

DISTRIBUTABLE (17)

(1) NATIONAL AIR WORKERS' UNION (2) AIR
TRANSPORT UNION

v

(1) AIR ZIMBABWE HOLDINGS (PRIVATE) LIMITED (2) AIR
ZIMBABWE (PRIVATE) LIMITED (3) THE MASTER OF
THE HIGH COURT

**SUPREME COURT OF ZIMBABWE
ZIYAMBI JA, GARWE JA & GUVAVA JA
HARARE, MAY 15, 2014**

C Mucheche, for the appellants

T Magwaliba, for the respondents

ZIYAMBI JA: The appellants are trade unions registered in terms of the Labour Act [*Cap 28:01*]. The first respondent is Air Zimbabwe Holdings (Private) Limited, a company duly incorporated according to the laws of Zimbabwe, and the holding company of the second respondent (Air Zimbabwe), also a private company incorporated according to the laws of Zimbabwe.

In January 2011, Elijah Chiripasi and Alexander Ngoni Guchu purporting to act on behalf of the first and second appellants, respectively, filed a court application in the High Court seeking an order for the provisional judicial management of the first and second respondents on the basis that the respondents were indebted firstly, to members of the

appellants in respect of arrear salaries and, secondly, to the appellants themselves in respect of unremitted union dues.

It was the appellants' contention that the two respondents were, by reason of mismanagement, unable to pay their debts and that if placed under judicial management they could become capable of fulfilling their respective obligations.

The application was opposed by the respondents who raised three points *in limine*, namely:

1. That the deponents of the founding affidavits did not have the authority of the applicants (appellants in this appeal) to make the application since no resolution given by the membership of the applicants was attached to the founding affidavits.
2. That the applicants had no *locus standi* to make the application in the absence of compliance with the provisions pertaining to demand laid down in s 205 of the Companies Act.
3. The application was vague and embarrassing in that:-

“6.4.1. It is not clear from the founding papers what relationship the appellants are alleging to have with each of the respondents.

6.4.2 It is also not clear which of the respondents it is alleged has failed to meet the alleged liabilities.

6.4.3 Applicants have not established the nature of their relationship with each respondent nor specified the liabilities of each respondent.

6.4.4 Being separate and distinct legal entities respondents are accordingly inhibited from understanding the case or cases that each of them has to answer.”

The respondents also averred that a number of members of both appellants had distanced themselves from the application which they regarded as a personal decision of the deponents to the founding affidavit.

The court *a quo* accepted as a general principle that the appellants, as trade unions, are corporate entities which could sue and be sued. It identified the issues to be determined *in limine* as:

- (a) Whether the appellants had been authorised by their membership to institute the proceedings; and secondly,
- (b) Whether the deponents to the founding affidavits had done so with the authority of the appellants,
- (c) Whether proceedings were instituted prematurely.

Regarding issues (a) and (b) above, the court made the following findings:

1. The appellants had attached no documents in support of their contention that they were authorized to institute the proceedings. Instead, they had attached to the answering affidavits two sets of documents, Annexures A & B, after perusal of which the court noted:

- (a) That the bulk of the documents were signed after the filing of the application.
- (b) The documents in Annexure B only authorized the appellants to represent the signatories in the recovery of arrear salaries and did not authorize them to institute judicial management proceedings.
- (c) Thirdly, that the number of signatories in Annexure A which purported to authorize the appellants to institute the

proceedings did not constitute a simple majority of the appellants' membership.

- (d) That Annexure A reflects that the signatories are employed by Air Zimbabwe Holdings (first respondent) and yet they are in fact employed by the second respondent (Air Zimbabwe).
- (e) The documents in Annexures A & B authorize first and second appellants to do various acts and yet the signatories are not members of both unions.
- (f) Both Annexures do not authorize the deponents to depose to the affidavits.

It concluded that not only had the deponents not derived their authority to institute these proceedings from the membership of the appellants, but the appellants themselves had not obtained a mandate from the majority of their membership to institute the present proceedings whether by resolution or otherwise. It therefore upheld the points *in limine* and dismissed the application.

Dissatisfied with this order, the appellants have appealed to this Court contending that the finding by the court *a quo* that the appellants had not established their *locus standi* to bring these proceedings was wrong in law.

The gist of Mr *Mucheche*'s submissions before us is that the averments in the founding affidavits as to the positions held by the deponents in the appellants as well as the fact that the appellants are trade unions was sufficient to establish the authority of both

appellants to institute these proceedings and of the deponents to attest to the founding affidavits.

It seems to me that Mr *Mucheche* misconceived the basis of the court *a quo*'s decision. The finding of the court *a quo* was not that the appellants as trade unions could not sue on behalf of their membership but rather that the deponents had not established that they had authority either from the appellants or their membership to bring these proceedings. A reading of the appellants' founding affidavit and the evidence before the court *a quo* cannot possibly justify any other conclusion.

Further, in terms of s 29 of Labour Act [*Cap 28:01*], a registered trade union acts in terms of its constitution. It is the constitution which must make provision regarding the person(s) authorized 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. The appellants placed no reliance on the constitution nor did they attach a copy thereof to the application.

For the above reasons we are of the view that the appeal lacks merit. It is accordingly dismissed with costs.

GARWE JA: I agree

GUVAVA JA I agree

Messrs Matsikidze & Muccheche, appellant's legal practitioners

Mutumbwa, Mugabe & Partners, respondent's legal practitioners