

WELLINGTON ZENGEZA
versus
EMPOWERMENT BANK

HIGH COURT OF ZIMBABWE
TAKUVA J
HARARE, 17 July 2024 and 19 February 2025

Court Application for a Declaratur

T Mupamhadzi, for the applicant
M Kondongwe, for the respondent

TAKUVA J: This is a court application for a declaratur in terms of s 14 of the High Court Act [*Chapter 7:06*] and ancillary relief thereto. The order sought is as follows;

- “1. My dismissal from employment by the Respondent on the 12th of December 2019 be and is hereby declared to be unlawful.
2. The Respondent be and is hereby ordered to reinstate me to my provisions position without loss of salaries and benefits.
3. If reinstatement is no longer tenable, the respondent be and is hereby ordered to pay the damages *in lieu* of reinstatement within 30 days from the date of this order, failure of which, either party can approach the Labour Court for quantification.
4. If the Respondent oppose (sic) this application, it be and is hereby ordered to pay costs of suit on an attorney and client scale.”

BACKGROUND FACTS

Notwithstanding the long and winding narration of the history of this case by the Applicant the bottom line is that the Applicant was employed by the respondent in various capacities. The dispute arises from the termination of a contract of employment that Applicant considers unlawful in that it is not in accordance with the provisions of the Labour Act [*Chapter 28:01*] Act.

Applicant has filed this application fully aware of the pity falls that lie ahead. In paragraph 1.39 of his founding affidavit, he concedes the point in the following words;

“It is on that basis that I have sought recourse to this Honorable Court for an order that declares rights. I am conversant and cognisant of the fact that genus and impetus of my claim falls under the domain of the labour Court. However, I have been made aware that such a court does not have the jurisdiction to grant relief of this nature, in particular a declaration of rights.”

The application was opposed by the Respondent which raised two points *in limine* namely;

1. Lack of jurisdiction

2. *Res judicatur*

I proceed to deal with these matters *Seriatum*

Lack of Jurisdiction

It is common cause that this is a purely labour matter wherein the applicant is effectively seeking an order setting aside the termination of his employment contract on 12 December 2019. Respondent can only challenge such termination in terms of the Act. This Court has no jurisdiction to determine the applicant's complaint that his contract was terminated unlawfully. This Court's jurisdiction to deal with purely employment matters having been restricted by the Constitution which created the Labour Court as a specialized Court to handle employment matters. See also *Stanley Nhari v Robert S Mugabe and ors SC161/20* where it was stated *inter alia*,

“Applicant says his termination was unlawful, hence his request for a declaratur that the letter of termination and any process taken pursuant to the said letter are null and void. This dispute therefore relates to the employment relationship between the applicant and the Respondent and the dispute is whether or not applicant's employment contract was lawfully terminated. Such dispute falls for determination in terms of labour law under the Labour Act and its structures. Section 2 A of the Labour Act spells out the purposes of the Act.”

See also Chingombe and Anor v City of Harare town SC 177/20 Muchenje v Mutangadura and ors HH 21/21

In *casu* it is clear that even if this court were to issue a declaratur prayed for its implementation will take effect back in the auspices of the Labour Court. This is because the applicant also seeks damages in the alternative of reinstatement and for such quantification to be done by the Labour Court. Surely the inescapable conclusion is that the subject matter of the dispute that has been brought before the court falls within the purview of the Labour Court. See *Harlequin Luxaire Ltd v Mberikanashe Matsvimbo 14 ors SCB 84/22*.

It is also noteworthy that the matter is one that went through the Labour processes all the way to the Supreme Court where the decision of the Labour Court substituting the Labour Officer's ruling was set aside. However, the ruling by the Labour officer was not set aside. It follows that the applicant must still challenge the Labour officer's ruling in terms of the Labour process. It is not correct that Applicant no longer has a remedy under the circumstances. The Labour Amendment Act No 11 of 2023 contains transitional provisions dealing with draft rulings made in terms of the repealed section 93 (5) of the Act. These provisions provide a remedy to the Applicant.

I take the view that this application is premised from a wrong interpretation of the Supreme Court Order. This is a purely labour matter that should be resolved in the Labour Court. The application for a declaratur is a guise because the relief is telling. Applicant prays for reinstatement and damages.

I would decline jurisdiction on the basis that this is not a proper case to grant a declarator and also that this court's jurisdiction over such matters is expressly ousted.

In the circumstances there would be no need to consider the second point *in limine*.

Disposition

1. The matter be and is hereby struck off the roll.
2. Each party to bear its own cost.

TAKUVA J:.....

Matsikidze Attorney at Law, applicants' legal practitioners
Dube Manikai and Hwacha, respondents' legal practitioners