

PETER MASUKA
versus
COLD STORAGE COMPANY LIMITED

HIGH COURT OF ZIMBABWE
HUNGWE J
HARARE, 4 October 2018 & 30 January 2019

Opposed Application

Applicant in person
B Ngwenya, for the respondent

HUNGWE J: At the hearing of this matter on 4 October 2018, I dismissed the application with costs for the reasons given at the time which I repeat here. Applicant appears to be unaware that parties can and do act upon an order pronounced *ex tempore* in open court and has requested that reasons for the dismissal of his application be formally written. These are they.

Applicant seeks a declaratur that the respondent is in contempt of an order of court and therefore in contempt of court. He also seeks a declaratur that he is still in the employ of the respondent company. The facts of this case are that the applicant's termination of employment was undertaken in accordance with the common law right of an employer confirmed in *Zuva Petroleum (Pvt) Ltd v Nyamande* SC 43/15. The fact that applicant's employment was lawfully terminated explains why he did not disclose this fact both in his founding affidavit as well as in his heads of argument. In any event the issues which applicant has raised before this court are within the jurisdictional competency of the Labour Court. That court has since addressed the same issues in its judgment which was handed down on 29 June 2018. Applicant has since filed an application for leave to appeal the decision of that court set out in the aforementioned judgment.

To this end the respondent denies being in contempt of an order of court as it has continued to comply with such an order which requires it to pay applicant his outstanding salary arrears whilst it challenges an order for reinstatement. It never consented to reinstatement as

claimed by the applicant. That issue is subject of an appeal. In any event, respondent contends, applicant's employment having been lawfully terminated, cannot be subject of an application as the present one.

Consequently, there is no basis for this court to seek to pronounce itself on an issue that is pending before another court of competent jurisdiction. It is undesirable and would promote forum shopping, such a development is in itself detrimental to the administration of justice.

On his own papers, however, the applicant has not met the requirements for a finding of contempt against the respondent company. Before an applicant can succeed in an application for an order for contempt of court an applicant must demonstrate that the respondent against who the order is sought was aware that:

- (i) that the person charged with contempt had knowledge of the court order;
- (ii) that such person was aware of the constraints placed upon him by the court order;
- (iii) that the person disobeyed the court order; and
- (iv) that the disobedience was willful.

See *Wilson v Minister of Defence & Ors* 1999 (1) ZLR 144 (HC); *Scheelite King Mining Co (Pvt) Ltd v Mahachi* 1998 (1) ZLR 173 and *Mudzimu v Municipality of Chinhoyi & Samuriwo* 1986 (1) ZLR 12 (HC).

In light of the above the present application has no merit. This is so because the question of whether or not applicant is still an employee of the respondent was settled in the Labour Court by judgment number LC/H/287/18 dated 29 June 2018. Applicant has since filed an application for leave to appeal that judgment, which application is still pending in the Labour Court.

It is for these reasons that I dismissed this application with costs on the turn.

Chinawa Law Chambers, respondent's legal practitioners