

CLEOPHAS ZVAITA
versus
RULETTA (PRIVATE) LIMITED
and
KENNETH WILLIAM LUNT
and
JOHN SHUMBA
and
REGISTRAR OF COMPANIES

HIGH COURT OF ZIMBABWE
DUBE-BANDA J
HARARE; 4 February & 25 March 2025

Application for a *declaratur*

Applicant in person
T Muzana for the 1st, 2nd & 3rd respondents

DUBE-BANDA J:

[1] This is an application for, *inter alia*, declaratory orders and consequential relief in the following terms:

- i. The meeting of the shareholders of the first respondent held on 31st July 2018 be and is hereby declared to be invalid, null and void for lack of quorum.
- ii. Applicant's removal from the position of director of the first respondent by way of XR 14 dated 2nd August 2018 and filed with the 4th respondent on 6th December 2018 be and is hereby declared to be null and void.
- iii. The appointment of third respondent as director of the first respondent through an improperly constituted meeting be and is hereby declared null and void and is set aside.
- iv. All actions done by the third respondent in his capacity as s director of first respondent be and are hereby set aside.
- v. The 4th respondent be and is hereby directed to revoke the CR14 dated 2nd August 2018 filed with his office on 6 December 2018.
- vi. Respondents to pay applicant's costs.

[2] The application is opposed by the first, second and third respondents. The fourth respondent has neither filed opposing papers nor participated in this hearing, and I take it that it has taken the position that it shall abide by the decision of the court.

[3] On 18 June 2017 the first respondent employed the applicant as a director. On 7 August 2018 the shareholders of first respondent convened a meeting, and the agenda was the removal of the applicant as director. The allegations against the applicant were that he had been acting for the first respondent without authority, to the extent of issuing legal proceedings without board authorization. It was further alleged that he was conflicted between his position as chairman of the Nyazura Residents and Ratepayers Association and his directorship of the first respondent. He was requested to submit his written representations, he neither acceded to the request nor did he attend the meeting. The shareholders resolved that he be removed as a director of the first respondent. The applicant was aggrieved by his removal as a director, and filed this application seeking the order stated above.

[4] The respondents took a number of points *in limine*, which are these: that the applicant used a wrong forum; that he has no existing right; that there were material disputes of fact which could not be resolved in motion proceedings; and that he has no *locus standi* in this matter. At the commencement of the hearing, I informed the parties that the court will hear submissions in respect of points *in limine* only, should any be dispositive of the matter that would mark the end of this matter. In the event that they are all dismissed, the matter will be re-set down for hearing on the merits.

[5] I now turn to the point *in limine* that this is a labour matter and this court has no jurisdiction to entertain it. In support of the preliminary point, it was submitted that the applicant was employed as a director by the first respondent, and his contract of employment was terminated when he failed to attend a hearing before the shareholders. It was argued that his contract was terminated in terms of the requirements of the law, and he did not challenge the termination at the Labour Court which has jurisdiction over such matters. It was argued that point *in limine* has merit and must be upheld.

[6] *Per contra*, the applicant argued that this court has inherent jurisdiction and is empowered in terms of s 14 of the High Court Act [*Chapter 7:06*] to grant a declaratory order to any person who has a direct and substantial interest in the matter. The applicant accepted that he was removed from the position of director, however argued that the meeting which was convened did not meet the 75% threshold required in terms of s 175 of the Companies and Business Entities Act [*Chapter 24:21*]. The applicant contended that the respondents have effected a

change on the company documents held at the company registry. The applicant argued that this is not a labour dispute, and the point *in limine* has no merit and must be dismissed.

[7] It is clear that the dispute in this matter arises from the first respondent's termination of the applicant's contract of employment as a director. The net effect of the order sought is that the applicant be reinstated in his position as a director of the first respondent. This, in my view, is a purely labour matter as enshrined in s 89(1) of the Labour Act [*Chapter 28:01*]. The jurisprudence in this jurisdiction is that the High Court has no jurisdiction in respect of issues of labour and employment, and even to issue a *declaratur*. This is a well-trodden path, and requires no further regurgitation. In fact, the Supreme Court has spoken and the of issue whether this court has jurisdiction in labour disputes has been put to rest. See *Harlequin Luxaire Limited v Mberikunashe Masvimbo & 14 Ors* SCB 84/22; *Nhari v Mugabe & Ors* SC 161/20; *Chingombe & Anor v City of Harare & Ors* SC 177/20. This is a labour dispute. It is for these reasons that the point *in limine* that this court has no jurisdiction in this matter has merit and must succeed.

[8] Because of the decision I have reached regarding the issue of jurisdiction, no useful purpose would be served by dealing the rest of the points *in limine* taken by the respondents.

[9] There remains to be considered the question of costs. No good grounds exist for a departure from the general rule that costs follow the event. The respondents are clearly entitled to their costs.

In the result, I order as follows:

- i. The point *in limine* that this court has no jurisdiction on the basis that this is a labour matter is upheld.
- ii. The application is struck off the roll with costs.

DUBE-BANDA J:.....

Tapera Muzana & Partners, first, second and third respondents' legal practitioners