TRIANGLE (PVT) LTD
versus
ERNEST ESTON
and
ANDRIES J BOSCH
and
ESTATE LATE AB MORAR
and
EPHRAIM GAVAZA
and
ANDRE J VAN RENSBURG
and
RAPHAEL T KATIDZA
and
LIVINGSTONE MABIKA
and
DAVID I MACINTOSH
and
IAN MIDDLETON
and
ONIAS MUSHORIWA
and
FUNGAI G MUTASA N.O.

HIGH COURT OF ZIMBABWE
MANYANGADZE J
HARARE, 14 October 2024 & 17 March 2025

Opposed Application

Adv *T Zhuwarara*, for the applicant
Adv *F Mahere*, for the 1st -10th respondents

MANYANGADZE J: This is an application for a declaratur, in which the applicant seeks an order declaring that its indebtedness to the respondents has been fully extinguished. The application arises out of a Labour Court judgment, LC/MS/09/18, handed down on 7 June 2018, in terms of which the applicant was ordered to pay the respondents certain benefits accruing from their contract of employment with the applicant.

The operative part of the Labour Court judgment reads as follows:

"1. The first Respondent be and is hereby directed to immediately cease the unlawful withholding of Claimants' compensation and incorporate the compensation due to the Claimants into their Zimbabwe Cash Packages. For A. J. Bosh and I Middleton the first Respondent shall appropriately compensate them into their cash packages given that they have now retired.
2. The first Respondent pays each of the Claimants the arrear compensation due to them from March 2011 to end of September 2015 as follows:

(*List of the amounts specified in United States dollars for each of the 10 Claimants*)

1. The amounts above should be paid without any additional tax losses by the Claimants and second Respondent arising by reason of the Respondent's wrongful actions therein. The first Respondent shall bear such tax losses by compensating the Claimants and the second Respondent accordingly.
2. The first Respondent shall pay the stated amounts with interest at 5% per annum from March 2011 to date of full payment.
3. The first Respondent shall bear Claimants' costs on an attorney-client scale."

The amounts listed in paragraph 2 of the judgment range from US$95 477,05 to US$183 842,94. The first to the tenth respondents ("the respondents") are former managerial level employees of the applicant. Respondents 1, 4 and 10 are still employed by the applicant.

The applicant, in June 2022, made a payment in RTGS dollars, which was the local currency at the time, in fulfilment of its obligations under the judgment. The payment was on a ratio of one--to-one, based on Statutory Instrument 33 of 2019.

The respondents filed an application for the registration of the Labour Court judgment under Case No. HCH 7234/22. The application was struck off the roll, per DEME J on 23 November 2023.

The applicant asserts that the payment it made in June 2022 constitutes full and final settlement of its liability to the respondents. In the instant application, it seeks a declaratory order to that effect. The order it seeks is stated as follows:

"1. The court application for a declaratory order be and is hereby granted.

2. The liability from the Labour Court Judgment LC /MS/09/18 dated 7 June 2018 be and is hereby declared to be executable in RTGS Dollars at the rate of one-to-one to the United States Dollar in accordance with Section 4(1)(d) of Statutory Instrument 33 of 2019.

3. The first to tenth Respondents to pay costs of (*sic*)."

The respondents have raised a point *in limine* to the effect that this court has no jurisdiction over the matter. This so because this is a purely labour dispute, in respect of which the Labour Court has exclusive jurisdiction. In this regard, the respondents indicate that the Labour Court judgment has not been fully quantified. When DEME J struck off their application

from the roll, he gave directions that the respondents revert to the Labour Court for such quantification.

In response to the point raised by the respondents, the applicant contends that the High Court has jurisdiction over the matter. The applicant seeks a declaratory order on a separate issue, which is the legal question of the applicability of SI 33/19 to the Labour Court Judgment. The applicant further avers that there is nothing pending at the Labour Court. The judgment rendered dealt fully with the question of the applicant's liability towards the respondents. It also quantified the liability and there is no basis for further quantification as claimed by the respondents.

The question of the exclusive jurisdiction of the Labour Court over labour matters has now been settled. This jurisdiction is, first and foremost, derived from the Constitution itself, in s 172(2) and (3), which reads:

> "(2) The Labour Court has such jurisdiction over matters of labour and employment as may be conferred upon it by an Act of Parliament.
>
> (3) An Act of Parliament may provide for the exercise of jurisdiction by the Labour Court and for that purpose may confer the power to make rules of court."

The Act of Parliament which specifically confers the powers referred to in the Constitution is the Labour Act [*Chapter 28:01*]. It provides, in s 89 (6):

> "No court, other than the Labour Court, shall have jurisdiction in the first instance to hear and determine any application, appeal or matter referred to in subsection (1)."

The position has been underscored in numerous authorities. Both parties have referred the court to some of them. In the case of *Stanley Nhari* v *Robert Gabriel Mugabe & Ors*, SC 161/20, GARWE JA (as he then was) lamented the conflicting decisions emanating from the High Court on the subject, and clarified the law. The learned judge of appeal stated, at p8:

> "[17] There is no doubt that there are conflicting decisions in the High Court on whether the court has jurisdiction to deal with all civil and criminal matters, a fact alluded to by the court *a quo* in its judgment. Before the advent of the current Constitution, the position was settled that the High Court had no jurisdiction in matters of labour and employment. Indeed, in decided cases such as *Zimtrade* v *Makaya* 2005 (1) ZLR 427(H), 429 and *DHL International (Pvt) Ltd* v *Madzikanda* 2010(1) ZLR 201(H), 204-5, the High Court itself accepted that it had no jurisdiction in these matters. The court further accepted that it would have been a mockery of the clear intention of the legislature to create a special court in circumstances where the jurisdiction of that court could be defeated by the framing of disputes as common law causes of action despite the fact that the Labour Act would have made specific provision for the same."

After examining the authorities , the learned judge went on to state, at pp 15-16:

> " [31] It could not, therefore, have been the intention of the legislature that the High Court would have jurisdiction in all civil and criminal cases without exception. An interpretation that the High Court has unlimited jurisdiction in all cases would clearly lead to an absurdity. The High Court would then have jurisdiction to determine matters that are in the province of say, the Military Courts. The High Court could, in these circumstances, be called upon to deal with petty cases involving the application of customary law at first instance or discipline at the work place. Were the High Court to have jurisdiction to hear and determine every case in Zimbabwe, it would get bogged down in matters over which it may have very little expertise or in petty matters that should ordinarily not detain the court. It would cease being the High Court as we know it. Such an absurdity could not have been in the contemplation of the legislature when it provided for the jurisdiction and exercise of such jurisdiction by the court in s 171 of the Constitution……..
>
> [34] I reach the conclusion therefore that the High Court does not in fact enjoy the jurisdiction to deal with each and every civil and criminal matter in Zimbabwe. Whilst it has original jurisdiction to deal with such matters, such jurisdiction has been fettered and truncated by the Constitution itself which has made provision for the creation of specialised courts whose jurisdiction may, in the process, oust the original jurisdiction of the High Court in specific areas."

This case puts to rest to the debate on the exclusivity of the Labour Court's jurisdiction in labour matters, and the jurisdictional exclusivity of other courts in specialised areas of the law. See also *Nyanzara* v *Mbada Diamond (Pvt) Ltd* 2016 (1) ZLR 195 (H), *TN Harlequin Luxaire Limited* v *Mberikunashe Matsvimbo & Ors* SCB 84/22, *Muchenje* v *Mutangadura & Ors* HH 21/21.

That the dispute over the pension benefits of the respondents falls within the province of the labour law is beyond question. The Labour Court, in the exercise of its jurisdiction in terms of the enabling legislation, rendered judgment on the dispute. It redressed the unfair labour practice that had been perpetrated by the applicant against the respondents. The operational part of the judgment, showing the nature of the relief granted by the Labour Court, is cited above.

Advocate *Zhuwarara*, for the applicant, contends that that judgment disposed of the matter completely. What the applicant has brought before this court is the question of whether the payment the applicant made extinguishes its liability for the judgment debt. The applicant's position, relying on SI 33/19, is that it indeed extinguished the debt fully. The applicant argues that a declaratory order to that effect can be competently brought before this court.

On the other hand, Advocate *Mahere*, for the respondents, contends that there is some unfinished business in the Labour Court. The judgment in question did not fully quantify the award due to the applicants. The quantification reflected in para(2) of the order does not capture all that was awarded in para (1). According to the respondents, para (1) provides a basis for further quantification. It provides a basis for another trip to the Labour Court.

The respondents further indicate that when their application for registration was struck off the roll by DEME J, the judge gave directions to the effect that the respondents approach the Labour Court for quantification of their award. DEME J's order, issued under Case No. HCH 7234/22 on 9 November 2023, simply struck the matter off the roll. It contains no directions as to what the respondents (then applicants) should do. Advocate *Mahere* explained that though the order, *ex facie*, contains no such directions, this is what the judge indicated during the hearing of the matter. This assertion requires evidence of the transcript of what transpired during that hearing. An order, unlike a full judgment, contains no details of the arguments advanced and the court's findings.

Be that as it may, what clearly emerges from counsel's respective submissions is that there is an issue over the import of the Labour Court judgment. The question is whether it exhaustively quantified the applicant's liability towards the respondents. Counsel for the applicant avers that it did and counsel for the respondents avers that it did not.

In my view, it is open to the respondents to approach the Labour Court with an application for quantification, as a separate and distinct cause of action from that of liability. It seems to me that such an application is likely to be met with conceivable defences such as *res judicata* or *functus officio*. It is however within the respondents' rights to institute that application. Whether the application has merit is another matter. It is up to the court that will be seized with it to determine the merits or demerits thereof.

If the parties were in agreement that the Labour Court had fully disposed of the issues of both liability and quantification, and what remains is enforcement of the judgment, then there would be no need to revert to that Court. Any issues to do with the enforcement of the judgment, after it is handed down by the Labour Court, would fall under the jurisdiction of this court. It is a separate and distinct stage of the proceedings. This, in my opinion, would of necessity include the question of the applicability or otherwise of SI 33/19.

However, having regard to the contention that quantification is still a live issue, it is only appropriate to defer to the court with the requisite jurisdiction to determine that issue.
In the circumstances, the respondents' point *in limine* relating to jurisdiction is upheld. The proper course of action to take is to order that this matter be struck off the roll, with each party bearing their own costs.

In the result, it is ordered that:

1. The application be and is hereby struck off the roll.

2. Each party bears its own costs.

MANYANGADZE J:……

Scanlen & Holderness, applicant's legal practitioners
Chinawa Law Chambers, first -tenth respondents' legal practitioners