

QUEST MOTORS CORPORATION
versus
HONOURABLE ARBITRATOR LOVEMORE MADHUKU
and
ANOTHER

HIGH COURT OF ZIMBABWE
MATANDA-MOYO J
HARARE, 17 October and 23 October 2013

E. Samkange, for applicant
Ms N. Mabhozi, for 2nd respondent

MATANDA-MOYO J: This is application for a declaratory order declaring the ruling by the Arbitrator null and void for want of compliance with s 89(2)(c) iii) of the Labour Act [Cap 28:01], which requires that an award for reinstatement must have as an alternative specific amount of damages to be awarded to the employee concerned.

Firstly second respondent objects to the jurisdiction of this court to hear this application. For this proposition second respondent referred me to s 89(6)(1) of the Labour Act which provides;

“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 (9)”

The Labour Court, is a creature of statute and can only do, that, which it is permitted to do by the statute creating it. The Supreme Court has held in several cases that the Labour Court does not enjoy jurisdiction to deal with applications for declaratory orders as such applications are excluded under s 89 of the Labour Act. I agree with applicant’s submissions that it is this court which has jurisdiction to grant declaratory orders in labour matters see s 14 of the High Court Act [Cap 7:06], see also *UZ-UCSF Collaborative Research Programmes in Women’s Health v Shamuyarira* 2010 (1) ZLR 127.

Before I proceed to deal with the merits of this application it is pertinent to deal with “whether the right procedure has been adopted by the applicant”. The second respondent submitted that what is before me is an application for review termed “an application for a declaratory order”. Second respondent submits that the applicant is challenging the manner in

which the first respondent omitted to assess damages. Second respondent argues that an exercise undertaken by this court to examine the manner in which first respondent failed to give effect to the provisions of s 89(2) (c) (iv) is no more than a review of quantification procedures. Second respondent referred me to the case of *Mushoriwa v Zimbabwe Banking Co operative* HH 28/08 where the court found that a declaration of nullity could only come about after a process of review. The court declined jurisdiction over the matter after finding that this court is precluded from exercising powers of review in the first instance over matters dealing with labour issues as that function has been specifically reserved for the Labour Court.

Applicant seeks an order declaring the Arbitrator's findings a nullity because in reaching his ruling, the Arbitrator did not comply with s 89(2)(c) (iii) of the Labour Act. In *Masuka v Chitungwiza Town Council and Anor.* 1998 (1) ZLR 15(H) the court held that;

“Acts which are *void abinitio*, that is, where the authority had no jurisdiction to make the decision challenged according to the decision in Musara's case, are open to challenge by way of ordinary application for a declaration of nullity without the need to comply with time limit On the other hand voidable acts, where the irregularity complained of is unrelated to an absence of jurisdiction, are the legitimate subject of a review”.

I am satisfied that applicant intends this court to scrutinize the procedures adopted by the Arbitrator and have this court exercise its review powers. There is no suggestion that the Arbitrator lacked the jurisdiction to hear the matter but rather that the decision of the Arbitrator is incomplete. The Arbitrator can be directed to complete the proceedings within a particular time. The mere fact that the proceedings are incomplete does not render the decision a nullity.

In the case of *Johannesburg Consolidated Investment Co v Johannesburg Town Council* 1903 TS 111 INNES CJ at 115 described the common law review in the following terms;

“Whenever a public body has a duty imposed upon it by statute, and disregards important provisions of the statute or is guilty of gross irregularity or clear illegality in the performance of the duty, this court may be asked to review the proceedings complained of and set aside or correct them The non performance or wrong performance of a statutory duty by which third persons are injured or aggrieved is such cause as falls within the ordinary jurisdiction of the court”

This application bears the hallmarks of a review. Having come to that conclusion it is clear that in terms of s 89(di) of the Labour Act, the Labour Court has jurisdiction to deal with the matter. Thus I decline jurisdiction in this matter. Applicant is ordered to pay costs.

Venturas and Samkange, applicant's legal practitioners
Macheyo Law Chambers, for second respondent