UNIVERSITY OF ZIMBABWE

versus

KWANELE MURIEL JIRIRA

and

LOUIS MASUKO

HIGH COURT OF ZIMBABWE

BERE J

HARARE, 25 and 31 October 2012

**URGENT CHAMBER APPLICATION**

*S. Zingano,* for the applicant

*K.E. Kadzere & M. Mandevere,* for the respondents

 BERE J: The following facts appear to be not in dispute in this matter.

 The two respondents were employed by the applicant as research fellows and were based at the Institute of Development Studies. Sometime in 2010 the applicant and the two respondents had an employment dispute which culminated in the subsequent dismissal of the two respondents.

 The respondents were aggrieved by their dismissal and the dispute was eventually taken for arbitration.

The arbitrator ruled in the respondents’ favour and ordered their reinstatement without loss of salary and benefits. This first ruling by the arbitrator was made on 15 July 2011.

 When the respondents’ reinstatement turned out to be impossible the respondents approached the arbitrator for quantification for damages *in lieu* of that failed reinstatement. This quantification was done on 18 February 2012.

 Pursuant to the arbitrary awards in their favour the respondents proceeded to have same registered in this court. The respondents issued a writ of execution in this court and also proceeded to serve on the applicant and its bankers the third respondent an application for a garnishee order in October 2012.

 Once served with the application for a garnishee order the third respondent was obliged to deny the applicant access to its funds held by the third respondent.

 Prior being served with the application for a garnishee order, the applicant had filed two notices of appeal against the arbitrary awards made in favour of the respondents to the Labour Court.

 The applicants have now lodged the instant urgent chamber application seeking interim relief couched in the following terms:

 “INTERIM RELIEF GRANTED

 Pending confirmation or discharge of the final order applicant is granted the following

 interim relief:

1. That pending finalization of case HC 11759/12 the consequences of the service of the application for a garnishee upon applicant’s account number 0112070100052 be and are hereby set aside.
2. That pending the finalisation of the two appeals being cases number LC/H/472/11 and LC/H/145/12, the third respondent be and is hereby directed to allow applicant access and use of its account number 011207010052.
3. That pending the determination of the two appeals being cases number LC/H 472/11 and LC/H 145/12, third respondent execution of the judgment obtained by the respondent in case number HC 2288/12 be and is hereby stayed.”

The respondents have opposed the urgent application by basically raising two points *in limine* which I must deal with first as they hold key as to whether or not I must deal with the application on merits. The respondents have argued that this application is not urgent and secondly that this court has no jurisdiction to entertain this matter.

Is this matter urgent?

It does seem to me that the signal for execution by the respondents in this matter was first put in motion on 15 July 2011 when the respondents obtained an order in their favour.

There was a further signal on 18 July 2012 when the Honourable arbitrator Masikano proceeded with the quantification for damages *in lieu* of reinstatement.

Subsequent to all these developments the applicant was served with an application for the registration of the arbitral award in this court which was filed on 1 March, 2012. The need to timeously act in cases of this nature cannot be overemphasized. Authorities are unanimous that those litigants who fail to act when the time to act presents itself to them to do so cannot seek to find refuge in an urgent application to interfere with execution. See *Kuvarega[[1]](#footnote-1)* v *Registrar General and Anor* and a host of other similarly decided cases.

The Labour Act itself makes it abundantly clear that an appeal to that court perse does not suspend execution of the decision appealed against. The applicant was within rights to have applied to the Labour Court immediately the first arbitrary award was made against it to have execution stayed. This application could have been made in terms of s 92 E (3) as read with s 89 (1) (a) of the Labour Act[[2]](#footnote-2). See also the case of *Zimbabwe Open Universty and* *Gideon Magovamombe N.O*[[3]](#footnote-3) and the case of *Kingdom Bank Workers Committee* v *Kingdom Bank Financial Holdings*.[[4]](#footnote-4) The applicant did not do so and even when the second award was made. There is no cogent explanation as to why this was not done. It decided to wait to be served with an application for a garnishee order application to awake from its slumber.

The sluggish manner in which the applicant handled this matter does not end with its failure to apply for stay of execution in terms of the Labour Act.

When the applicant was served with an application for registration of the arbitrary award, it did not oppose it. It is only when the day of execution arrives that the applicant starts reacting to this matter by seeking to stay execution. A litigant that waits for the day of reckoning to start acting will find no sympathy from this court.

I have no doubt in my mind that the lackadaisical approach adopted by the applicant in this case leads to one inevitable conclusion, *viz*, that the applicant has authored or created the urgency in this matter before me. Consequently the application must not find sympathy with this court.

Does this Court have jurisdiction in this matter to stay execution?

When the Legislature, in its wisdom has created a special court to deal with specific issues the domestic remedies available in such a court must be exhausted first before one seeks any other complementary remedy provided elsewhere.

I am aware that the need to exhaust domestic remedies is not absolute, it is not a rule of thump but there must be good reasons or special circumstances to depart from this sound principle of our law. No such good reasons have been advanced by the applicant and consequently the two preliminary points raised by the respondents must be found in favour of the respondents.

In the result, I decline to treat this matter as urgent to pave way for its hearing on merits.

The applicant is ordered to pay the costs of this hearing.

*Ziumbe & Partners,* legal practitioners for the applicant

*Kadzere, Hungwe & Mandevere,* legal practitioners for the respondents

1. 1998 (1) ZLR 188 (H) [↑](#footnote-ref-1)
2. Chapter 28:01 [↑](#footnote-ref-2)
3. Judgment No. SC 20/12 p 2 of the psyclostyled judgment [↑](#footnote-ref-3)
4. HH 302/2011 [↑](#footnote-ref-4)