of 65 years as provided for in rule 2:27 of the first respondent's Pension Fund Rules.

The explanation of early retirement that the respondents raised in opposing the applicant's application is not applicable in the present matter because the notices that respondents wrote to the applicant's members giving them notice of retirement did not say they were being retired on the basis of early retirement but normal retirement because they have reached normal retirement age of 60 years. That the pension fund rules also allow for retiring employees early is not disputed. However, that argument cannot stand in the present matter. It is not the reason why the respondents are retiring its employees.

However, there is merit in the argument by the respondents that the Chemplex Pension Fund Rules only apply to the employees of the first respondent and not to the rest of

the respondents which are subsidiary companies to it. It is only the basic conditions of employment of the first respondent that apply to its employees and certain of its subsidiary and associated companies. See Clause 1 of Chemplex Corporation Limited Conditions of Employment. However, in terms of Clause 15 thereof '*an employee who qualifies for membership of a Pension Fund shall become a member of that Fund in terms of its Rules*." Further in terms of Clause 17, '*the age of compulsory retirement from the Company's service shall be in terms of the Rules of the pension Fund to which the Employee belongs.'* This clause makes it clear that employees of the first respondent as the holding company and its subsidiary companies belong to different pension funds. The Chemplex Pension Fund Rules that the applicant basis its application on makes this point even clearer by providing in rule 2:16 that:-

> 'employer' shall mean, Chemplex Corporation Limited (whether statutory or otherwise) by which as a result of 'any amalgamation or reconstruction or otherwise, functions of said company may for the time being be carried on.'

This rule makes it clear that the word 'employer' only means the first respondent and does not include the subsidiary companies of the first respondent. This is proof that the employees of the subsidiary companies are not covered by the pension fund rules of the first respondent as the applicant's counsel sought to argue. It is in rule 2:27 that it is provided that '*normal retirement shall mean the age of 65.'* The G & W Industrial Minerals Pension Fund Rules that the respondents attached to their notice of opposition further amplifies the point that the subsidiary companies of the first respondent have their own pension fund rules that are applicable to them separate from those of the first respondent. In terms of Clause 1.8 is:

> 'Employer' is "G & W Industrial Minerals and such associated or subsidiary organisation in Zimbabwe as may be agreed from time to time between the insurer and G & W Industrial Minerals."

G & W Industrial Minerals Pvt Ltd is the second respondent in the present matter. In terms of Clause 1:19, normal retirement age is 60 years. This means that the normal retirement age for the applicant's members who are employed by this respondent is 60 years, and not 65 years. So, all such members that have reached 60 years are due for retirement for they have reached their normal retirement age in terms of the pension fund applicable to them.

The applicant did not furnish any proof that shows that the 4th and 5th respondents' employees are governed by the first respondent's Chemplex Pension Fund Rules. Since an application stands or falls on its papers, it is my conclusion that the applicant managed to

prove a *prima facie* right against the first respondent only since the pension fund rules that it bases its application on only relate to the first respondent and not to the rest of the respondents.

The respondents took issue with the fact that the applicant attached a list of 28 names of its members that are affected without indicating the employer of each member. He submitted that as a result it is not clear which applicant's member works for which respondent. Mr *Matsikidze* submitted that under the circumstances an interdict cannot be granted as the court has no way of telling which employee falls under which employer. This is a non-issue because the party that is seeking an interdict is the applicant and not the members. The interdict order does not need to specify the names of the applicant's members since they are not co-applicants. The failure by the applicant to specify which member works for which respondent is therefore not fatal to the application. In any case each respondent knows which of the applicant's members works for it.

Mr *Matsikidze* took issue with the fact that the applicant had attached only one letter giving notice of retirement to one of applicant's members. The letters for the rest of the applicant's members were not attached. That is not a material issue because it is not disputed that the respondents served their employees whom the applicants say are its members with notices of retirement. That which is not disputed need not be proven for this serves no purpose. The issue of the 29-year-old who forms part of the list of the applicant's members is of no consequence since he is employed by the second respondent and is said to be currently seconded to the third respondent. I have since made a finding that the applicant only managed to prove a *prima facie* right against the first respondent and not against the rest of the respondents.

I am satisfied that there will be irreparable harm if the interdict is not granted in favour of the applicant as its members who work for the first respondent will lose their jobs, income and other benefits before they reach the age of 65 when their employment contract provides for retirement at 65. As it is, the applicant seeks to protect the rights of its members before they are retired. The only available remedy is an interdict. Waiting until the members have been retired will not protect the rights that need to be protected now before the members are retired. Therefore, there is no alternative remedy available to the applicant. The balance of convenience favours the granting of the interdict. If it is not granted, the applicant's members will lose their jobs and the benefits that come with it such as salaries.

The applicant having proven a *prima facie* right against the first respondent only, I will grant an interdict against the first respondent only. This interdict will apply to those employees of the first respondent who fall under the Chemplex Pension Fund and not to the rest of the employees. The applicant having failed to prove a *prima facie* right against the second to the fifth respondent, its application is dismissed with costs.

In view of the foregoing, I will grant the interdict the applicant is seeking in the following terms.

"TERMS OF THE FINAL ORDER SOUGHT

That you show cause to this Honourable Court why a final order should not be made in the following terms:-

1. That the purported retirement by the respondents of their employees be and is hereby

   declared unlawful and set aside with the employees being reinstated to their respective positions without loss of salaries and benefits.

2. That the respondents shall pay costs of suit.

TERMS OF THE INTERIM ORDER GRANTED

Pending determination of the matter, the applicant be granted the following relief: -

1. That the first respondent be and is hereby interdicted from giving effect to the notices of retirement that were served on the applicant's members who fall under the Chemplex Pension Fund.

Tundu Law Chambers, applicant's legal practitioners
MATLAW, respondent's legal practitioners