

IN THE LABOUR COURT OF ZIMBABWE

JUDGMENT NO LC/H/357/2023

HARARE 10 OCTOBER 2023

CASE NO LC/H/451/23

05 DECEMBER 2023

TEMBO BURAWUDI & 2 OTHERS

APPLICANTS

FAITH MUPANGANI N.O. & ANOTHER

RESPONDENTS

Before the Honourable G. Musariri Judge:

For Applicants Mr R. Goba, Advocate

For Respondent Ms C. Makura, Attorney

MUSARIRI, J:

At the onset of oral argument in this Court 2nd Respondent raised points in limine which Applicants opposed. However Respondent abandoned the point pertaining to the form of the application. The remaining points shall be dealt with ad seriatim.

1. Whether 1st and 2nd applicants are properly before the Court

The point is expatiated in 2nd respondent's opposing affidavit thus,

"7. The 2nd respondent takes issue with the stance taken by the 2nd applicant in purporting to appear on behalf of the 1st and 3rd applicants without the parties deposing supporting affidavits to the application. It only points to one conclusion that the 2nd applicant is acting on a frolic of her own. In addition to that, the 2nd applicant is the deponent to the founding affidavit whereas the 1st applicant does not have any founding papers before the court and yet he is cited as the 1st applicant. He neither deposes to the founding affidavit as the dominus litis nor does he tender a supporting affidavit to the present application. By that, the cause of action does

not have a driver and thus cannot stand. One cannot place something on nothing and expect it to stay there. It will collapse like a deck of cards.”

2nd Applicant countered in her answering affidavit as follows;

- “10. As I stated on my founding affidavit, I have always made representations for and on behalf of the 3rd Applicant. I attach hereto my authority to act for and on behalf of the 3rd Respondent (sic) in this regard.
11. I further provide the 1st Applicant’s confirmation that he duly authorised me to make such representations. Find attached his confirmatory affidavit.

The point in limine lacks merit primarily because the underlying judgement sought to be appealed to the Supreme Court cites both the 1st and 3rd applicant. 2nd applicant was therefore obliged to cite them in the application for leave to appeal whether or not they consented to the citation. It would then be open to them to associate or dissociate with or from the application. That is the standard practice regarding appeals involving multiple appellants.

2. Whether the 1st applicant’s affidavit was properly commissioned by a Commissioner of Oaths

This point is rendered moot by the Court’s conclusions above regarding the 1st point in limine.

3. Whether the draft grounds of appeal raise points of law

The point was raised in 2nd respondent’s opposing affidavit. However it was not taken up in oral argument. Further and in any event the point deals with the heart or quintessence of the application for leave to appeal. It cannot properly be determined as a preliminary issue. It is a key issue to be determined by this Court after full argument by the parties.

Conclusion

All in all it is concluded that the points in limine were misconceived and should not have been taken.

Wherefore it is ordered that,

- 1. The 2nd respondent's points in limine be and are hereby dismissed;**
- 2. The Registrar of this Court is directed to re-set the matter for continuation on the earliest available date; and**
- 3. Costs shall be costs in the cause.**

G MUSARIRI

J-U-D-G-E