

DAVIES GRANITE (PRIVATE) LIMITED

AND

MOSES NDLOVU

AND

HONOURABLE JUSTICE MERCY MOYA-MATSHANGAN.O

IN THE HIGH COURT OF ZIMBABWE

MOYO J

BULAWAYO 24 NOVEMBER AND 11 DECEMBER 2014

Advocate H. Moyo for the applicant

Advocate L. Nkomo for the 1st respondent

Opposed Application

MOYO J: This is an application for a review of the decision of the Labour court granted on 17th July 2013.

The respondent raised points *in limine* as follows:-

- 1) That the High Court has no jurisdiction to hear the matter as in terms of section 13 of the High Court Act; the Jurisdiction of the High Court is subject to the provisions of any other law or enactment. That the High Court can not review matters of another court where the enabling stature of the court in question provides for an Appellant court.
- 2) That the Applicant had a duty to exhaust domestic remedies as provided for in the Labour Act which Applicant has not done and neither has Applicant shown good cause for failure to exhaust them.
- 3) That the Applicant filed an application for review with this court and an Application for leave to appeal to the Supreme Court in terms of Section 92(F) (2) of the Labour Act.

Whilst Applicant contends that such application was dismissed, Respondent contends that it is still pending. If the appeal is still pending then the issue is whether Applicant can launch both processes at the same time.

On the other hand, Applicant submits that this court has inherent jurisdiction and should exercise it in Applicant's favour to hear this matter. In this matter, without delving into the

contentious issue of whether or not the High Court has review powers on the decisions of the Labour Court, the crunch of this matter is that leave to appeal has been sought before the Labour Court, meaning that the Applicant is also proceeding on the appeal route. Whilst the remedies sought on these two different platforms might not necessarily be the same, I am persuaded that the Applicant can not be allowed to place this court in competition with the court that will handle the appeal process. My opinion in this regard is fortified by the position held in the case of *African Consolidated Resources PLC vs Ministry of Mines and Others* HH 57/10 wherein it was held that where an Applicant files an application for review before the High Court and an appeal under the relevant legislation, this places the court in competition with the other and that can not be allowed. The Applicant should take the matter one step at a time, seek review if that is what it deems appropriate, or appeal the decision if that is what it finds best rather than to embark on both processes at the same time. The aforesaid view is also fortified by the provisions of Section 124 of the Labour Act [Chapter 28:01] which provides thus:-

“PROTECTION AGAINST MULTIPLE PROCEEDINGS

- 1) Where any proceedings in respect of any matter have been instituted, completed or determined in terms of this Act, no person who is aware thereof shall institute or cause to be instituted, or shall continue any other proceedings in respect of the same or any related matter, without first advising the authority court or tribunal which is responsible for or concerned with the second mentioned proceedings of the fact of the earlier proceedings.”

This Section is very clear in my view, the legislature in a bid to avoid scenarios like this one, wherein a matter is pending on appeal and on the other hand a review application is launched before another court enacted this section. The situation before me is the one sought to be protected against by the legislature as it can not be desirable to have the Supreme Court determining a matter on appeal and the High Court determining the same matter on review. Refer also to the case of *Zimasco Pvt Ltd vs Makarirano* HH 148/10. The fact of the pending matter before the Labour Court was brought by the Respondent before this court, the Applicant did not comply with Section 124 of the Labour Act which I presume is meant to give the court in the second scenario power to decline to hear a matter that is pending before another court.

It is for this sole reason that I decline to hear this matter and will accordingly uphold the

point *in limine* that the Applicant can not be allowed to go forum shopping.

I accordingly dismiss the application with costs.

Joel Pincus, Konson & Wolhuter, applicant's legal practitioners

Advocate Nkomo chambers, 1st respondent's legal practitioners