

EMMA CHIVARAIDZE

Versus

HWANGE LOCAL BOARD

And

MHLUPHEKI MLILO

IN THE HIGH COURT OF ZIMBABWE
NDOU J
BULAWAYO 28 FEBRUARY & 8 MARCH 2012

Dube-Banda with applicant
J. Tsvangirai with respondent

Judgment

NDOU J: This is an application for urgent interim relief in the form of an order interdicting the 1st respondent from going ahead with transferring the applicant from her current position as Human Resources and Administration Officer to that of Public Relations and Economic Development Officer, pending finalization of the labour dispute between the parties pending before a Labour Officer. In essence the applicant seeks an interdict to maintain the *status quo* between her and the 1st respondent until the labour dispute under ML/37/01/12 is finalized. The salient facts are the following. The applicant was transferred to the post of Public Relations and Economic Development Officer on 6 December 2011. She received a copy of the transfer letter on 9 December 2011 and responded to it the same date. This application was filed almost three (3) months after the said transfer was communicated to her. The applicant has been transferred with all the benefits she was obtaining from her previous post. The 1st respondent being alive to the fact that applicant might lack requisite skills for the new post, has offered to train her at its own expense. The applicant has, as alluded to above, already filed her complaint with the Labour Office. A point *in limine* has been raised by the respondents on the question of urgency. It is trite law that in such applications the applicant is required to satisfy the court that irreparable harm may be suffered by the applicant if the matter is not dealt with urgently. The applicant should have treated the matter urgently – *Kuvarega v Registrar General* 1998 (1) ZLR 188 (H); *CABS v Ndlovu* HH-3-06 and *Triangle Ltd v ZIMRA* HB-12-11. The irreparable harm relied on by the applicant is that she does not have the requisite professional qualification for the new post and that the decision to transfer her is a variation of the material terms of the contract of employment. This is alleged to be a clear

unfair labour practice calculated to constructively dismiss her. This is the issue before the Labour Officer. It does not constitute irreparable harm or a well grounded apprehension of irreparable harm. There is no basis for the matter to be treated urgent. Accordingly, the matter is struck off the roll with the applicant bearing costs.

Dube-Banda, Nzarayapenga & Partners, applicant's legal practitioners

Dazinger & Partners, respondent's legal practitioners