JULIET HOMODZA
versus
CHITUNGWIZA MUNICIPALITY

HIGH COURT OF ZIMBABWE
TAKUVA J
HARARE, 1 November and 12 February 2014

Opposed application

G. Madzima, for the applicant
Ms *C. Maphosa,* for the respondent

TAKUVA J: This is an apposed court application. The facts which are wholly common cause are as follows:

The applicant was in respondent's employ for the past thirty-two and half years. On 24 October 2012 she resigned on medical grounds. The resignation was accepted by respondent on 29 October 2012. In a letter authored by respondent's Human Resources Manager dated 25 March 2013 applicant was advised by respondent that the total net of her terminal benefits amounts to US$45 147,03. Respondent paid the applicant US$10 000,00 leaving a balance of US$35 147,03. Applicant also claimed US$2 698,00 being her October and November 2012 arrear salaries. Respondent failed to pay the balance outstanding prompting applicant's lawyers to send a letter of demand to the respondent on 3 April 2013. Respondent ignored that letter leading to the current court application for debt recovery.

Respondent filed an appearance to defend and subsequently a special plea the nub of which is that this court has no jurisdiction to determine this matter in that issues relating to non-payment of terminal benefits and arrear salaries are specifically within the purview of the Labour Court as these matters are provided for in the Labour Act [*Cap 28:01*]. Reliance was placed on sec (s) 92 of the Constitution of Zimbabwe and 89 of the Labour Act which was quoted *in extensio*. Respondent also relied on the following cases:

(a) *ZIMTRADE* v *Makaya* 2005 (1) ZAR 427 (H).
(b) *Tuso* v *City of Harare* HH-01-04
(c) *Zhakata* v *Mandoza N.O. and N. M. Bank Ltd* HH-22-05; and

(d) *McFoy* v *United Africa Co. Ltd* [1961] 3 ALL ER 1169 (PC) @ 1172

Applicant filed her heads of argument wherein she abandoned her claim with respect to arrear salaries but maintained her claim in respect of outstanding terminal benefits. The gist of applicant's argument is that this court has inherent jurisdiction to deal with this matter since the Labour Act does not specifically preclude this court from determining a claim for non-payment of terminal benefits properly quantified and acknowledged by the employer. Further, it was submitted that in the present matter there is no employer/employee relationship or dispute that is provided in terms of the Labour Act as the cause of action is clearly premised on a document acknowledged by the respondent reflecting the quantified amount owed to the applicant which document amounts to an acknowledgement of debt. By signing the document acknowledging the terminal benefits, the respondent signified its intention and willingness to be bound by the terms of the same in line with the *caveat subscriptor* rule.

Applicant relied on the following cases:

(i) *DHL International Ltd* v *Madzikanda* 2010 (1) ZLR Z 01 @ 204B-D
(ii) *Moyo* v *Gwindingwi NO & Anor* HB-168-11
(iii) *Samudzimu* v *Dairiboard Holdings Ltd* HH-204-10
(iv) *Lynne Ashley* v *John Goodwin t/a Cambridge Creche & Nursery School* HH-301-11
(v) *Martin Sibanda & Anor* v *Bearson Chinemhute NO & Anor* HH-131-04

In my view, the issue of jurisdiction can be resolved by examining the nature of the case applicant has presented before the court. 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. If it is accepted that this court by virtue of its inherent jurisdiction can do anything except that which is specifically prohibited by law whereas the Labour Court can only do those things that are specifically permitted by law, the respondent's argument becomes fallacious.

Another way of demonstrating that this court has jurisdiction is to ask the question what dispute is there for the Labour Court to determine *in casu*? The answer is there is none except respondent's intransigence in refusing to pay the amount owed. Now, to the best of my

knowledge, there is no provision in the Labour Act that allows the applicant to approach the Labour Court directly seeking a similar remedy she is seeking in this court. The matter will have to go via a Labour Officer for conciliation, then to an arbitrator if need be and finally to the Labour Court on appeal. Assuming that both this court and the Labour Court have jurisdiction to determine this matter, why should the applicant be required to go along the circuitous journey instead of the more direct route she has chosen.

For these reasons, I find that his court has jurisdiction to determine the matter. Consequently, the point *in limine* is hereby dismissed with costs on a higher scale.

Messrs Kanyenze & Associates, plaintiff's legal practitioners
Matsikidze & Mucheche, defendant's legal practitioners