

**REPORTABLE** (60)

**NATIONAL EMPLOYMENT COUNCIL FOR ENGINEERING  
AND IRON AND STEEL INDUSTRY**

**v**

**GENERAL ENGINEERS, ENGINEERING MAINTENANCE  
AND CIVIL ENGINEERING WORKERS UNION**

**SUPREME COURT OF ZIMBABWE  
HARARE: 21 SEPTEMBER 2022 & 26 JUNE 2023**

*T.L. Mapuranga*, for the applicant

*A. Kambunge*, for the respondent

**CHAMBER APPLICATION**

Judgment No. SC 60/23  
Chamber Application No. SC 371/22

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**BHUNU JA:**

[1] This is an opposed application for condonation and extension of time within which to note an appeal. The application is brought in terms of r 43 of the Supreme Court Rules 2018.

**POINTS IN LIMINE.**

[2] At the commencement of the hearing of this application, the respondent raised a point *in limine* protesting against the authenticity of one Patricia Darangwa to represent the applicant in legal proceedings. They questioned the validity of the resolution appointing her to represent the applicant on the basis that there was another resolution appointing a different person to represent it.

[3] The law is clear. A legal entity can only be represented by an authorized natural person in legal proceedings. In *Madzivire & Ors v Zvarivadza & Ors* 2006 (1) ZLR 514 (S) it was held that a company, being a separate legal *persona* from its directors, cannot be represented in a legal suit by a person who has not been authorised to do so. *In casu*, the applicant has however attached the minutes of the meeting that granted her authority to represent the applicant. From those minutes it is clear that three officials of the applicant were authorised to represent the applicant and Patricia Darangwa is one of them. Consequently, the challenge to the notice of opposition in this respect lacks merit.

[4] During the course of the hearing only the signature of the erstwhile president removed from office under acrimonious circumstances was challenged leaving three other signatures virtually unchallenged. Counsel for the respondent explained that in the circumstances the then President left office, they were unable to get confirmation of his signature. That submission was not challenged by the respondent. I then made the following ruling:

“Considering that the majority of the signatures to the resolution are not challenged, I come to the conclusion that the resolution authorising Ms Chiyangwa to represent the applicant is authentic. The point *in limine* is accordingly dismissed.”

[5] That ruling still stands.

## **BACKGROUND FACTS'**

[6] The applicant is a National Employment Council duly established in terms of the Labour Act [*Chapter 28:01*]. Its mandate is to regulate employment matters within the Engineering, Iron and Steel Industry. It has an elaborate dispute resolution

mechanism for employers and employees falling under its ambit. On the other hand the respondent is a trade union covering employees in the Iron and Steel industry.

[7] The parties are embroiled in a dispute over the scope or extent of the respondent's membership. The applicant's certificate of registration designates its scope of interests as "ENGINEERS". Its scope of operations therefore covers engineers.

[8] The applicant approached the High Court (the court *a quo*) seeking a declarator and consequential relief. The applicant's complaint was that the respondent was using its dispute resolution mechanisms to represent employees who are not engineers. In other words, the complaint was that the respondent was using its designated agents to resolve issues of employees who were not engineers. It averred that its designated agents had no jurisdiction to preside over disputes involving employees who are not NEC graded.

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[9] On the other hand, the respondent contended that the applicant has no business in preventing trade unions and those who subscribe to a particular trade union, from using applicant's quasi-judicial structures for redress. This is because workers have a statutory and constitutional right to belong to trade unions of their choice.

#### **FINDINGS OF THE COURT A QUO**

[10] The court *a quo* found in favour of the respondent's argument and held that employees had a right to join any trade union of their choice whose scope of operations covers their industry. Consequently, it dismissed the applicant's application with costs.

[11] Aggrieved by the dismissal of its application, the applicant sought to appeal to this Court but was out of time, hence this application for condonation of late noting of appeal and extension of time within which to appeal.

## **RELIEF SOUGHT**

[12] The applicant seeks the following relief:

1. The application for condonation for non-compliance with r 38 of the Supreme Court Rules, 2018 be and is hereby granted.
2. The application for extension of time within which to file and serve a notice of appeal in terms of the rules be and is hereby granted.
3. The Notice of Appeal which is annexure "C" to this application shall be deemed to have been filed on the date of this order.
4. Each party shall bear its own costs. Judgment No. SC 60/23  
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## **THE LAW**

[13] The requirements for an application of this nature to succeed are well known. These were listed in *Forestry Commission v Moyo 1997 (1) ZLR 254 (S)* by GUBBAY CJ, as follows:

- (a) That the delay involved was not inordinate, having regard to the circumstances of the case;
- (b) That there is a reasonable explanation for the delay;
- (c) That the prospects of success should the application be granted are good;  
and
- (d) The possible prejudice to the other party should the application be granted.

## **THE LENGTH OF DELAY AND EXPLANATION FOR THE DELAY**

[14] The judgment of the court *a quo* was granted on 18 May 2022. The applicant ought to have noted its appeal within 15 days from the date of the judgment. The application for condonation was filed on 3 August 2022, three months after the lapse of the *dies induciae*. In my view the delay is not inordinate having regard to the explanation for delay.

[15] The applicant's explanation for delay is that when the judgment of the court *a quo* was handed down some of its secretaries were not available to approve the decision to appeal against the judgment *a quo*. In my view the explanation for the default is reasonable considering the magnitude of the applicant organisation.

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## **PROSPECTS OF SUCCESS**

[16] The basis of the applicant's appeal is that the court *a quo* erred by allowing the respondent to represent employees who do not fall within its scope of operations. On its part the respondent denies that it is representing employees who fall outside its scope of operations. The onus was on the applicant to prove on a balance of probabilities that indeed the respondent was representing employees outside its scope of operations. The nub of the applicant's appeal is that the respondent's scope of operations does not cover engineers. The respondent countered that it was entitled to represent non-managerial engineers who were its members.

[17] In opposing the applicant's claim, the respondent placed heavy reliance on the case of *Jack v National Employment Council for the Engineering and Iron and Steel Industry*

HH 204-19. In that case the court *a quo* held that the respondent was entitled to represent its members. In that case the court had this to say:

“As shown above, the trade union involved in this case is for the industry or undertaking under which the third respondent falls. Its name says so but, in any case evidence shows the involvement of the respondents in cases in which the trade union has been involved. It is not for the conciliation tribunal to choose for or dictate to an employee the particular trade union to join as long as the trade union which the employee joins is for the undertaking or industry in which he is employed. Such conduct as displayed by the respondents in objecting to the applicant’s membership of the trade union of his choice is a violation of the applicant’s rights as enshrined in s 65(2) of the Constitution of Zimbabwe and in s 4 (1) (a) and (2) and s 50 (1) of the Labour Act [Chapter 28:01], and is unlawful. 4 HH 204-19 HC 7482/18 Applicant’s evidence shows that he is a member of the General Engineers, Engineering Maintenance and Civil Engineering Workers Union. That membership entitles the applicant to all the rights and privileges of a member, including the right to seek advice from and be represented by the trade union or its officials in any labour dispute whether that dispute is at the conciliation stage or some other stage. The trade union has the right to be heard on behalf of its members as well.” (My emphasis).

## DISPOSAL

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[18] In the absence of any argument that the above case was wrongly decided or distinguished from the instant case, it is difficult to fault the learned judge *a quo* for following laid down precedence. Indeed the learned judge *a quo* was correct in premising his judgment on the basis that both the Constitution and the Labour Act confer on employees the right to join trade unions of their choice. I therefore hold that there are no reasonable prospects of success on appeal. Costs follow the result.

[19] It is accordingly ordered that the application be and is hereby dismissed with costs.

*Caleb Muccheche and Partners*, applicant's legal practitioners

*Hungwe and Partners*, respondent's legal practitioners

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