

- 1) ASSOCIATED MINE WORKERS UNION OF ZIMBABWE  
versus  
ACTURUS MINE (PVT) LTD
- 2) ASSOCIATED MINE WORKERS UNION OF ZIMBABWE  
versus  
METALLON GOLD ZIMBABWE t/a MAZOE MINE
- 3) ASSOCIATED MINE WORKERS UNION OF ZIMBABWE  
versus  
METALLON GOLD ZIMBABWE t/a SHAMVA MINE
- 4) ASSOCIATED MINE WORKERS UNION OF ZIMBABWE  
versus  
METALLON GOLD ZIMBABWE t/a HOW MINE
- 5) ASSOCIATED MINE WORKERS UNION OF ZIMBABWE  
versus  
METALLON GOLD ZIMBABWE t/a REDWING MINE

HIGH COURT OF ZIMBABWE  
CHAREWA J  
HARARE, 14 & 22 November 2017

### **Opposed Application – Special Plea**

*B Ndoro*, for the plaintiffs  
*B Ngwenya*, for the defendants

CHAREWA J: The plaintiff, a trade union organisation, instituted summons in each of the five matters claiming for payment of trade union dues due to it in terms of a Collective Bargaining Agreement. The defendants in each of the cases raised a special plea of lack of jurisdiction averring that the collective bargaining agreement is a contract between an employer and employee and thus non-payment of trade union dues is a labour matter for which the High Court has no jurisdiction.

The cause of action in all five matters being the same; the plaintiff being the same trade union and the defendants being the same company or entities within the same group of companies; with the heads of argument filed by the parties being exactly similar and all the

parties being represented by the same legal practitioners; the matters were consolidated and heard as one at the instigation of the parties' legal practitioners.

### **The Law**

It is trite that the Labour Court's jurisdiction is exclusively in labour matters. It cannot deal with any dispute which does not arise out of an employment relationship as prescribed in the Labour Act.

It is also trite that the High Court is a court of original jurisdiction, which has interpreted its powers so widely as to be unnecessarily fettered by other courts with similar jurisdiction.<sup>1</sup> However, the High Court has also recognised that it should not willy nilly usurp the powers of courts specifically established to deal with certain categories of matters. In that regard, the High Court is ever loathe to infringe upon the jurisdiction of the Labour Court, and does not normally deal with any labour matters as prescribed by the Labour Act.

That said, it is also trite that a collective bargaining agreement is not a contract of employment or a bilateral agreement between an employer and employee. Rather it is a tripartite agreement between an employee, an employer and the trade union for the particular industry. The agreement lays down terms and conditions for the particular industry, breach of which may give rise to a claim for unfair labour practice by an employee whose labour rights are circumscribed by that agreement.

### **The issue**

The question that the special plea poses therefore is whether a trade union, acting in its own stead is subject to an employer –employee relationship which ought therefore to be subject to the jurisdiction of the Labour Court.

The defendants' argument suggest that that is the position the court ought to take: that when a trade union is claiming dues that it is entitled to as an organisation, and which are not claimable by an employee from his employer, that should be a matter for the Labour Court. They aver that a collective bargaining agreement is an agreement between an employer and employee where the trade union is an agent of the employee. Therefore collection of union dues arise out of an employment arrangement and is thus a labour matter.

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<sup>1</sup> *Homodza v Chitungwiza Municipality* HC 2947/13. See also *Confederation of Zimbabwe Industries v Mbatha* HH125-15 and *Water and Allied Workers Union v City of Harare* HH238-15

The plaintiffs argue otherwise: that there is no employer employee relationship between the trade union and the employer. And since the Labour Act gives the Labour Court jurisdiction over employment disputes, a claim for union dues is a debt divorced of any employment relationship between the union and employer. The union is not even claiming the dues as an agent of the employee as those dues are not going to the employee, but to the union.

### **Analysis**

It seems to me that the defendants fell into a very elementary error. They failed to separate the employee and his relationship to his employer, which is an employment relationship subject to the Labour Act and which should ordinarily be referred to the Labour Court, from a purely civil dispute where a non-employer or non-employee seeks to recover a debt from an employee or employer respectively.

In the first scenario, it is true that the court has taken the contrasting view, from its traditional stance that only the Labour Court has exclusive jurisdiction as the court of first instance in employment disputes. This is evidenced in *Homodza v Chitungwiza Municipality (supra)* and *Confederation of Zimbabwe Industries v Mbatha (supra)* and *Water and Allied Workers Union v City of Harare (supra)*, where it was held that the High Court, as a court of inherent jurisdiction, can determine labour disputes as a court of first instance.

In the second scenario, a trade union exists to safeguard the interests of employees and is not itself in an employment relationship with the employer. The trade union, so to speak, is the middleman, which negotiates terms and conditions for employees and may represent them but is itself not an employee. In the particular matters *in casu*, the trade union is merely saying to the employer, “your employee is obliged to subscribe to his union so that it can represent him in negotiations with you. In terms of the tripartite agreement between us, you are obliged to deduct the employee’s subscriptions and remit them to us, and you have failed to do so. Therefore, we require you to pay to us those subscriptions which you did deduct or ought to have deducted from the employee on our behalf.”

This is hardly an employment relationship. In fact, in these circumstances, the Collective Bargaining Agreement, in my view, has made the employer an agent of the union, to collect subscriptions on its behalf. It would thus be farfetched to suggest that a trade union

acting in its own stead to collect monies due to itself is exercising its rights in terms of an employer-employee relationship.

There is thus no labour dispute for the Labour Court to deal with. The issue is one of the collection of a debt owed by the defendants to the plaintiff in circumstances where there is no employer-employee relationship between them.

The cases cited by the defendants are thus totally irrelevant and inapplicable in so far as they were all concerned with disputes between an employer and employee. In particular, in *Triangle Limited & Ors v Zimbabwe Sugar Milling Industry Workers' Union & Ors* HH 74-16 the union was representing its members, the employees, in a planned collective job action. And in *Water and Allied Workers Union of Zimbabwe v City of Harare (supra)*, the union was representing its members, the employees, to be reinstated and have their purported retirement set aside.

In the premises I find that the special plea is ill founded and must be dismissed.

The plaintiff prayed the court for costs on the higher scale on the grounds that the special plea was badly taken in view of the clear provisions of s89 of the Labour Court which gives the Labour Court jurisdiction only on employment disputes. Further, and in any event, s 78(2) does not limit a party to the Labour Court where the remedy sought is readily available through other means. In addition, the special plea was persisted in merely to buy time despite the defendants' attention being drawn to the provisions of s171 of the Constitution.

The defendant argues that in view of conflicting decisions by the High Court on this matter, higher costs are not warranted.

I must state that defendant went off on a complete wild goose chase arising out of a total misconception of the case law and statutes. I have already stated that the cases cited are totally irrelevant to the case in issue as they dealt with matters arising from employment disputes between an employer and employee.

There is absolutely no conflict in the jurisprudence of the High Court with regard to whether union dues arise out of an employment dispute and should be referred to the Labour Court. Jurisprudential conflict has only arisen in labour disputes where some judges have felt that s171 of the Constitution entitles an employee, personally or through his trade union, to

bring his claim against an employer to the High Court directly, thus circumventing the circuitous dispute resolution mechanisms prescribed in the Labour Act.<sup>2</sup>

However, I notice that the plaintiff, in its heads of argument also fell into the same error as the defendants, in failing to distinguish between case law dealing with labour disputes arising out of an employer-employee relationship, or where a union was acting on behalf of employees. This is evidenced by plaintiff's reliance on *Homodza v Chitungwiza Municipality* (supra) and *Confederation of Zimbabwe Industries v Mbatha* (supra) and *Water and Allied Workers Union v City of Harare* (supra), without noticing that these are matters dealing with disputes between an employer and employee. In the circumstances, I find that costs on the higher scale are not warranted.

In the premises, it is ordered that the defendants' special plea is dismissed with costs on the ordinary scale.

*Mabulala & Dembure*, plaintiff's legal practitioners  
*Chinawa Law Chambers*, defendant's legal practitioners

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<sup>2</sup> See for instance *Homodza v Chitungwiza Municipality* (supra) and *Confederation of Zimbabwe Industries v Mbatha* (supra)