LYNNE ASHLEY
versus
JOHN GOODWIN
Trading as
CAMBRIDGE CRECHE AND NURSERY SCHOOL

HIGH COURT HARARE
MAKONESE J
HARARE, 23 November 2011 & 29 November 2011

Opposed Application

Advocate *T. Mpofu*, for applicant
S. Tsaurai, for respondent

MAKONESE J: The applicant and the respondent are former employee and employer respectively. The relationship came into effect on 1 June 2009 when the parties signed a contract of employment. The employer-employee relationship went sour sometime in January 2011 and the parties agreed to part ways amicably. On 12 January 2011 the respondent addressed a letter to the applicant in the following terms:-

> "Re; Termination of Employment
>
> Further to my memo in response to your petition, please be advised that we no longer require your services at the Nursery School; this decision has come about due to the fact that it seems you are unable to work under supervision of the Manager Mrs T. Culverwell.
>
> To avoid any further problems or confrontations you will leave with immediate effect so you will be paid out your 3 months cash in lieu of notice totalling of $1 843-00. Attached is a complete breakdown of this amount together with a copy for your signature.
>
> Yours sincerely
>
> Mr J. Goodwin
> Managing Director".

The respondent then handed over the matter to his lawyers at the time Messrs MATIZANADZO & WARHURST who addressed a letter to the applicant's legal practitioners as follows:-

> "We acknowledge receipt of your letter dated 2 February 2011.

> Our client agrees to termination by mutual agreement. We therefore advise that our client (have) accepted your client's decision not to be reinstated."
>
> The amount of damages specified as US$4 640-00 is hereby accepted by our client in full and find settlement of the matter.
>
> Finally as agreed in our tele-conversation our client will pay off the sum of US$4 640-00 in three monthly instalments. Payment will be paid on the 28 February 2011, 31 March 2011, and lastly on 29 April 2011. Each instalment shall be in the sum of US$1 546-00 and payment shall be made at our offices.
>
> We thank you for your co-operation in the amicable resolution and finalisation of the matter.

Yours faithfully

MATIZANADZO & WARHURST".

The present legal action against the respondent became necessary because the respondent refused to settle the amounts tendered by his legal practitioners. The respondent raised the following issues in his defence to the claims:

1. The claim in question is based on a contract of employment and this being a labour case the court with jurisdiction to determine the case is the Labour Court and not the High Court.
2. The respondent was suffering under a unilateral mistake of law. He genuinely believed even after paying everything in terms of the contract of employment he was still unable to pay "something" to the leaving employee.
3. The respondent's mistake was induced by wrong legal advice and therefore there was no legal basis to pay further money to the applicant.
4. The respondent's legal practitioner was not authorized to tender payment on behalf of the respondent.
5. The respondent was not bound by the written undertaking made on his behalf by the legal practitioners.

At the commencement of the proceedings the respondent's legal practitioner indicated that he was abandoning his point *in limine* which was to the effect that this court had no jurisdiction because the case was a labour matter and only the Labour Court could deal with the matter. The respondent correctly in my view, did not persist with his argument

on that aspect because it had absolutely no legal basis. The dispute between the parties is purely contractual and this court has jurisdiction to entertain the matter.

The respondent however persisted with the other issues and essentially argued in the main that the legal practitioner he appointed to represent him at that time made a written undertaking without his authority. It is difficult to believe the respondent's story and even if the legal practitioner had no mandate to enter into an undertaking there has been no affidavit from the respondent's erstwhile legal practitioners to explain how the mistake could have arisen. It is apparent that the totality of the respondent's defence is to subvert and besiege the sanctity of a contract concluded between the parties. I am not at all convinced that the defence of mistake is at all open to the respondent. Respondent through his duly appointed legal representative and for good measure, executed an undertaking to pay the amount being claimed. The author RH CHRISTIE summarizes the position on the law at p 180 of his book THE LAW OF CONTRACT IN SOUTH AFRICA p 180 as follows:-

> "It is a matter of common knowledge that a person who signs a contractual document thereby signifies his assent to the contents of the document, and if these subsequently turn out not to be his liking he has no one to blame but himself"

In the case of *Burger v Central SAR* 1903 TS at p 571, CHIEF JUSTICE INNES (as he then was) stated that:-

> "It is a sound principle of law that a man, when he signs a contract, is taken to be bound by the ordinary meaning and effect of the words which appear above his signature."

In my view it is very clear that the respondent undertook to pay the sum being claimed and instructed his legal representative to forward that information to the applicant's legal practitioner. It appears however that at some point the respondent changed his mind and decided to unilaterally resile from the contract. This, the respondent cannot do. The respondent is clearly bound by the acts of his legal practitioner. Any act done or performed by a legal practitioner legitimately on behalf of his client binds the client as if the client himself executed the contract. This principle is in accordance with the sanctity of a contract. Litigants who seek to escape their contractual obligations may not do so under the guise of changing legal practitioners. The courts will not assist such litigants from avoiding their obligations to the detriment of innocent parties who would genuinely expect contracts to be honoured.

I am satisfied that the respondent has no recognisable defence to the claims in terms of our law and the applicant's claims must succeed. I have been asked to award costs *de bonis propris* but however I do not consider that the applicant would be entitled to costs on an attorney and client scale. If the respondent's previous legal practitioner who made the undertaking had appeared in these proceedings I would have been tempted to order costs *de bonis propris* against that legal practitioner.

In the result it is ordered as follows:-

1. The application be and is hereby granted.
2. The respondent pay the applicant the sum of US$4 640-00 together with interest thereon at the rate of 5% per annum with effect from 1 March 2011 to date of final payment.
3. The respondent shall pay the costs of suit on an attorney and client scale.

Hangazha & Charamba, applicant's legal practitioners
Chinganga & Company, respondents' legal practitioners