MARTIN TICHAONA MUCHERO
versus
THE GRAIN MARKETING BOARD
and
THE MINISTER OF LANDS AGRICULTURE
AND RURAL RESETTLEMENT

HIGH COURT OF ZIMBABWE
BHUNU J,
HARARE, 23rd February 2005 and 18 May 2005

Mrs *Wood,* for the applicant
Mr *Machiridza,* for the 1st respondent
Mrs *Mabhiza,* for the 2nd respondent

BHUNU J: The applicant is the suspended Chief Executive of 1st respondent, The Grain Marketing Board.

He was initially suspended by the permanent secretary in the Ministry of Lands and Agriculture. The suspension letter is dated 1st March 2000 but was received by the applicant on the 2nd March 2000.

The permanent secretary purported to effect the suspension in terms of Section 48(1) of the Public Service Regulations No. (1) of 2000. It was however subsequently realised that the Public Service Regulations were inapplicable to the applicant in consequence whereof the invalid suspension was rescinded and he was reinstated with full salary and benefits being paid for the duration of the suspension.

Shortly thereafter and on the 8th of March 2000 the applicant was again re-suspended from duty in terms of the Grain Marketing Board's Code of Conduct by the Chairman of the G M B Management Committee.

Once again the applicant successfully challenged the propriety of his suspension with the result that he was reinstated with full salary and benefits.

Determined to suspend the applicant the 1st respondent's Board Chairman on the 24th October 2000 re-suspended the applicant from employment.

In suspending the applicant the Board Chairman stated that disciplinary proceedings would be instituted either in terms of the Code of Conduct or in terms of Statutory Instrument 371 of 1985, the Labour Relations (General Conditions of Employment) (Termination of Employment) Regulations 1985.

The 1st respondent subsequently applied to the Labour Relations Officer on the 14th November 2000 for permission to terminate the applicant's contract of employment on grounds of misconduct. The application was submitted through its then legal practitioners, *Dube Manikai and Hwacha*.

The applicant challenged the propriety of *Dube, Manikai and Hwacha* representing the respondents on the basis of conflict of interests. The firm of lawyers subsequently renounced agency on the 10th November 2004.

The applicant now seeks a provisional order barring the respondent from terminating the applicant's benefits and salaries. He also seeks an order directing the respondents to comply with the letters of suspension dated 8th March 2000 pending the outcome of the disciplinary measures or the criminal prosecution whichever is the sooner.

At the hearing counsel for the applicant objected to the presence of both respondents arguing that they are barred. It is common cause that both respondents are barred. In respect of the 2nd respondent I ruled that the bar could not be lifted because it deliberately decided not to oppose the application and to abide by the decision of the court. That decision was communicated to all interested parties about 4 years ago. That being the case the 2nd respondent could not be allowed to blow both hot and cold.

As regards the 1st respondent the facts establish that it has always vigorously endeavoured to defend the application. It merely defaulted in filing heads of argument due to the confusion arising from the conflict of interests on the part of its initial lawyers who ended up renouncing agency.

There being a reasonable explanation for the delay in submitting the heads of argument I am of the view that the ends of justice can best be met by uplifting the bar and determining the application on the merits.

In its heads of argument the 1st respondent has submitted without any contradiction that the labour dispute between the parties is now pending before the labour court.

It is trite that the labour court is a special court created specifically to deal with labour disputes of this nature. It is the court with the necessary expertise and resources to deal with labour disputes. It is clothed with both appellate and review

jurisdiction. It is in my view eminently capable of giving the relief being sought in this court.

Section 124 of the Labour Relations Act [*Chapter 124*] seeks to protect litigants against multiple proceedings in different courts. It provides that:

> "(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.
>
> (2) Any person who contravenes subsection (1) shall be guilty of an offence …"

The applicant in this case appears to have fallen foul of the above provisions in that he has failed to notify this court of the pending proceedings in the labour court. This court only came to know of those proceedings through the objection by the 1st respondent.

The reference of this matter to this court is therefore incompetent for want of compliance with the provisions of section 124 of the Labour Relations Act.

I also find that the issues referred to this court are capable of resolution by the labour court.

No reasons have been advanced as to why the dispute has been referred to this court without first exhausting the available domestic remedies.

In the result the application cannot succeed. It is accordingly ordered that the application be and is hereby dismissed with costs.

Byron, Venturas and Partners, the applicant's legal practitioners.
Muzangaza, Mandaza and Tomana, the 1st respondent's legal practitioners.
Civil Division of the Attorney General's Office, the 2nd respondent's legal practitioners.