

MORGAN PARADZA  
versus  
MASHONALAND TOBACCO COMPANY

HIGH COURT OF ZIMBABWE  
CHINAMORA J  
HARARE, 26 July 2022 and 15 March 2023

### **Opposed Application**

Mr *N Mugiya*, for the applicant  
Mr *G Ndlovu*, for the respondent

### **CHINAMORA J:**

#### **Background facts:**

This is an application for a declaratur in terms of s 14 of the High Court Act. The background facts are that the applicant was employed by the respondent, Mashonaland Tobacco Company (“MTC”) under a fixed term contract from 2006, as a messenger in the stores and procurement department. It is the applicant’s contention that in 2009 his salary was reduced without his consent and knowledge. He also states that in 2015 his contract was changed from a fixed term contract to a seasonal contract. It is from this that the applicant’s grievance stems. In essence, the applicant’s complaint is that the contract between him and MTC was unlawfully changed without his consent. He contends that his duties were permanent and not seasonal since they are not tobacco related duties. Because of this, the applicant asks this court for a declaratory order on the two contracts and ascertain which contract the applicant is subjected to, and which one determines their rights. Noteworthy is that the relationship between the applicant and the respondent originates from a contract of employment.

When the matter came before me on 26 July 2021, the respondent raised three (3) points *in limine*, namely; that the High Court lacks jurisdiction; that there is no respondent before the court; and that the applicant’s claim has prescribed. On the first preliminary point, the respondent argued this court has no jurisdiction to deal with labour matters at first instance. I upheld the point in

*limine* on lack of jurisdiction and struck off the matter off the roll. It is imperative to note that during the proceedings Counsel for the applicant conceded this legal position, but advised the court that he wished to personally explain this to his client. When the matter was struck off the roll, the applicant wrote to the registrar of this court seeking reasons for my decision. These are the reasons.

### **The applicable law**

The position of the law is settled on the issue of the jurisdiction of the High Court in labour matters. For example, the Supreme Court has pronounced on this subject in *Chingombe and Anor v City of Harare and Ors* SC177-20; *Nhari v Mugabe and Ors* SC 161-20. This court has also added weight on its lack of jurisdiction in *Muchenje v Mutangadura and Ors* HH 21-21; *Confederation of Zimbabwe Industries v Rita Marque Mbatha* HH 125-15 and *Rodin Mzyece v Grain Marketing Board* HH 72-23. In *Stanley Machote v Zimbabwe Manpower Development Fund* HH 813-15, the question was considered whether the Constitution had reinstated the jurisdiction of the High Court in labour matters. TSANGA J had this to say:

“As stated, when a court has original jurisdiction this refers to its standing and right to hear a case as the first court of first instance. Constitutionally, the High Court has indeed been conferred with unfettered power to exercise original jurisdiction in all civil and criminal matters as argued by the respondent. Such original jurisdiction is exercisable even in matters regulated by statute. However, whilst s 171 (1) (a) does confer upon the High Court original jurisdiction over all civil and criminal matters throughout Zimbabwe, this overall authority also has to take into account other applicable constitutional provisions as well as legislation force that in reality places some breaks or limits on its exercise of original jurisdiction in specific instances. Thus, s 172 (2) of the Constitution gives the Labour Court “jurisdiction over labour matters as conferred by an Act of Parliament”. The applicable Act of Parliament in labour matters is the Labour Act [*Chapter 28:01*]. As stated, its s 89 (6) clearly confers on the Labour Court jurisdiction in the first instance to hear and determine any applications, appeals or other matters stipulated in that Act. The Labour Act is thus a delegated piece of legislation in labour matters in terms of which it is empowered to determine all labour matters as a court of first instance and as also as a court of appeal”.

I agree entirely with the sentiments of TSANGA J. The jurisdiction of the High Court is specifically ousted in the first instance by s 89 (6) of the Labour Act when it comes to labour matters. Similarly, in *Triangle Limited and Ors v Zimbabwe Sugar Milling Industry Workers Union and Ors* HH 74-16 MAKONI J (as she then was) confirmed that:

“Provisions of the Constitution cannot be read in isolation. If s 171 (1) is read with s 172 it becomes clear that “all matters” in s 171 (1) excludes matters over which a specialized court, such as the Labour Court is established. The absurdity that will arise is that while the Labour Court is set up

with elaborate mechanisms to deal with labour disputes, litigants will by-pass it and approach the High Court. This would render the establishment of specialized courts nugatory. This would not have been the intention of the drafters of the law.”

Having reviewed the law as it stands in this jurisdiction, I now move to consider if there is merit in the point *in limine* raised by the respondent. In other words, the question that requires an answer is: Does s 89 (6) of the Constitution preclude the jurisdiction of this court in *casu*? It is my view that the dispute in this matter is purely a labour one in so far as the disagreement between the parties arises from a contract of employment. It is apparent that the applicant has disguised his application as a declaratur, and that this has been done in order to exclude the jurisdiction of the Labour Court. I say so taking guidance from the case of *Shangiwa and Ors v Ndimbarimba N.O and Ors* HH 679-2022, where CHILIMBE J appositely observed that:

“I note that in *Nhari v Mugabe & Ors* SC 161-20; *Chingombe & Anor v City of Harare & Ors* SC 177/20 as well as *Muchenje v Mutangadura & 4 Ors* HH 21-21, the court analysed whether the applicants/appellants` had fulfilled the requirements of a declaratur. That inquiry exposed that the underlying relief sought was that of reinstatement of the contract of employment under the guise of a declaratur.”

From what is discernible from the papers before me, I inevitably reach the same conclusion as my brother, CHILIMBE J. The point must be repeated that Counsel for the respondent accepted that this matter falls within the purview of the Labour Court, but acted *ex abundante cautela* to avoid making a concession without instruction from his client. It is evident that the applicant sought a declaratur principally to have the court declare the applicant’s rights in a contract of employment. However, the facts *in casu* are no different from those that confronted this court in *Muchenje v Mutangadura and Ors supra*. When it was argued that the applicant (Muchenje) was seeking an interdict which only the High Court could grant, MUREMBA J had no hesitation in disposing of that submission thus:

“The fact that the applicant is seeking a particular relief is not itself decisive. In other words, what is important or what matters are the grounds on which the application is based rather than the order or the relief that is being sought. Regard should be made to the substance of the application and the averments contained therein instead of the relief that is being sought. The relief being sought cannot be the sole decider of whether or not a matter is properly before the court”.

In light of the above case law, I am satisfied that this court has no jurisdiction in the first instance to hear this matter as it is essentially a labour dispute. It was for this reasons that I withheld the jurisdiction of this court and granted the following order:

1. The point *in limine* raised by the respondent on lack of jurisdiction be and is hereby upheld
2. The matter is struck off the roll.
3. The applicant shall bear the costs of suit.

*Mugiya and Muvhami*, applicant's legal practitioners  
*Gill, Godlonton and Gerrans*, respondent's legal practitioners