

**IN THE LABOUR COURT OF ZIMBABWE  
HARARE ON 11 OCTOBER, 2013  
AND 25 OCTOBER, 2013**  
In the matter between

**JUDGMENT NO. LC/H/547/13  
CASE NO. LC/H/308/2012**

**SECRETARY FOR HIGHER AND  
TERTIARY EDUCATION** - **Applicant**

And

**COLLEGE LECTURERS ASSOCIATION  
OF ZIMBABWE & 14 OTHERS** - **Respondents**

**Before The Honourable Manyangadze, J.**

**The Honourable Chidziva, J.**

**For Applicant: Mr T.O. Dodo (Legal Practitioner)**

**For Respondents: Mr T. Katsuro (Legal Practitioner)**

**MANYANGADZE, J.**

According to the papers filed by the Applicant, this is an urgent chamber application for;

"Stay of Execution pending appeals and for an appeal and applications' for leave to appeal to be heard urgently."

The drafting of the title to the application appears cumbersome, and needs to be unpacked for one to appreciate the nature of the relief sought by the applicant. A brief background of the matter will help unpack the issues.

The Respondents who are employed by the Applicant as lecturers, were stationed at various Teachers' Colleges in Zimbabwe where they carried out their duties.

Sometime in April 2012, the Respondents were found guilty of misconduct after disciplinary proceedings conducted in terms of Public Service Regulations. As part of their penalty, they were transferred from their duty stations to other stations throughout the country.

The Respondents noted an appeal to the Labour Court, against the Public Service Commission (PSC) penalty on 9 May 2012. The appeal is still pending.

The Respondents went on to apply for stay of execution pending appeal. The application was granted on 14 September 2012. The effect of the court order was to reverse the transfers. The court also ordered that the Applicant meets the Respondents' relocation expenses.

On 7 November 2012, the Applicant filed an application for leave to appeal to the Supreme Court against the Labour Court judgment of 14 September 2012. The application is still pending.

The Respondents proceeded to apply for quantification of relocation expenses, which application was granted on 28 June 2013. The Applicant has indicated an intention to file an application for leave to appeal against this judgment as well. At the end of the day, what Applicant is seeking, on an urgent basis, is;

- (i) Stay of execution of the two judgments granted by the Labour Court on 14 September 2012 and 28 June

2013 pending appeal against the same in the Supreme Court.

- (ii) Hearing of the applications for leave to appeal to the Supreme Court in respect of the two judgments.
- (iii) Hearing of the appeal against the penalty imposed on the Respondents.

The Applicant argues that if the matters outlined above are not heard as a matter of urgency, the Respondents will demand compliance with the order granting them relocation expenses. If they are paid these expenses they will use the money and will be unable to repay it should Applicant be successful in the Supreme Court.

The Applicant has packed into one chamber application, a number of pending applications which he wishes to be heard on an urgent basis. However, a careful examination of the chronology of events outlined shows that it is the quantification judgment of 28 June 2013 which has prompted or triggered the application for stay of execution, which Applicant wants to be considered urgently.

On the other hand, the Respondents contend that there is no urgency in the matter. The Applicant has been all along, aware of the existence of the judgment whose execution he now seeks to stay.

The Applicant should not have waited until today to seek relief from the effects of that judgment, argued the Respondents. The order in question was coupled with a direction for the payment of relocation allowances and expenses. The Applicant was therefore aware he had an obligation to pay relocation expenses. That is the point at which he should have sought interim relief.

Respondent referred the court to the case of **Kuvarega vs Registrar General 1998(1) ZLR 188**, where it was held that a party cannot approach the court raising urgency because the day of reckoning is approaching. In the instant case, the urgent application has been prompted by the quantification order, and fear of its enforcement. Before that, it appears Applicant saw or felt no need to seek redress.

Applicant's explanation for non-compliance was firstly that he was not aware of any interim order referring to relocation expenses. It was not clear what Applicant meant by this, in the light of the fact that he filed an application for leave to appeal against this order. Applicant appeared to retract from this line of argument when he contended that he could only appeal against a final order.

This was an interim order. He was obliged to seek relief only from a final order. Applicant submitted that he could only have done something about it after 28 June 2013, not before that.

It is, in view of this argument, important to look at the order in question. Can it be said that Applicant was under no obligation to comply with it? The court granted the Respondents interim relief in terms of the order applied for, which was couched as follows;

- "1. Pending the finalization of the applicant's appeal in case number LC/MD/23/12 execution of the 1<sup>st</sup> Respondent's determination be and is hereby stayed.*
- 2. The decision by the 1<sup>st</sup> Respondent to transfer the applicants from Mkoba Teachers College with immediate effect be and is hereby set aside.*

3. *The Respondents be and are (sic) hereby to meet all the relocation expenses incurred by the Applicants from and back to Mkoba Teachers College.*
4. *That the Respondents (sic) bears the costs of this application."*

The court order as noted above, was clear and specific as to what should be done. The Applicant was told what to do. There was therefore placed upon him an obligation to comply. If for any reason he felt the order was too burdensome or unsustainable, he could have sought relief at that time. He chose not to.

In the judgment of 28 June 2013, the court expressed its displeasure at Applicant's attitude when it stated;

*"Seven months down the line the Respondents had not complied with the order neither had the Respondents applied for the suspension of the court order. Therefore when they appeared in this court they were in open defiance of the order."*

This then brings us to the second aspect of the point in limine, that of Applicant being in contempt of court and thus approaching it with dirty hands.

When the judgment of 28 June 2013 was handed down Applicant (then Respondent) had not yet complied with the court order of 12 September 2012. The court held that Applicant was "in clear defiance of the law" and went on to grant the application for quantification.

The Respondent is seeking relief from a court whose orders he has still not complied with. It is 13 months since the original order was granted. The court in the present case

will simply refer to the authorities cited in the original judgment, that of **Associated Newspapers of Zimbabwe (Pvt) Ltd v Minister of State for Information 2004(1) ZLR.**

*"This is a court of law and as such cannot connive at or condone the Applicants open defiance of the law. Citizens are obliged to observe the law of the land and argue afterwards. It was entirely open to the Act before the deadline for registration and thus avoid compliance with the law it objects to pending a determination of this court."*

In the same case, Chidyausiku CJ also stated;

*"In my view there is no difference in principle between a litigant who is defiant of a court order and a litigant who is in defiance of law. The court will not grant relief to a litigant with dirty hands in the absence of good cause being shown or until such defiance or contempt has been purged."*

The urgent application in casu is the culmination of a judgment that has been standing since September 2012. In the circumstances, it is difficult to find in favour of Applicant that a case for an urgent application has been established.

The other point in limine raised by Respondent relates to alleged defectiveness of the application.

The first point raised is that Applicant is described as Secretary, Higher and Tertiary Education, when he should be cited as Permanent Secretary at the Ministry of Higher and Tertiary Education. The other point is that the chamber application is not paginated. Lastly the provisional order invites the Respondents to file their notice of opposition

with the Registrar of the High Court, instead of the Labour Court.

The points summarized above essentially indicate oversight in the preparation and editing of the application before submission to court. If thorough proof reading was done, the defects could have been easily attended to. The defects, while reflecting an undesirable pell mell rush in the preparation and submission of court papers, are not fatal in nature.

Notwithstanding its finding that the defects adverted to are not fatal, the court would like to express its displeasure with the attitude of the Applicant. The Applicant's legal practitioner seemed unfazed with the errors pointed out, taking comfort in the fact that he was approaching what he described in his oral submissions as an informal court.

The legal practitioner, and perhaps other legal practitioners of a similar mind, need to be reminded that the Labour Court is a court of record formally and constitutionally mandated to preside over matters of labour and employment. See **Section 172** of the **Constitution of Zimbabwe Amendment (No. 20) Act 2013**.

Whilst the Court, in terms of Section 90A of the Labour Court Act, Chapter 28:01, as read with rule 12 of the Labour Court Rules, Statutory Instrument 59 of 2006, exercises some flexibility in the interests of justice, this does not mean it is an informal court where anything goes. Practitioners are warned against slip shod preparation and filing of court papers, and reminded of the need to adhere to the Court's Rules, without which the conduct of court proceedings can be chaotic.

Turning to the application in casu, it is the court's considered view that the first and second points raised in limine have merit and if upheld, have the effect of denying Applicant the relief he seeks on an urgent basis. The court sees no reason why a normal court application was not used in the circumstances. It is accordingly ordered that:

1. The Applicant's urgent chamber application be and is hereby dismissed on the basis of the point in limine raised by the Respondent.
2. Costs shall be in the cause.

.....

**Manyangadze J,**

.....

**Chidziva J, I agree**