

UNTU MICROFINANCE PRIVATE LIMITED  
versus  
TINOTENDA MUSIYAZVIRIYO

HGH COURT OF ZIMBABWE  
MWAYERA & MUNANGATI-MANONGWA JJ  
HARARE, 6 June 2017

### **Civil appeal**

Ms *L Mhangachena*, for the appellant  
Respondent in person

MUNANGATI-MANONGWA J: The respondent was an employee of the appellant and she resigned by giving 7 days' notice instead of the requisite 3 months' notice as per s 12 (4) (a) of the Labour Act [*Chapter 28:01*]. She proceeded to do a handover takeover procedure. The employer then demanded payment of \$1 402-25 being amount due to it *in lieu* of the 3 months' notice which respondent failed to serve. The respondent admitted liability by way of an email which appears on record as exh 5, she again reiterated her willingness to pay in another email dated 10 June 2014 which stands as exh 6. In both instances she offered to pay by way of instalments. When she failed to pay, the appellant instituted summons claiming the aforesaid amount.

In her defence to the summons the respondent stated that the handover process had been properly done hence there was no prejudice to the employer. The only issue referred for trial at the pre-trial conference was:

“Whether or not the defendant is indebted to plaintiff for failure to give notice in the sum of US\$1402.25 together with interest at the prescribed rate of 5% per annum from 25<sup>th</sup> February 2014 to date of payment in full.”

At trial the respondent admitted to owing the amount and confirmed to having made an offer to pay, and further that there was no waiver of the notice period by the employer. She however, seems to believe that there were other issues to be considered which from her evidence had something to do with her former employer recruiting from outside the company when positions arose within the company which seem to have frustrated her. The court *a quo*

observed that evidence before it showed that respondent had admitted liability and offered to pay appellant, it nonetheless dismissed the appellant's claim on the basis that it had no jurisdiction since this is a labour matter. The court *a quo*'s reasoning being that since there was an employer-employee relationship and the claim arose out of breach of s 12(4) of the Labour Act [Chapter 28:01] only the Labour Act could apply as per provisions of section 3(1) of that Act which provides

“This Act shall apply to all employers and employees except those whose conditions of employment are otherwise provided for in the Constitution.”

Aggrieved by that decision, appellant appealed to this court on the following grounds:

“1. The Court *a quo* erred and misdirected itself on a point of law in failing to appreciate that the Labour Act [Chapter 28:01] does not govern disputes involving former employers and former employees.

2. The Court *a quo* erred and misdirected itself on a point of law in holding that the Labour Act [Chapter 28:01] was applicable to the dispute involving the parties and yet their employment relationship had terminated on the 7<sup>th</sup> February 2014.

3. The Court *a quo* erred and misdirected itself in failing to appreciate that the respondent had absolutely no defence in that she had acknowledged her indebtedness to the appellant and put forward a payment proposal which she subsequently failed to honour.

WHEREFORE the Appellant prays that its appeal be allowed with costs and that the order of the Court *a quo* be altered to read as follows:-

Judgment be and is hereby granted in favour of the plaintiff in the sum of US\$1402-35 plus interest thereon at the rate of 5% per annum from the 25<sup>th</sup> of February 2014 to date of payment and together with costs of suit.”

Ms *Mhangachena* for the appellant argued that the employer-employee relationship had terminated and in its stead a contractual relationship had come into existence when the respondent admitted to liability. A new cause of action had come into being under common law hence the Labour Act was no longer applicable. In response and relying on her heads of argument the respondent maintained that the court *a quo* had not misdirected itself, it had no jurisdiction in a matter whose relative cause emanates from an employment contract and she relied on s 3(1) and 89(1) [d] of the Labour Act.

Clearly the issue before the court was whether or not the defendant was indebted to the plaintiff in the sum of US\$1402-25 together with interest for failure to give a notice therefore. This in any case was the very issue that had been referred for trial at the pre-trial conference stage. In my mind, the evidence showed the answer to be in the positive. There was no dispute on the facts, the relationship between the parties had been terminated without

issue as the respondent had agreed to pay for her failure to serve the required notice. At trial she further admitted liability. By agreeing to pay which she had done in writing and confirmed at trial the matter had assumed a different dimension. It became a contract wherein she acknowledged a debt. As TAKUVA J stated in *Homodza v Chitungwiza Municipality*<sup>1</sup>

“While I agree that the matter’s ancestors had labour law characteristics, this forebear died when the applicant resigned and a modern animal in the form of an acknowledgement of debt emerged. The applicant simply desires to recover a debt whose acknowledgment forms a separate cause of action based purely on the law of contract.”

I fully associate with TAKUVA J’s view. In that regard, accepting Ms *Mangachena*’s argument that the acknowledgment of debt brought about a new cause of action. Suffice to state that even at this hearing respondent admitted to having acknowledged the debt. No issues of duress or undue influence *vis* the acknowledgment were ever raised. The respondent simply seeks to hide behind the claim of lack of jurisdiction which has no basis in the circumstances given the facts as stated in the foregoing paragraphs. This was a simple debt, which was acknowledged and the origins thereof were clear. The court should have adjudicated on the matter as it had jurisdiction. The appellant having established its claim on a balance of probabilities judgment should have been entered in its favour. Due to the misdirection on the part of the court *a quo* the appeal has to succeed and accordingly:

1. The appeal is upheld with costs.
2. The court *a quo*’s ruling is set aside and substituted as follows:

“Judgment be and is hereby entered in favour of the plaintiff in the sum of US \$1402-35 together with interest thereon at the rate of 5% per annum from the 25<sup>th</sup> of February 2014 to date of final payment.”

MWAYERA J agrees .....

*Danziger & Partners*, appellant’s legal practitioners

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<sup>1</sup> HH38/14 at p 2