

WELLINGTON TAKAWIRA
versus
CZI INCORPORATED (PVT) LTD

HIGH COURT OF ZIMBABWE
UCHENA J
HARARE 10 and 29 October 2014

Opposed Application

M. Mandevere, for the applicant
S. M. Chisoko, for the respondent

UCHENA J: The applicant was the respondent's employee. He resigned from, employment by letter dated 1 October 2013. The respondent accepted his resignation by letter dated 6 January 2014. Through the same letter the respondent acknowledged that it owed the applicant US\$32 542.07, for salaries, pension refunds, cash *in lieu* of leave and medical refunds and promised to pay him as follows;

1. 1 st instalment by 7 th February 2014	\$10 000-00
2. 2 nd instalment by 28 February 2014	\$ 3 757-00
3. 3 rd instalment by 31 st March 2014	\$ 3 757-00
4. 4 th instalment by 30 th April 2014	\$ 3 757-00
5. 5 th instalment by 31 st May 2014	\$ 3757-00
6. 6 th instalment by 30 th June 2014	\$ 3757-00
7. 7 th instalment by 31 st July 2014	\$ 3757-00

In addition the respondent asked the applicant to handover the company vehicle by the 31st December 2013 which was his last working day. The respondent did not pay the applicant as promised. The applicant did not handover the company motor vehicle as directed.

The applicant issued summons claiming the sum of US\$32 542.07 from the respondent. The respondent entered appearance to defend. The applicant applied for summary judgment. The respondent opposed the applicant's application and counter applied for an

order that the applicant handover the company vehicle an Isuzu KB Registration number ABD 4174 to the respondent.

At the hearing of the applicant's application for summary judgment and the respondent's counter application, the respondent in the application for summary judgment raised a point *in limine* challenging the jurisdiction of this court on the basis of s 89 (6) as read with ss (1) of the Labour Act (*Cap 28.01*), which provides as follows;

- “(1) The Labour Court shall exercise the following functions—
- (a) hearing and determining applications and appeals in terms of this Act or any other enactment; and
 - (b) hearing and determining matters referred to it by the Minister in terms of this Act; and
 - (c) referring a dispute to a labour officer, designated agent or a person appointed by the Labour Court to conciliate the dispute if the Labour Court considers it expedient to do so;
 - (d) appointing an arbitrator from the panel of arbitrators referred to in subsection (6) of section *ninety-eight* to hear and determine an application;
 - (d1) exercise the same powers of review as would be exercisable by the High Court in respect of labour matters;
 - (e) doing such other things as may be assigned to it in terms of this Act or any other enactment.
- (6) 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 (1).”

The applicant submitted that this court has jurisdiction because there is no dispute the Labour Court can hear and determine as the respondent admits and acknowledged its indebtedness to the applicant. Commending on respondent's counter application Mr *Mandevere* for the applicant said the applicant is holding the respondent's motor vehicle as a lien for the acknowledged debt. He is agreeable to this court ordering the respondent to pay the sum owed and his client being ordered to handover the motor vehicle to the respondent. It is therefore clear that both parties have no defence to the other party's claim against them.

There is therefore no dispute to be determined by the Labour Court. The Labour Court's exclusive jurisdiction does not apply where a party has admitted its indebtedness arising from a labour relationship which amicably ended with the rights of both parties clearly spelt out and admitted by the other. Section 89 (6) of the Labour Act applies where the Labour Court has “to hear and determine any application, appeal or matter referred to in subsection 1”. In this case both parties admit their liability to the other leaving no dispute to be determined by the Labour Court. Where a party acknowledges his indebtedness to the

other this court has jurisdiction to determine whether or not to grant summary judgment. In the case of *Madinda Ndhlovu v Highlanders Football Club* HB 95/11 CHEDA J dealing with a similar situation said;

“ It is my respectful view that while it was the intention of the legislature to oust the jurisdiction of the courts from adjudicating on matters involving labour disputes, an acknowledgment of debt even if it arises from a contract of labour is not what the legislature intended to mean. An acknowledgment of debt is nothing but a liquid document which is covered by the rules of this court, for which an application, for summary judgment can be applied for”.

The respondent's point *in limine* is therefore be dismissed.

The applicant's application for summary judgment should be granted as the amount claimed is acknowledged in the letter in which the respondent accepted the applicant's resignation. The debt is further admitted in the opposing affidavit of Nozipho Guzha on p 14 of the record, where in paragraphs 12, 13, and 14 she clearly admits that the respondent owes the applicant the sum of US\$32 542.07, but has delayed the promised payments due to financial problems the respondent is facing.

The counter application should also be granted because the applicant admits that the motor vehicle belongs to the respondent, but was holding it as a lien. On the granting of the court order the need for a lien falls away as the applicant can execute the court order to be granted. Mr *Mandevere* for the applicant submitted that his client is not opposed to the order sought in the respondent's counter claim being granted.

In the result the applicant's application for summary judgment and the respondent's counter application for the handing over of its motor vehicle, are granted in terms of their respective draft orders as amended.

Kadzere, Hungwe & Mandevere, applicant's legal practitioners
Tamuka Moyo Attorneys, respondent's legal practitioners