

**REPORTABLE:** (74)

(1) TRIANGLE (PRIVATE) LIMITED  
v  
(1) FUNGAI GEORGE MUTASA (NO) (2) A.B MORAR (3)  
A.J BOSCH (4) E. ESTON (5) E. GAVAZA (6) A.J.  
VAN RENSBURG (7) R.T KARIDZA (8) L. MABIKA (9)  
D.I. MANCLINTOSH (10) I. MIDDLETON (11)  
MUSHORIWA

**SUPREME COURT OF ZIMBABWE  
GARWE JA, MAVANGIRA JA & MAKONI JA  
HARARE: 4 JUNE 2020 & 24 JUNE 2021**

*T. Zhuwarara*, for the appellant

*F. Mahere*, for the 2<sup>nd</sup> -10<sup>th</sup> respondents

No appearance for the 1<sup>st</sup> respondent

**Judgment No. SC 77/21  
Civil Appeal No. SC 845/18**

1

**GARWE JA**

[1] This is an appeal against the judgment of the Labour Court confirming with an amendment a ruling by a labour officer that the appellant was guilty of an unfair labour practice and that the appellant pays to each of the respondents arrear compensation due to them for the period March 2011 to September 2015. The appellant seeks an order setting aside the confirmation and, in its place, another order dismissing the application for confirmation with no order as to costs.

[2] Having gone through the papers filed in this matter and after hearing counsel, I am not persuaded that the Labour Court was, except for part of its order, wrong in confirming the ruling by the labour officer.

### *BACKGROUND FACTS*

[3] The first respondent herein Fungai George Mutasa, is a labour officer to whom an allegation of unfair labour practice was referred by the second to the eleventh respondents (“the respondents”). He unsuccessfully attempted to settle the matter by conciliation following which he then heard the parties in order to come up with a draft ruling in terms of s 93 (5)(c) of the Labour Act, [Chapter 28:01] (“the Act”).

[4] The respondents are employed by the appellant and fall in what the appellant calls the E Band employment grade. The appellant is a wholly-owned subsidiary of Tongaat Hullett, a South African company. In addition to the benefits they enjoyed in Zimbabwe in terms of their conditions of employment commensurate with their grade, the respondents also enjoyed membership of the Tongaat Hullett Pension Fund, a South African registered pension fund as well as the Discovery Essential Saver Plan, which enabled them to access medical services in South Africa. On 21 February 2011, the respondents were advised of the intention to terminate their entitlement to both the Pension Fund and the Discovery Essential Saver Plan with effect from 28 February 2011. It was indicated in that communication that the respondents would each be paid accrued benefits in cash or alternatively such benefits would be transferred to a retirement annuity or pension preservation fund held in each employees name with a registered entity of the employee’s choice in South Africa. It was further indicated that the cost related to the current monthly fund contributions would be incorporated into each employee’s monthly United State Dollar package in Zimbabwe with

effect from 1 March 2011. As regards the Discovery Essential Saver Plan, compensation was to be paid by incorporating the monthly member contributions, which translated to a hundred per cent contribution by Tongaat Hullett, into each employee's monthly United States Dollar package in Zimbabwe.

[5] The exchange of correspondence between the parties reveals that the respondents made several follow-ups to have the compensation paid and the contributions incorporated into their cash packages. This was to no avail. The papers further show that the appellant demanded that the respondents move from the Triangle Senior Staff Pension Fund (TSSPF) to the Money Plan Pension Scheme to enable these benefits to be processed. Owing to the stalemate, the respondents approached the High Court and, in an order dated 26 February 2015, the court determined that the TSSPF remained valid and binding and that there was no obligation on the respondents to migrate to the Money Plan. The court consequently ordered the appellant to commence making its contributions and to actuate the TSSPF. Appellant was further ordered to pay the costs of the application. That order remains extant as it was not appealed against. Notwithstanding that order, the appellant did not pay compensation or incorporate the monthly contributions into the employee's monthly United States Dollar package.

[6] In their statement of claim before the labour officer, the respondents averred that, in addition to benefits accruing in Zimbabwe, their conditions of service also provided for contractual entitlements to the Tongaat Hullett Pension Fund and the Discovery Essential Saver Plan, both of which were operational in South Africa. They further averred that it was the appellant that undertook to pay to each employee the accrued fund benefits or to transfer such fund to a retirement pension preservation fund and to incorporate the monthly fund

contributions into the cash packages in Zimbabwe. They averred further that the pension fund and Saver Plan were open to all employees in the E Band, regardless of the nature of one's pension in Zimbabwe. The decision not to pay the respondents was a punitive measure because the respondents had dared to assert their rights to membership of the TSSPF in the High Court.

[7] The respondents further alleged that the appellant had accepted its obligation to compensate the respondents when it communicated its decision to terminate the two benefits. The appellant had then proceeded to pay those employees who had agreed to join the Money Plan Pension Scheme in Zimbabwe but had then withheld compensation to the respondents. They therefore submitted that, by withholding the compensation, the appellant and its directors were guilty of an unfair labour practice. They therefore asked for a ruling directing the appellant to cease the unfair labour practice and to pay the arrear compensation. They further averred that the amounts should be paid "without any additional tax losses" by them.

**Judgment No. SC 77/21**  
**Civil Appeal No. SC 845/18**

4

[8] In its response to the complaint, the appellant stated that the benefits which formed the subject of the matter were availed as a measure to cushion the employees from the harsh economic situation obtaining in Zimbabwe at the time and that these benefits were being administered by Tongaat Hullett, a South African company and the holding company of the appellant. The benefits did not become vested in the contracts of employment of the respondents and remained discretionary on the part of the holding company. Therefore, so the appellant argued, whatever obligations the holding company created pursuant to the grant of these benefits do not bind the appellant. The benefits were paid and administered by Tongaat Hullett and, consequently, the appellant, as a subsidiary, had no obligation to actuate those benefits. The appellant further submitted that any claims that had arisen more than two

years before the hearing of the matter were prescribed in terms of s 94 of the Act. In other words, if it was found that an unfair labour practice resulting in the underpayment of the respondents had taken place, then the monthly underpayments would constitute separate causes of claim.

[9] In his analysis of the evidence and submissions made on behalf of the parties, the labour officer found that the letter of 21 February 2011 unequivocally placed an obligation on the appellant to compensate the respondents and to incorporate the monthly fund contributions and member contributions into the respondents' United States Dollar cash package in Zimbabwe with effect from 1 March 2011. He further found that the fact that the pension fund was administered by another agency other than the appellant itself did not mean the employees were employed by that agency. He therefore concluded that the payment of compensation of accrued benefits was a right. This was more so given the fact that the other employees in the same grade as the respondents who had migrated to the Triangle Money Plan have accessed their pension fund contributions and have had their Saver Plan incorporated into their monthly cash package in Zimbabwe. On the question of prescription, he found that, as the parties had been communicating over the issue, the matter was of a continuous nature and therefore the claim had not become time-barred. Lastly, he found that when the appellant's managing director wrote to the respondents, at no stage did he indicate that he was not writing on behalf of the appellant and that he was doing so on behalf of the holding company. Consequently he concluded that, by withholding the benefits, the appellant was guilty of an unfair labour practice. He therefore ordered that the appellant cease such unfair labour practice and pay individual arrear compensation to each of the respondents.

[10] Having made the above draft ruling, the labour officer referred the same to the Labour Court for confirmation in terms of s 93 (5)(a) of the Act. In its submissions before the Labour Court the appellant argued that the labour officer had grossly erred in finding that the benefits, the subject of this matter, had become vested in the contracts of employment entered into by the respondents. The benefits remained discretionary on the part of Tongaat Hullett. It further argued that whatever obligations Tongaat Hullett may have created were not binding on the appellant, a mere subsidiary. Lastly, the appellant submitted that the labour officer had misdirected himself in not finding that some of the claims by the respondents had prescribed. Having submitted their complaint to the arbitrator in September 2015, the respondents would only have succeeded on those claims that had arisen after September 2013, i.e. within the period of two years from the date when the unfair labour practice or dispute arose. The monthly underpayments would have constituted separate causes of action. Therefore the pensions claimed from March 2011 to September 2013 would have become prescribed.

**Judgment No. SC 77/21  
Civil Appeal No. SC 845/18**

6

[11] In their submissions before the Labour Court the respondents stated as follows. The appellant was attacking findings of fact made by the labour officer. There was no allegation that such findings were irrational. On prescription, they submitted that the unfair labour practice was continuing at the time the matter was referred to the labour officer and that, in terms of s 94 (2) of the Act, the claims had not prescribed.

[12] The Labour Court agreed with the labour officer, but for a different reason, that the unfair labour practice was continuing and therefore the claim was not prescribed in light of s 94 (2) of the Act. The court agreed with the other factual findings made by the labour officer but was of the view that the order directing the managing director and board of directors to effect payment was irregular as they had not been heard before the order was

made. The court accordingly confirmed the draft ruling but amended it to remove the reference to the managing director and board of directors from the order.

#### *PROCEEDINGS BEFORE THIS COURT*

[13] Unhappy with the outcome of the confirmatory proceedings, the appellant noted an appeal to this Court. It alleged that the Labour Court had erred:-

- In determining that the respondents' claim was not prescribed.
- In confirming the finding by the labour officer that the appellant had an obligation to pay the respondents when it was apparent that the benefits claimed had arisen from an agreement to which appellant had not been a party.
- In making a finding as regards the respondents' attendant tax obligations and placing an obligation on the appellant to pay any ensuing tax penalties.
- In assuming review and / or appellate jurisdiction during the confirmation proceedings when the court has no such power.

**Judgment No. SC 77/21**  
**Civil Appeal No. SC 845/18**

7

[14] In its heads of argument before this Court, the appellant has submitted as follows. Section 94 of the Act provides for a prescriptive period of two years from the date when the dispute or unfair labour practice first arose. Having submitted their claim to the arbitrator on 9 September 2015, any claims by the respondents prior to 9 September 2013 would have become prescribed as each monthly underpayment constituted a separate cause of action. The appellant further submitted that the benefits were initially offered by Tongaat Hullett, its South African holding company, which subsequently terminated the benefit. Its own attempts to incorporate the benefits into the respondents' contracts of employment were not accepted by them and consequently never became a contractual entitlement. The benefits could therefore be extinguished without the consent of the respondents. It further submitted that, not being privy to the agreement between the respondents and Tongaat Hullett, it had no

obligation to pay any of the benefits and, consequently, no unfair labour practice has been perpetrated by it. On the order directing the appellant to pay ZIMRA tax penalties, it was its submission that this was a declarator which the court *a quo* had no jurisdiction to make. The court had determined a contingent right, being the contingent tax penalty which had not arisen and may not arise at all. Lastly, it submitted that the Labour Court misconstrued its powers during confirmation proceedings. It could not, in terms of the law, rehear the matter. Nor could it amend the ruling to remove reference to the managing director.

[15] The respondents pray that the appeal be dismissed with costs. They have submitted as follows. In terms of s 94(2) of the Act prescription does not apply to a dispute or unfair labour practice which is continuing at the time it is referred to a labour officer. The appellant continues to discriminate against the respondents and has refused to pay them their monthly dues. The wrong was a continuous one and the respondents' claim was therefore not prescribed. The respondents have further submitted that they had no relationship with Tongaat Hullett outside of their employment contracts, which contracts entitled them to the benefits now the subject of this matter. The appellant had at all times accepted its obligation to pay the benefits. They further argue that the order directing the appellant to pay tax penalties was proper and that the court *a quo* correctly exercised its confirmatory jurisdiction.

[16] During oral argument, Ms *Mahere*, for the respondents, raised an objection to the submission by the appellant's counsel that s 94 (2) of the Act did not arise because the matter between the parties was a dispute and not an unfair labour practice. She submitted that this was a new point being taken on appeal for the first time. The effect of that submission was that s 94(2) of the Act would not arise because the issue before the labour officer was a dispute and not an unfair labour practice. At no point had the appellant taken the position



that the matter between the parties was a dispute and not an unfair labour practice. She submitted that, in any event, regard being had to s 6 (1)(e) of the Act, the appellant's conduct constituted an unfair labour practice as the latter had withheld the benefits due to the respondents as punishment for having sought recourse in the High Court. This conduct, in addition to the failure to pay the benefits, falls squarely within the ambit of an unfair labour practice as defined in s 8 of the Act. Moreover, the challenge in the first ground of appeal is whether or not the unfair labour practice was continuous and not whether the conduct was an unfair labour practice in the first place.

[17] Counsel for the appellant denied that it had changed its submission on the question of prescription, thereby taking the respondents by surprise. He submitted that it was appellant's primary position that there was no unfair labour practice and that even if it were so, the two year prescriptive period would still apply. The respondents' cause has always been that the conduct by the appellant of withholding compensation was their basis for alleging an unfair labour practice. The appellant has always argued that the claims were prescribed and that no reliance could be placed on s 94 (2) of the Act. What the court *a quo* determined was the time when the dispute arose. On a proper appreciation of the common cause facts, the respondents' claims for compensation were prescribed.

#### *ISSUES FOR DETERMINATION*

[18] From the foregoing, it seems to me that four issues arise for determination by this Court. The first issue relates to the question whether the matter referred by the respondents' to the labour officer was referred as a mere dispute or an unfair labour practice and, concomitantly whether the claim by the respondents had become prescribed. The second issue is whether the court *a quo* was correct in confirming the labour officer's ruling that the

appellant had an obligation to pay the benefits. The third is whether the court *a quo* correctly confirmed the order directing the appellant to pay additional tax losses by the respondents. The last is whether the court *a quo* could, in confirmation proceedings, re-hear submissions and amend the ruling. I relate to each of these issues in the same order in which they arise.

*WHETHER THE MATTER REFERRED TO THE LABOUR OFFICER WAS A MERE DISPUTE*

[19] The contentious issue that arises is whether the matter referred by the respondents to the labour officer was so referred as mere dispute or as an unfair labour practice and whether, in terms of s 94 (2) of the Act, the claims by the respondents were prescribed. There is no doubt in my mind that, although the respondents did not, at the time they approached the labour officer, specifically refer to the provisions of s 8 of the Act dealing with unfair labour practices by an employer, the gravamen of their complaint was one of an unfair labour practice and not just a dispute.

Judgment No. SC 77/21  
Civil Appeal No. SC 845/18

10

[20] The letter referring the matter to the Principal Labour Officer by the respondents' legal practitioner is dated 8 September 2015. It states in no uncertain terms that the matter being referred was one "of breach of employment contracts and unfair practices by Triangle Limited." It makes the allegation that the appellant had "withheld payments due to them as a way of punishing them for asserting their rights in court." It further alleges "unlawful conduct which is not only discriminatory and breach of employment contracts but a blatant unfair labour practice which we hereby request your office's intervention in terms of the Labour Act." It then requests the labour officer to proceed in terms of s 93 of the Act.

[21] It is the contents of that letter that kick-started the process of conciliation. When conciliation failed, the labour officer came up with a draft ruling which was then referred to the Labour Court for confirmation. In the draft ruling the labour officer found that when the employees turned down the request for them to exit from TSSPF to the Triangle Money Plan, the appellant had “proceeded to compensate all executives who are members of the Money Plan Pension Scheme in Zimbabwe and withheld compensation only to those executives who all along have been and are still members of the Triangle Senior Staff Pension Fund.” He further found the employees’ “assertion of discrimination persuasive” and that the appellant “should not have precluded them from enjoying the incorporation of compensation into the cash package or their salaries on the basis of their refusal to exit from the Triangle Senior Staff Pension Scheme as prescribed by the Respondent.” The labour officer concluded that, by withholding compensation, “the appellant, its managing director and Board of Directors” were guilty of an unfair labour practice. In his founding affidavit to the application for confirmation, the labour officer states that he “presided over the matter on 25 September 2015 on the alleged breach of contract of employment and unfair labour practice.”

Judgment No. SC 77/21  
Civil Appeal No. SC 845/18

11

[22] Although the labour officer on occasions used the terms “matter, “dispute”, it is clear he used these interchangeably with the term unfair labour practice. At no stage did the labour officer entertain the idea that what he was dealing with was a mere dispute as opposed to an unfair labour practice. It was for that reason that the labour officer went on to consider “whether the matter ... between the contending parties were (sic) of a continuous nature”- a clear reference to s 94 (2) of the Act.

[23] The appellant itself accepted that the issue before the labour officer involved an investigation into whether or not it (the appellant) had committed an unfair labour practice. In its written response to the complaint raised before the labour officer, it submitted that the respondents were only entitled to those claims which had arisen within two years of the date of the submission of the matter to the labour officer. It even accepted that, were it to be found that it had committed an unfair labour practice resulting in underpayment every month, then such monthly underpayments would constitute separate causes of action. It submitted that the respondents could not rely on subs (2) of s 94 of the Act and argue that the unfair labour practice (if such was one) was still continuing. In other words the appellant accepted that should the labour officer find that there was an unfair labour practice, he should further find that each such monthly underpayment constituted a separate cause of action in respect of which the two-year prescriptive period provided in subs (2) of s 94 would apply. At no stage did the appellant argue that the matter before the labour officer was not an unfair labour practice but rather a mere dispute – a point belatedly raised during oral argument. In all the circumstances therefore I hold that the issue before the labour officer was whether the appellant had committed an unfair labour practice by deliberately withholding monthly payments of benefits and whether the individual monthly claims were in any way affected by the two-year prescriptive period.

Judgment No. SC 77/21  
Civil Appeal No. SC 845/18

12

*WHETHER THE RESPONDENTS' CLAIMS HAD PRESCRIBED*

[24] Having found that the issue before the labour officer was whether the appellant had committed an unfair labour practice, the issue that consequently arises before this Court is whether the monthly benefits, or any of them, had become prescribed. As already noted, the appellant's position was that the respondents' cause of action would arise every month and that in terms of s 94 of the Act such cause of action would become prescribed after a period

of two years from the date when it arose. Accordingly the respondents were only entitled to succeed on those claims that had arisen within the period of two years before the lodgement of their complaint. The appellant, in its heads of argument before this Court, argued that the respondents cannot rely on subs (2) of s 94 because the section “clearly states as to when such a prescriptive period must be reckoned from.” However the appellant, as is clear from its heads, made no effort to interpret what subs (2) of the section means.

[25] That subsection states, in short, that prescription shall not apply to an unfair labour practice which is continuing at the time it is referred to a labour officer. The question before the court *a quo* and this Court is the interpretation to be accorded to the phrase “which is continuing at the time it is referred.” Whilst the principle of a continuous unfair labour practice has not been fully developed in our jurisdiction, the South African Labour Appeals Court has had occasion to consider the interpretation to be accorded to a similar phrase in their labour legislation. A case in point is that of *SABC Ltd. v CCMA*, 8, Ors. 2010 (3) BCLR 251 (LAC). At paragraph 27 of the judgment, the court remarked as follows:-

“...The problem however is that the argument presented by the appellant is premised upon the belief that the unfair practice or unfair discrimination consisted of a single act. There is however no basis to justify such belief. While an unfair labour practice or unfair discrimination may consist of a single act, it may also be continuous, continuing or repetitive. For example, where an employer selects an employee on the basis of race to be awarded a once-off bonus, this could possibly constitute a single act of unfair labour practice or unfair discrimination because like a dismissal, the unfair labour practice commences and ends at a given time. But where an employer decides to pay its employees who are similarly qualified with similar experience performing similar duties different wages based on race or any other arbitrary grounds, then notwithstanding the fact that the employer implemented the differential on a particular date, the discrimination is continual and repetitive. The discrimination in the latter case has no end and is therefore ongoing and will only terminate when the employer stops implementing the different wages. Each time the employer pays one of its employees more than the other, he is evincing continued discrimination.”

[26] I agree with the above remarks. Where, as in this case, the monthly benefits are withheld, the unfair labour practice is continual and repetitive. It will only terminate when such discriminatory conduct ceases and all the employees are treated the same. Section 94 (2)

makes it clear that, in such a case, the prescriptive period of two years does not apply. In other words, even in a situation where the amounts claimed cover a period of, say, three years, the prescriptive period of two years would not apply as the unfair labour practice would be of a continuous nature.

[27] In the present case, it is not in dispute that the monthly benefits to which the respondents were entitled were being withheld. The practice was continuing. In terms of s 94 (2), the claims, even those that arose beyond the period of 2 years, were not prescribed.

*WHETHER THE COURT A QUO CORRECTLY FOUND THAT THE APPELLANT WAS LIABLE TO PAY THE BENEFITS*

[28] It was the finding of the labour officer, subsequently confirmed by the court *a quo*, that the appellant was under an obligation to pay the various outstanding amounts, notwithstanding its claim that it was not privy to the agreement that gave rise to the conferment of those benefits by its parent company. The labour officer, in his draft ruling, found that the appellant had an obligation to compensate the respondents. He found that the appellant had authored the letter of 21 February 2011 to the individual employees undertaking to make such compensation. At no stage did the letter make reference to the compensation being a privilege or that the obligation to do so lay on its parent company. The labour officer also found that it is common practice for an employee's pension to be held or administered by an entity other than the employer itself. He also found it strange that, whilst denying liability on the basis that the agreement was between the employees and the appellant parent company, the appellant was prepared to pay them had they agreed to move to the Triangle Money Plan.

[29] The labour officer made findings of fact. That these were made in the context of a draft ruling is neither here nor there. Those findings were not inconsistent with the evidence before him. The labour officer accepted the position that the pension fund was administered by the Tongaat Hullett Pension Fund. The correspondence that forms part of the record confirms that the respondents enjoyed the benefits in question by virtue of their membership of the Pension Fund. Nowhere does the appellant show the existence of a separate agreement between the respondents and the holding company. Had there been such an agreement, the appellant would, no doubt, have produced it. It did not do so. What is apparent is that the respondents enjoyed these pension benefits by virtue of their employment with the appellant and not because the holding company had separately entered into agreements with the respondents to provide these benefits. Indeed it was not in contention that the respondents did not have any other connection to the Tongaat Hullett Pension Fund except in their capacities as employees of the appellant. In the letter of 21 February 2011 the appellant accepted that the “letter and conditions contained therein are part and parcel of the revised terms and conditions of employment.”

Judgment No. SC 77/21  
Civil Appeal No. SC 845/18

[30] The court *a quo* agreed with the findings of the labour officer that it was the appellant that had the obligation to pay the benefits. This was a finding made on a consideration of all the evidence. Such a finding cannot be impugned unless the appellant shows that it was irrational – *Hama v National Railways of Zimbabwe* 1996 (1) ZLR 664 (5), 670 C – E; *Edward Misihairambwi & 14 Ors v Africare Zimbabwe* SC 22/17. Absent demonstrable, material misdirections and clearly erroneous findings, the Labour Court was bound by the findings. No such finding can be made on the facts of this case.

*THE ORDER TO PAY ADDITIONAL TAX LOSSES*

[31] The appellant submits that the order for the appellant to pay additional tax losses was declaratory in nature. It submits that the court *a quo* had no jurisdiction to make such an order. During oral submissions, counsel for the respondents explained that what was envisaged were penalties to be imposed by ZIMRA owing to delays in the payment of tax by the respondents.

[32] I agree with the appellant that the court *a quo* made a determination on a contingent right, namely additional tax. Such tax penalty had not arisen and it is anyone's guess whether it ever will be imposed. Neither the court *a quo* nor the labour officer provided the basis, in law, upon which this order was made. It is common cause neither party had made submissions on it.

[33] In any event, it is difficult to see how additional tax liabilities would arise, it being common cause that no payment had been made to the respondents. As I understand the law, the liability to pay tax would arise once the respondents were paid their benefits and not before. It is difficult to imagine ZIMRA imposing penalties on the respondents in respect of benefits that were the subject of court proceedings and which, to date, remain unpaid.

Judgment No. SC 77/21  
Civil Appeal No. SC 845/18

16

*WHETHER THE COURT A QUO PROPERLY EXERCISED ITS CONFIRMATORY ROLE*

[34] As I understand the appellant's submission on this aspect, the court *a quo* neither had review or appellate jurisdiction and could not therefore "rehear" the matter. It could not amend the ruling and was confined to either confirming it as it was or dismissing it in its entirety. It could not substitute its own order.



[35] In my view, there is no merit to the appellants' submission in this regard. Section 93 (5b) of the Act allows the Labour Court to grant the application with or without amendment. In *Air Zimbabwe (Private) Limited v J.V. Mateko (2) Elijah Chiripasi and Others* SC 180/20, this Court had occasion to make the following pertinent remarks:

“(15)...

It will be apparent from the above decision that when the Labour Court is called upon to confirm a draft ruling it is essentially being asked to exercise its powers of review.

...

(16) – (27)...

(28) What the court *a quo* did was to confirm that the termination of employment was indeed lawful. In doing so, it removed reference to a declaratur. It also removed the names of the parties who had not been properly joined to those proceedings. It also made provision for reinstatement, alternatively payment of damages.

(29) In my view, there was no substitution of the order of the labour officer but rather a correction and addition to make the order more acceptable in terms of the law. At the end of the day therefore the order granted by the court *a quo* was one within the contemplation of the labour officer, the amendment having been made merely to ensure that the confirmed order accorded with the law.

(30) I am of the considered view, in light of the above sentiment, that the changes effected by the Labour Court were indeed amendments and that they cannot, by any stretch of imagination, be termed a substitution. As noted earlier in this judgment, labour officers are often lay persons with little or no training in matters legal. For that reason they are given the power to make draft rulings which are then subjected to scrutiny by the Labour Court, a specialised court in terms of labour and employment."

[36] In all the circumstances, therefore, I find nothing improper in the manner in which the court *a quo* handled the confirmation proceedings.

#### *DISPOSITION*

[37] In light of s 94 (2) of the Act, the claims for unfair labour practice made by the respondents against the appellant were not prescribed, as these were of a continuing nature.

The court *a quo* was correct in confirming the finding by the labour officer that the claims were not prescribed. The court was also correct in finding that the appellant, and not its parent company, was liable for the payment of the outstanding benefits. It was however irregular for the labour officer to order payment of possible tax penalties by the appellant. That part of the order should not have been confirmed.

[38] In the result, it is ordered as follows.

1. The appeal is allowed only to the extent that the order directing the appellant to pay additional tax losses incurred by the respondents is set aside.
2. Subject to paragraph 1 above, the appeal is otherwise dismissed.
3. The appellant is to pay the costs of the appeal.

**MAVANGIRA JA** : I agree

**MAKONI JA** : I agree

**Judgment No. SC 77/21**  
**Civil Appeal No. SC 845/18**

18

*Scanlen & Holdernes*, appellant's legal practitioners

*Chinawa Law Chambers*, 2<sup>nd</sup> – 11<sup>th</sup> respondent's legal practitioners