ANALYSIS OF THE RIGHT TO STRIKE IN ZIMBABWE IN THE CONTEXT OF INTERNATIONAL LAW, ILO CONVENTIONS AND THE FUNDAMENTAL BILL OF RIGHTS IN THE CONSTITUTION OF ZIMBABWE

BY CALEB MUCHECHE[1]

INTRODUCTION

Theoretically the right to strike is one of the most formidable and potent weapons at the disposal of employees in the entire global village.[2] The cardinal importance of this right has earned veiled acclaim and universal recognition by international law under the auspices of the International Labour Organisation(ILO) conventions. However, in practice, the right to strike is sometimes watered down and rendered impotent by an interplay of factors in each given jurisdiction.[3] In the context of the Zimbabwe, the right to strike exists on paper but its practical realisation is a moot point particularly given the artificial "Berlin wall"[4] that exists between

---

[1] Caleb Mucheche LLM Commercial Law Specialising in Banking, Company and labour law (Unisa:SA) ,LLM Labour Law (Zambia) specialising in individual labour Law, Collective Labour Law, Alternative dispute resolution Law and International Labour Law (Zambia) : LLB Hons (UZ); Zimbabwe former Law lecturer Former executive Dean of Law (Zimbabwe); Former Examiner at the council for Legal Education, Senior Head Legal Researcher at ZimLaw Trust & Head/Senior Partner at Caleb Mucheche and Partners Commercial, Labour and Investment Law, Legal Practitioners (Zimbabwe)

[2] According to Khan Freund, quoted in P. Davies and M Freedland, Khan Freund's Labour and The Law, 3rd ed, 1983(Stevens and Sons, London) p 292 " there can be no equilibrium in industrial relations without a freedom to strike. In protecting that freedom, the law protects the legitimate expectations of the workers that they can make use of their collective power: it corresponds to the protection of the legitimate expectation of management that it can use the right of property for the same purpose on its side....." see also an English Judge, Lord Wright's apposite comments in Crafter Harris Tweed v Veitch [1942] AC 435 at 463, " the right of workmen to strike is an essential element in the principle of collective bargaining" and a Canadian Judge, Cameron JA's succinct remarks in Re Tail Wholesale Union and Govt of Saskatchewan (1985) 19 DLR (4th) 609, at 639 "... the freedom to bargain collectively, of which the right to withdraw services is integral, lies at the very centre of the existence of an association of workers. To remove their freedom to withdraw labour is to sterilise their association" ; cited in L Madhuku's Article, The Right to Strike in Zimbabwe, Zimbabwe Law Review(1995) p 113.

[3] see L Madhuku, The Right to Strike in Zimbabwe, Zimbabwe Law Review (1995), p 115 "There is no ILO Convention dealing specifically with the right to strike. The more obvious candidate ILO Conventions, No. 87(On Freedom of Association and Protection of the Right to organise) and 98 (on the Right to Organise and Collective Bargaining) do not make any specific reference to the right to strike. However, the absence of a specific right to strike in ILO Conventions, does not means such a right does not exist in International labour law. ILO case law, developed by the Committee of Experts and the Committee on Freedom of Association as enshrined in Conventions 87 and 98 holding that the right to strike is "an intrinsic corollary to the right to organise protected by Convention No. 87" and the right to strike is "a legitimate means...through which workers may promote and defend their economic and social interests". Per Freedom of Association Digest, paras 362 and 363; ILO General Survey by Committee of Experts, 1983 para 2000; ILO General Survey, 1994,per 148. To remove their freedom to withdraw labour is to sterilise their association" ;cited in L Madhuku's Article, The Right to Strike in Zimbabwe, Zimbabwe Law Review(1995) p 113.

[4] The Berlin Wall Divided East and West Germany after the Second World War but eventually collapsed

private sector and public sector employees and essential and non-essential service employees as well as a myriad of restrictions on the exercise of the right to strike itself. [5] The purpose of this essay is to consider the extent to which Zimbabwean law is in sync with the letter and spirit of the right to strike. The Berlin wall divided East and West Germany after the second world war but eventually collapsed Private sector employees expressly enjoy the right to strike under section 65 of the Constitution of Zimbabwe as read with 104 of the Labour Act(Chapter 28:01) but public sector employees are not governed by the Labour Act but the Public Service Act (Chapter 16:04) which does not provide for the right to strike. However the effect of the enactment of section 65(3)of the Constitution of Zimbabwe is to apply the right to strike to both private sector and public sector employees with the exception of members of the security services in the following terms " Except for members of the security services, every employee has the right to participate in a collective job action, including the right to strike, sit in, withdraw their labour and to take other similar concerted action but a law may restrict the exercise of this right to maintain essential services". The purpose of this essay is to consider the extent to which Zimbabwean law is in sync with the letter and spirit of the right to strike. One may further posit that the right to strike in Zimbabwe exists on paper only but in reality it is a mirage or phantom typical of a pie in the sky. It is respectfully submitted that the right to strike is at the heart or nerve centre of the right to collective bargaining for without the right to strike, the right to collective bargaining is hollow and rendered a laughing stock typical of collective begging. One may be inclined to say that the right to strike in our beloved country is sometimes a **pie in the sky beyond the reach of many workers or employees due to the procedural and substantive limitations which operate like an albatross around the neck or a python.**

CORE CONTENT OF THE RIGHT TO STRIKE AS ENSHRINED IN THE JURISPRUDENCE OF THE INTERNATIONAL LABOUR ORGANISATION FREEDOM OF ASSOCIATION COMMITEE

One of the fundamental facets of the right to strike is that it is a crucial tool or means through which workers and their organisations may promote and defend their economic and social

[5] Private sector employees expressly enjoy the right to strike under section 65 of the Constitution of Zimbabwe as read with section 104 of the Labour Act (Chapter 28:01) but public sector employees are not governed by the Labour Act but the Public Service Act [Chapter 16:04] which does not provide for the right to strike. However, the effect of the enactment of section 65(3) of the Constitution of Zimbabwe is to apply the right to strike to both private sector and public sector employees with the exception of members of the security services in the following terms "Except for the members of the services, every employee has the right to participate in a collective job action, including the right to strike, sit in, withdraw their labour and to take other similar concerted action but a law may restrict the exercise of this right to maintain essential service.

interests. [6] In the same vein, the Digest of Decisions and principles also underpins the fact that the right to strike is a legitimate lifeline for workers and their organizations to defend their economic and social interests. [7] In essence the right to strike is not an end in itself but a means to an end. It is a vehicle for transporting workers and their organisations from the land of bondage to the typical promised land of economic and social prosperity("Canaan"). Also, the Digest of Decisions and Principles is pivoted on the fact that federations and confederations should be allowed to call for strikes without prohibitions. [8] This is meant to ensure that workers are not hamstrung in exercising the right to strike because the major arsenal at the hands of the employees is their number and hence federations and confederations can press for better improvement of conditions of employment due to the huge impact of a concerted strike action by a legion of workers. The giving of primary responsibility to trade unions to call strikes does not offend against ILO Conventions but it is critical that union leaders be protected from reprisals flowing from a strike which can take the form of discrimination. [9]

Another core attribute of ILO jurisprudence on the right to strike is the fact that such right should not be narrowly confined to better working conditions and claims of an occupational nature but the dragnet should be widened to encompass a cocktail of solutions to social and economic policy questions having a direct impact on employees of a particular organisation. [10] The rationale is to ensure that the right to strike is not only used as an arrow for the offensive but also as a shield to safeguard the legitimate interests of the concerned employees and also a panacea for industrial peace and harmony. Thus the right to strike serves as a launch pad for employers and employees to find common ground for the mutual benefit of both parties.

There is a restriction on the nature of strikes with a particular proscription of strikes of a political nature and putative strikes because essentially such strikes may not serve the best interests of workers but other extraneous interests. [11] However, trade unions retain the right to strike seeking to criticise a government's economic and social policies because invariably the workers bear the brunt of such policies if they are badly formulated and implemented. The prohibition of the right to strike in a legal dispute where a solution can be provided by

[6] See para 521, Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of ILO, Chapter 10 (hereinafter referred to as "The Digest of Decisions and Principles").
[7] See para 521 522 and 531 of the Digest of Decisions and Principles(supra).
[8] See para 525 (supra).
[9] See para 524(supra)
[10] See para 526-527(supra)
[11] See para 528-529(supra)

competent courts of law through interpretation of the law in the event of a deadlock between employers and workers accords well with ILO Conventions embedding the right to strike. [12] This is what is commonly referred to as a dispute of right which can best be resolved through adjudication as opposed to power based resolution premised on a strike. The existence of a collective agreement should not preclude the right to strike for top ups but if such prohibition exists, there is need for workers to have access to an effective and expeditious dispute resolution mechanisms to deal with any impasse between the employer and the affected workers. [13] Protest strikes over prolonged non-payment of salaries by the Government are fully recognised. **[14]**

The import of the objective of strikes is that it can cater for a wide range of issues that entail strikes on economic and social issues, political strikes and solidarity strikes. [15] The restrictions on the types of strikes in the interests of peace augurs well with ILO Conventions and similarly the need to maintain essential services by curtailing circumstances under which a strike can be resorted to bode well with the conventions. [16] The use of compulsory arbitration as a moratorium to end a strike is permissible if done at the instance of both parties or in situations where the strike is outlawed. [17] The rationale for a preceding agreement of the parties to submit to compulsory arbitration is to ensure that the voluntary autonomy of the parties is preserved to avoid a situation where parties feel that the arbitration process has been imposed on them thereby potentially creating a fertile ground for resentment and consequent escalation of the dispute. The limitations on strikes by public service and essential service workers should be reciprocated by compensatory guarantees. [18] The definitions of public service employees and essential service should not be too broad such as to create a blanket ban on the right to strike for a certain category of employees who ordinarily cannot be construed as public service or essential service employees.**[19]**

The need to strike a balance between the right to strike on hand and the maintenance of minimum services is fully recognised but the object of such interventionist measures should not be to completely stifle strike action but simply to provide stop gap measures. In tandem with the principles of fairness, the responsibility to declare illegal should not lie with the

[12] See para 532(supra)
[13] See para 533 (supra)
[14] See para 537(supra)
[15] See paras 526-544 (supra)
[16] See paras 545-563(supra)
[17] See paras 564-569 (supra)

[18] See paras 570-603. (supra)
[19] See paras 615-627(supra)

government as an interested party but should be the exclusive preserve of an independent and impartial body. [20] Justice must not only be done but it must manifestly appear to be done without any subjective connotations which tend to taint objectivity.

Except in circumstances of an essential services, gap filling to replace striking employees militates against the notions of the right to strike and are proscribed. Similarly forcing striking employees back to work or resort to military force to quell a strike gravely infringes upon the right to strike and the use of armed forces to take over the responsibility of striking employees is only permissible in exceptional circumstances motivated by the need to maintain core services. [21] The use of military or the police to ward off a strike militates against the Conventions although the police are allowed to maintain peace and order without breaking the strike. [22] Pickets are recognised to the extent that they do not disturb public order. [23]

Under the principle of 'no work no pay', the deduction of wages for the duration of the strike is permissible with the caveat that such deductions should not be higher than the period of the strike. [24] Workers who participate in a lawful strike enjoy maximum protection from reprisals and saddling the striking employees or trade union with unduly burdensome sanctions consequent to a strike flies in the face of ILO Conventions. [25] Subtle punishment for striking employees which can take the form of dismissal, demotion or reduction of salaries is anathema to the Conventions. To curb the effects of unruly elements, the conventions recognises that legal bridles can be put in place to punish those who abuse the right to strike but such punishment should not be unduly harsh and excessive but should be proportionate to the offence or fault committed and the drastic penalty of imprisonment should not be resorted to.[26]

WHETHER ZIMBABWEAN LAW GIVES EFFECT TO THE RIGHT TO STRIKE?

LIMITATIONS ON THE FORMS THAT STRIKES MAY TAKE (PARTIAL STRIKES, SECONDARY STRIKES, PROTEST ACTION)

To a greater extent, Zimbabwean law recognises all form of strikes that entail partial strikes, secondary strikes and protest action. [27] According to M. Gwisai the legal basis for the right to

[20] See paras 628-631 (supra)
[21] See paras 632-639. (supra)
[22] See paras 642-647. (supra)
[23] See paras 648-653. (supra)
[24] See paras 654-657. (supra)
[25] See paras 658-666. (supra)
[26] See paras 667-670. (supra)
[27] Labour and Employment Law in Zimbabwe (2006), 1st ed, Zimbawe Labour Centre, Harare, at 345.

strike is provided for under the constitution and statutes. It is noteworthy that right to strike in all its forms is now entrenched in the fundamental bill of rights in terms of the Constitution of Zimbabwe. [28] This effectively means that the right to strike is now justiciable. However, the only permissible constitutional derogation from the right to strike is in respect of essential services. [29] Suffice to mention that the limitation of the right to strike in genuine essential service is also recognised by the ILO Report by Experts. Under Zimbabwean labour law, the right to strike only applies in respect of disputes of interest and not disputes of right. [30] However, there is no automatic right to refer a dispute of interest to arbitration for other employees other than those in essential service where it is peremptory that once a certificate of no settlement is issued pursuant to a fruitless conciliation process, the dispute should be referred to compulsory arbitration. [31] This jells with the ILO Experts' recommendation that employees in essential service who are deprived the right to strike be afforded impartial and speedy conciliation and arbitration.[32] It is important to point out that partial strikes are permissible even in an essential service especially where there is an occupational hazard which presents an impending threat to the health [33]or safety of the victims and in defence of an immediate threat to the existence of a workers committee or registered trade union. [34] A protest action is accepted under Zimbabwean law because of the wide definition of collective job action. **[35]**

---

[28] See section 65(3) of the Constitution of Zimbabwe which became operational on 22 May 2013 after it was adopted by an overwhelming majority in a national referendum on 15 March 2013.

[29] See section 104(3)(a)(i) of the Labour Act (Chapter 28:01) which says, "subject to subsection (4), no collective job action may be recommended or engaged in by any employees, workers committee, trade union, employer, employers'organisation or federation if the persons are engaged in essential service.

[30] See section 104(1) of the Labour Act, see also Supreme Court of Zimbabwe decision in Zimbabwe Graphical Workers Union v

[31] See section 93(5) of the Labour Act; After a labour officer has issued a certificate of no settlement, the labour officer upon consulting any labour officer who is senior to him and to whom he is responsible in the area in which he attempted to settle the dispute or unfair labour practice-

(a) shall refer the dispute to compulsory arbitration if the dispute is a dispute of interest and the a parties are engaged in an essential service;or

(b) may, with the agreement of the parties, refer the dispute or unfair labour practice to arbitration; or

(c) may refer the dispute or unfair labour practice to compulsory arbitration if the dispute or unfair labour practice is a dispute of right.

[32] See paras 596.

[33] See section 104(4)(a) of the Labour Act

[34] See section 104(4)(b) of the Labour Act, see also the Supreme Court of Zimbabwe decision in First Mutual Life Assurance v Muzivi SC-62-2003 wherein the court upheld the strike as lawful due to not only a direct threat to the existence of a workers committee but a direct attack on the workers committee after the employer demoted members of the concerned workers committee.

[35] See section 65(3) of the Constitution of Zimbabwe which provides that the right to collective job action includes the right to strike, sit in, withdraw labour and similar concerted action.

A protest is a form of concerted action. Even though the Labour Act of Zimbabwe did not expressly embrace a secondary strike action, it can be authoritatively argued that a secondary strike action is n ow legally recognised in Zimbabwe since the constitution uses the term concerted action whose import can entail a secondary strike. To a lesser extent, there still exists limitations on the right to strike under Zimbabwean law but such limitations are now largely confined to employees in the essential services sector and the security services.[36] The artificial divide between public and private sector employees has been demolished by the Constitutional provisions that extends the right to strike to both private and public sector employees. However, what is still of particular concern is the restriction of the exercise of the right to strike in respect of the essential services. It can be argued that ILO does permit reasonable restrictions on the right to strike in the essential services.

THE EXTENT TO WHICH ACTION IN SUPPORT OF A STRIKE(FOR EXAMPLE, PICKETING) IS PERMITED OR RESTRICTED

A picket is permissible under Zimbabwean Labour Act but the only limitation is that it is only reserved for a registered trade union or workers committee and not an individual employee.[37] However, given the wide and individualistic wording of section 65(3) of the Constitution, there is little doubt that individual employees now enjoy the full right to picket much the same way as registered trade unions or workers committee used to enjoy under the old era. Even though no test case has been taken to the Constitutional Court of Zimbabwe, [38] it is an open secret that the Constitution is the supreme law and prevails over any other law, custom or practice inconsistent with it to the extent of the inconsistency. [39] The law allows a picket to be exercised outside the premises of the employer or any other public place. [40] The requirement for a picket to be done peacefully bodes well with ILO requirements. [41] It is therefore respectfully submitted that Zimbabwean law gives effect to the right to picket and any derogations fall within the permissible limitations codified under ILO.

PROCEDURAL CONSTRAINTS/LIMITATIONS ON THE RIGHT TO STRIKE, AND WHETHER OR NOT THESE ARE DESTRUCTIVE OF THE RIGHT TO STRIKE

[36] See section 65(3) of the Constitution of Zimbabwe.
[37] See section 104A(2) of the Labour Act which says, "A registered trade union or workers committee may authorise a picket."
[38] See section 175 of the Constitution of Zimbabwe which confers the Constitutional Court with final jurisdiction in all constitutional matters.
[39] See section 2(1) of the Constitution of Zimbabwe.
[40] See section 104A(3) of the Labour Act.
[41] See paras 667 (supra)

The issue of procedural stumbling blocks to the right to strike is where Zimbabwean law is found wanting. L Madhuku gives a justified scathing attack to the on the numerous procedural restraints on the right to strike. [42] Suffice to mention that some of the constraints enumerated by the learned author have since been addressed by both the subsequent amendments to the Labour Act itself and the enactment of section 65 of the Constitution of Zimbabwe. The major procedural barriers to the right to strike include the requirement to give seven days[43] written notice to the party against whom the action is taken, to the employment council and the appropriate trade union or employers' organisation or federation. [44] Also the precondition to a strike that an attempt should have been made to resolve the dispute via conciliation and a certificate of no settlement issued. [45] The need for conciliation to precede resort to strike effectively renders the right to strike difficult to assert because in practice, the conciliation process can last for a period ranging from 30 days to a period *ad infinitum* if the conciliation is extended. [46] The fourteen days written notice to go on strike is too excessive and will only serve to deflect and deflate the right to strike and thus undermining that right. **[47]** These procedural hindrances in the form of an unreasonably long notice to engage on a strike run counter to the ILO requirements on the right to strike. **[48]**

Also, the involvement of labour officers who are employed by the state to conciliate and issue a certificate of no settlement pre-strike may result in unscrupulous labour officers sabotaging or derailing the strike action by unjustifiably elongating the conciliation process. Given the 30-day period for conciliation, the momentum for a strike falls away because after the lapse of 14 days' notice and an additional 30 days for conciliation, the strike action is effectively diluted.**[49]** In the same vein, the need for a strike to be approved by a majority of employees or employers voting by secret ballot renders a strike by minority employees illegal. It is important to pin point out that the trade union which facilitates a secret ballot before a lawful strike is done need not necessarily be a trade union representing all employees at the

[42] See L Madhuku(supra) at 121; "....the right to strike is made subject to restrictions(and they are many) in the Act. It is these restrictions which have made the law on strikes ridiculous".
[43] Section 37 of Labour Amendment Act No. 11 of 2023 progressively and commendably reduced the strike notice period from the previous fourteen (14) days via an amendment to section 104 (2)(a) of the Labour Act [Chapter 28:01].
[44] See section 104(2) of the Labour Act.
[45] See section 104(2)(b) of the Labour Act
[46] See section 93(3) of the Labour Act
[47] See Moyo v Central African Batteries(Pvt) Ltd 2002(1) ZLR 615(S), Mukundwi and 42 Others v Chikomba Rural District Council LC/H/01/05, Cole Chandler Agencies (Pvt) Ltd v Twenty-five named employees SC-161-1998.
[48] See Carnaud Metal Box(Pvt) Ltd v Mwonzora and Ors SC-9-2009.
[49] See section 104(3)(e) of the Labour Act; See section 104(3)(a)(ii) of the Labour Act

workplace for as long as the applicable trade union is the one which represents some employees at that workplace. However, it is submitted that this position can no longer stand in the face of section 65(3) of the Constitution which expressly confers the right to strike to an individual employee as well. It is now legally possible to have a "one man" strike action unlike the previous dispensation where a lawful strike required approval by the majority of employees voting by secret ballot. In practice, the secret ballot is conducted by labour officers thereby giving the State room to influence the course of events in its preferred direction. The constitutional provision widening the right to strike to apply to individuals without getting majority vote is very commendable in that it brings that right closer home unlike beforehand where it was futile for an individual to exercise the right to strike solo. No test case has been taken to the Constitutional Court of Zimbabwe to impugn the procedural humps to a strike but if that is done, it is likely that the Court will declare such bridles to the right to strike to be unconstitutional.

Section 34 of Labour Amendment Act No. 11 of 2023 which was enacted as legislation by the legislature of Zimbabwe on 14 July 2023 amended section 112 of the Labour Act and introduced a drastic penalty of one year imprisonment or up to a maximum of level 14 fine or both imprisonment and fine, for an unlawful strike. This is like double trouble/jeopardy/ tragedy because an employee who goes on an unlawful strike is legally liable for disciplinary action by the employer and also not entitled to be paid any remuneration under the "**no work no pay**" legal principle. It is respectfully submitted that jailing an employee or some employees for an unlawful strike sends a chill down the spine and may need to be revisited with a view to remove the penalty of imprisonment as it is too harsh and seemingly a relic of the barbaric, draconian, capricious, nefarious and notorious colonial era legislation in terms of which black African workers were imprisoned with hard labour for deserting the workplace. International Labour Organisation (ILO) best practices detest and frown upon imprisonment for any labour disputes and hence Zimbabwe may borrow a leaf from ILO jurisprudence and tailor-make our labour laws to remove imprisonment and fine.

SUBSTANTIVE LIMITATIONS ON THE RIGHT TO STRIKE

The most remarkable substantive limitation on the right to strike finds its fullest expression in the dichotomy between disputes of right and disputes of interest. The right to strike only exists in respect of disputes of interest which fall to be determined by power games but it does not exist for disputes of right which should be resolved by formal disputes resolution systems. A dispute of interest involves matters for negotiation (privileges) where there is no established legal right e.g wage increases. On the other hand, a dispute of right entails a

determination on the existence or otherwise of a legal right flowing from legislation, collective agreements, contracts of employment or any other recognised source of law. It must be pin pointed out that the distinction between disputes of right and disputes of interest does not go against ILO Conventions. Also, providing that disputes of right be resolved via adjudication peace obligations but allows parties to graft in an exclusive dispute resolution mechanism in their collective bargaining agreement and once that is agreed, it precludes the right to strike. [50] In the context of essential services, the only permissible strikes are partial strikes to avert occupational hazard or immediate threat to the existence of a workers committee otherwise there is virtually no right to strike for employees engaged in an essential service. [51] The essential services sector is compounded by the fact that there is no independent committee to determine what constitute essential service as the Minister is given an open cheque to do so. **[52]** It is this skewed manner in which essential service is defined under Zimbabwean law that leading labour lawyer like L Madhuku[53] has made a penetrating attack on the concept of essential service which can potentially be abused to outlaw strikes by simply designating a sector as essential service. [54] Also, once a dispute(whether interest or right dispute) [55] is referred to compulsory arbitration, the door for the right to strike is firmly shut. [56] The right to strike is rendered nugatory if the labour officer subsequently refers the dispute to compulsory arbitration. [57] The autonomy of the parties is eroded by an Arbitrator who is

[50] See section 82(4) of the Labour Act which says; "if a registered collective bargaining agreement provides a procedure for the conciliation and arbitration of any category of dispute, that procedure is the exclusive procedure for the determination of disputes within that category."

[51] See section 104(4)(a) and (b) of the Labour Act.

[52] See section 102 of the Labour Act which says; "essential service" means any service-

(a) the interruption of which endangers immediately the life, personal safety or health of the whole or part of the public; and

(b) that is declared by notice in the Gazette made by the Minister, after consultation with the appropriate advisory council, if any, appointed in terms of section nineteen, to be an essential service;

[53] see L Madhuku(supra) at 122; '' the additional powers given to the Minister can be exercised even where a strike has already broken out, thus making even these strikes that may escape the net to be subsequently made illegal. It is suggested that the determination of what constitutes "essential service" be democratised and the tripartite social partners be involved in delineating essential services. In South Africa, for instance, the new Labour Relations Act creates a tripartite committee for the determination of essential services. Such an approach will cut down the very wide and ridiculous ambit of the definition of "essential service".

[54] See L Madhuku (supra) at 122; " the first restriction relates to "essential services". Employees engaged in essential services have no right to strike at all. Essential service is defined so widely as to cover virtually every industrial activity in Zimbabwe. This definition of essential services is unreasonably wide and makes one wonder why it was ever necessary to claim the right to strike in the first place".

[55] See section 104(3)(a)(iii) of the Labour Act.

[56] See Tel-One (Pvt) Ltd v Communications and Allied Services Workers Union SC-26-2006, Rutunga and Ors v Chiredzi Town Council and Anor SC-117-2002.

[57] See Chisvo and Ors v Aurex (Pvt) Ltd 1999(2) ZLR 334.

imposed to adjudicate over the dispute by the State under the guise of compulsory arbitration and this is undesirable.[58]

THE EXTENT TO WHICH EMPLOYEES ARE PROTECTED FROM REPRISALS AND OR DISCRIMINATION FOR ENAGAGING IN A STRIKE ACTION

The law protects employees who engage in a lawful strike but the same cannot be said of employees who engage in an illegal strike who are prone to be saddled with various forms of legal liability. [59] It is noteworthy that employees who carry out a lawful strike enjoy immunity from dismissal. [60] In the same vein, the law protects both individuals and organisations from civil liability consequent to a lawful strike. [61] This protection is important because reprisals can instil fear in the victims and thus burying the right to strike. However, it is important to note that an employee who participates in a lawful strike loses an entitlement to get remuneration from the employer[62] but if an employer locks out an employee, that employer is barred from employing another person to perform the duties of an employee who falls prey to a lockout. [63]

In the case of an unlawful strike, both civil and criminal liability can be attributed to the perpetrators of the illegal strike. [64] The most drastic effect of an illegal strike is dismissal for breach of contract. There is a long line of case authorities that reiterate the fact that an illegal strike can give rise to dismissal of the offenders. [65] A party confronted with an illegal strike is entitled to have recourse to the Minster to issue a show cause order[66] and ultimately the Labour Court will issue a disposal order. [67]

THE PRESENCE OR ABSENCE OF STATE INTERFERENCE IN STRIKES

The State interference in strikes is more conspicuous in an illegal strike where the Minister is legally empowered to issue a show cause order. [68] The Minister has powers to terminate,

---

[58] See section 108 of the Labour Act.
[59] See section 109 of the Labour Act.
[60] See section 108(3) of the Labour Act.
[61] See section 108(2) of the Labour Act
[62] See section 108(4) of the Labour Act.
[63] See section 108(5) of the Labour Act.
[64] See section 107(3)(iv) of the Labour Act.
[65] See Wholesale Centre v Mehlo and Others 1992(10 ZLR 376, Kadoma Magnesite v RHO 1991 (1) ZLR 283, Masiyiwa v TM Supermarkets 1990(1) ZLR 283, ZIMPOST v Communication and Allied Workers Union SC-23-2009.
[66] See section 106 of the Labour Act.
[67] See section 107 of the Labour Act.
[68] See section 106(2)(b) of the Labour Act.

postpone or suspend any strike action under a show cause order. There is a right of appeal to the Labour Court by any person aggrieved by the issuance or non-issuance of a show cause or disposal order[69] but the appeal itself does not suspend the decision appealed against such that this purported remedy becomes hollow and academic to workers if the Minister has already made a decision to ban the strike.[70] It is submitted that bestowing such powers on the Minister is problematic in that it gives the State room to interfere with strikes especially given the fact that the State can easily render a legal strike illegal through a Minister's declaration that the strikers fall in an essential service.[71] However, it must be noted that there is a right of appeal to the Labour Court by any person who is aggrieved by the Minister's declaration of any service or occupation as essential service but appeals to the Labour Court can be cumbersome and very expensive for ordinary employees and that remedy can be rendered a pie in the sky.[72] In practice, the Labour Court is overburdened with a backlog of cases and there is no guarantee of the expeditious disposal of the dispute.

Also the subtle State interference in the right to strike manifests itself through the involvement of State employees called labour officers who are statutorily empowered to conciliate and issue a certificate of no settlement in a dispute before strike action can be resorted to.[73] The State's role should be only confined to ensure that there is peace and order during a strike rather than create insurmountable blocks to a strike. In the same vein, the State interference is sign posted by the involvement of compulsory arbitration in strike related disputes once a matter has been referred for conciliation.

The Arbitrators who conduct compulsory arbitration are appointed by the State and hence the State interference in strikes can be inferred particularly where the labour officers are enjoined to conciliate over a dispute before it is referred to compulsory arbitration. Invariably, the conciliation process by labour officers representing the State may result in the intended strike action being aborted as the process can help extinguish the burning desire for a strike. Granted, there is a subsidiary legislation in force that protects workers and employers' organisations from interference by each other's agents but there is no corresponding provision eliminating or preventing interference by the State.[74]

---

[69] See section 110(1) of the Labour Act.
[70] See section 110(2) of the Labour Act
[71] See Labour(Declaration of Essential Services) Notice, 2003; Statutory Instrument 137 of 2003 for a non exhaustive list of some occupations declared to be essential service
[72] See section 103 of the Labour Act
[73] See section 104(2)(b) of the Labour Act.
[74] See Labour Relations(Protection Against Any Acts of Interference Between Workers' Organisation and Employers' Organisation) Regulations, 2003, Statutory Instrument 131 of 2003.

RIGHT TO STRIKE IN OTHER JURISDICTIONS

Just like in Zimbabwe, the right to strike is a constitutional right fully guaranteed under the constitution of South Africa but there is a restriction on the right to strike in respect of those employees who are in the essential services.[75] The Constitution of Malawi does not have an express right to strike but simply makes reference to fair labour practices and to fair remuneration.[76] Similarly, there is no direct constitutional right to strike under the Zambian Constitution but certain provisions thereof can be stretched to provide a basis for a strike.[77] The absence of a clear constitutional guarantee for the right to strike in Malawi and Zambia Constitutions respectively render the enforcement of that right practically difficult as it is not justiciable. In Botswana, the right to strike is a fundamental right that is entrenched in the Constitution.[78] The Indian Constitution is also progressive in that it enshrines the right to strike as a fundamental right.[79] Also the United States of America Constitution recognises the right to strike as confirmed by case law.[80] In the same vein, the SADC Charter of Fundamental Social Rights provides for the right to strike.[81] It is also critical to point out that the right to strike is provided for in terms of the African Charter on Human and People's Rights.[82]

THE RIGHT TO STRIKE AS A COLLECTIVE BARGAINING TOOL

Disputes of interest a best resolved through power games like collective job action if negotiations fail to bear tangible fruit. Thus **section 104(1) of the Labour Act** gives employees, workers committees and trade unions the right to resort to collective job action to resolve disputes of interest in any industry except the **essential service** sector as per **section 104(3)(a)(i) of the Act**. When it comes to the essential service sector like electricity, fire, ambulances e.t.c, in terms of **section 93(5)(a) of the Act** a labour officer is legally obliged to refer a dispute of interest to compulsory arbitration if he/she fails to resolve it via conciliation. However, in a non essential service sector, a labour officer does not have an unfettered and automatic right to refer a dispute of interest to compulsory arbitration

---

[75] See section 23(2)(c) of the Constitution of the Republic of South Africa, 108 of 1996(''the Constitution").
[76] Malawi(Constitution) Act, 1994 (No. 20 of 1994).
[77] Constitution of Zambia, Article 14(1) and (2).
[78] See section 13 of the Constitution of Botswana.
[79] See Article 19(1) of the Indian Constitution.
[80] See Lyng v Auto Workers, 485 U.S. 360,368 (1988)
[81] See Article 4 providing for Freedom of Association and Collective Bargaining.
[82] See Article 15 of the African Charter on Human and People's Rights as read with Clause 6(h) of the Pretoria Declaration on Economic, Social and Cultural Rights in Africa(2004) which states that the right to work in Article 15 entails among others; the right to freedom of association, including the right to strike and other related trade union rights.

pursuant to a fruitless conciliation exercise. The referral of a dispute of interest to compulsory arbitration in such a scenario must be preceded by an agreement between the parties in terms of **section 93(5)(b) of the Act**. In the absence of consensus between the parties, all that a labour officer can do is to issue a certificate of no settlement. However if any of the parties to a dispute of interest is aggrieved by the failure by a labour officer to refer the dispute to compulsory arbitration, the aggrieved party can invoke **section 93(7) of the Labour Act.**

To further illustrate the fundamental dichotomy between a dispute of right and a dispute of interest, where a labour officer fails to resolve a dispute of right via conciliation in terms of **section 93 of the Labour Act** within the stipulated period, the labour officer is conferred with the discretion to refer such dispute to compulsory arbitration without soliciting for the agreement of the parties in terms of **section 93(5)(c) of the Act**. Quite on the contrary, when it comes to a dispute of interest, a labour officer cannot rush to refer such a dispute to compulsory arbitration without securing the agreement of both parties to the dispute. The rationale for this distinction is because the only way a dispute of right can be resolved is the intervention of an impartial adjudicator since parties may have polarized legal positions. Concerning a dispute of interest, the delay in referring the same to compulsory arbitration may allow for some flexibility and the parties may depart from rigid or fixed positions. Furthermore, if the employer's reason for refusing to accede to the employees' demands for higher salaries is due to financial challenges at the time of the deadlock, with the passage of time, the financial situation can improve and thus lead to a compromise in terms of which that employer can give in to the employees' demands.

More fundamentally, given the fact that in terms of **section 104(2)(b) of the Labour Act,** securing a certificate of no settlement is one of the necessary preconditions for a lawful strike over a dispute of interest, once a labour officer has given the parties to a dispute of interest a certificate of no settlement, if the workers are properly organized and possess a critical mass at the workplace, it can easily ignite a lawful strike to press for its demands. A lawful strike is one which is not prohibited in terms of **section 104(3) of the Act.** In other words a lawful strike must comply with the provisions of **section 104(2) of the Act.** It is important to note that in terms of **section 104(3) (a)(ii) of the Act** there is no right to strike for a dispute of right. In the same vein, in terms of **section 104(3)(a)(iii) of the Act** an agreement between the parties to refer a dispute to arbitration extinguishes the right to resort to collective job action or strike. Suffice to mention that in terms of **section 104(4) of the Act** employees are bestowed with an automatic right to resort to collective job action notwithstanding **subsections (1), (2) and (3)** to avoid an occupational hazard which is

reasonably feared to pose an immediate threat to the health and safety of the concerned persons and in defence to an immediate threat to the existence of a workers committee or registered trade union. It therefore follows that the provisions of **section 104(4) of the Act** applies to both the essential service sector and non-essential service sector. A collective job action or strike under **section 104(4) of the Act** cannot continue indefinitely or ad infinitum but diminishes as the threat subsides. Furthermore, the collective job action must be proportionate to the occupational hazard or threat to the existence of a workers committee and registered trade union, that would have triggered the collective job action in the first place. It cannot be used as a magic wand to settle scores around disagreements over wages or salary increases.

Confusion arises at times as to the extent of the meaning of the term compulsory arbitration. In terms of section 2 of the Labour Act, compulsory arbitration means compulsory arbitration in terms of Section ninety-eight. With the greatest respect this definition of compulsory arbitration is too simplistic and does not really shed light on the import of compulsory arbitration. One is therefore forced to look at section 98 of the Labour Act to see how the institution of compulsory arbitration is established.

It is submitted that if the term compulsory arbitration refers to the voluntary effects of an arbitration procedure resorted to voluntarily by the parties, this does not give rise to difficulties. This is particularly so since the parties should normally be deemed to accept to be bound by the decision of the arbitrator or arbitration board they have freely chosen. The real issue arises in practice in the case of compulsory arbitration which authorities may impose in an interest dispute at the request of one party, or at their initiative.

As regards arbitration imposed by the authorities at the request of one party, it is submitted that it is generally contrary to the principle of voluntary negotiations of collective agreements established in **Convention No**. **98**, and thus the autonomy of the bargaining partners. However, it must be borne in mind that, there comes a time in bargaining where, after protracted and fruitless negotiations, the authorities might be justified to step in when it is obvious that the deadlock in the bargaining will not be broken without some initiative on their part in line with **Article 4 of Convention** No. **98**.

It would be highly advisable that the parties be given every opportunity to bargain collectively, during a sufficient period, with the help of independent facilitations (mediator, conciliator, etc) and machinery and procedures designed with the foremost objective of facilitating collective bargaining. Based on the premises that a negotiated agreement, however unsatisfactory, is

to be preferred to an imposed solution, the parties should always retain the option of returning voluntarily to the bargaining table, which implies that whatever disputes settlement mechanism is adopted should incorporate the possibility of suspending the compulsory arbitration process, if the parties want to resume negotiations. It is noteworthy that **section 82(4) of the Labour Act** permits parties to incorporate an exclusive dispute resolution procedure for any category of dispute in their collective bargaining agreement.

This can either be conciliation or arbitration. Upon registration of that collective bargaining agreement that dispute resolution procedure becomes the exclusive for resolving any disputes within that category. This shuts the door for litigation if the parties have opted to use appropriate/ alternative dispute resolution. This is a very commendable provision because it gives parties the freedom to choose whether they want the dispute resolved via arbitration or conciliation.

VOLUNTARY ARBITRATION, CONCILIATION AND MEDIATION AS IDEAL METHODS FOR RESOLVING COLLECTIVE BARGAINING DISPUTES

Compulsory arbitration is not ideal for collective bargaining because the arbitrator is imposed onto the parties by the state. Voluntary arbitration augurs well for collective bargaining because it allows the parties to freely choose their arbitrator and ensures finality because an award emanating from voluntary arbitration cannot be appealed against. This dispute resolution mechanism is important in that it ensures finality to disputes whereas with compulsory arbitration the dispute can cascade into the formal courts and take long to resolve. In the same vein employer and employee parties are free to choose their own arbitrators with the requisite expertise to deal with the dispute at stake unlike in compulsory arbitration whereby an amateur arbitrator can be appointed to deal with a complex dispute beyond his/her scope.

Furthermore, compulsory arbitration creates a win-lose situation and parties are likely to be antagonized and that can be a barrier for future negotiations. The longer it takes for the matter to be resolved by an arbitrator appointed by the state or the Labour Court, the more tension parties' experience. At the end of the day a cumbersome and time consuming dispute resolution mechanism is counter-productive because employees will not work wholeheartedly given the unfinished collective bargaining dispute.

The employer and employee parties cannot blame the government if they find themselves in a protracted a collective bargaining dispute. Prevention is better than cure. The legislature has already given the parties the powers to prescribe their preferred dispute resolution

mechanism in their collective bargaining agreements. It is only where there is no dispute resolution mechanism enshrined in the collective bargaining agreement that compulsory arbitration takes centre stage.

Compulsory arbitration is the worst, most inefficient and primitive form of resolving collective bargaining disputes because it breeds resentment amongst employers and employees and unduly protracts the collective bargaining process. Its outcome is susceptible to a pandora box of litigation because a party who is aggrieved by the arbitral award can either appeal or seek review from the Labour court. This creates a vicious cycle and a merry go round scenario. The dispute can spill into the Supreme court and it may take long to be resolved because of the technicalities involved in litigation.

To make matters worse, the arbitrator is simply imposed onto the parties and his/her qualifications will be a mystery to the parties and some arbitrators will be out of grasp with what they are nominated to decide upon. Instead of extinguishing the flame the compulsory arbitrator can fan the flame by pouring petrol on top of the fire. In any event collective bargaining entails the employer and employees meeting for negotiations and not a single arbitrator arbitrarily fixing such conditions of employment.

Furthermore, the dispute can take long to be finalized because the compulsory arbitrator is not accountable to the parties. It cannot be overemphasized that the parties should insert their desired dispute resolution mechanisms in their collective bargaining agreements. There is no need to amend the Labour Act because the lawmaker has already given employers and employees the right to choose their ideal dispute resolution mechanisms for collective bargaining disputes.

The only problem is that many employers and employees have never bothered to tailor-make their collective bargaining agreements with alternative dispute resolution mechanisms like conciliation, voluntary arbitration and mediation. Conciliation allows parties to come up with their own solution as opposed to have a third party impose his views as happens in compulsory arbitration.

It is amazing that a legion of employers and employees fail to agree on what is reasonable during their collective bargaining process, reach a deadlock, only to resort to compulsory arbitration thinking the arbitrator will perform magic. If many heads fail to come up with a meaningful solution how can they expect a single arbitrator to come up with a solution that will please both parties unless he is imbued with solomonic wisdom.

Unfortunately, an average arbitrator does not have that kind of supernatural wisdom. It therefore follows that where the employers and employees are so blank and fail to coin an agreed dispute resolution mechanism for collective bargaining disputes, compulsory arbitration is the lender of the last resort.

WORKERS IN THE PUBLIC AND SEMI PUBLIC SECTORS

Collective bargaining in the public service is not legally guaranteed. In Zimbabwe this is worsened by the fact that in terms of section 3(2) of the Labour Act, the Labour Act itself does not apply to public service employees. That being the case and by extension of logic, the provisions on collective bargaining as contained in the Labour Act do not apply to public service employees. It should be noted that the Labour Amendment Act No. 17 of 2002 had achieved the harmonization of Labour Laws in Zimbabwe by incorporating public service employees under the provisions of the Labour Act.

However, that progressive move was rather short-lived as it was reversed by the retrogressive provisions of Labour Amendment Act No. 7 of 2005 which ousted public service employees from the purview of the Labour Act. The peculiar circumstances of the public service are that the state has a twofold responsibility. It is both employer and the legislative authority. Is certainly a well-grounded conflict of interest and it is against the principles of natural justice for one to be a judge and a prosecutor in his case.

Sometimes the difficult distinction between these two roles and the virtual contradiction between them may give rise to problems. It is difficult to toe or draw a line between state's role as employer and also legislative authority. In Zimbabwe, the state's legislative authority is amply demonstrated in the Public Service Act (Chapter 16.04) and the Public Service Regulations statutory 1 of 2000. These pieces of legislation are a dead letter as far as collective bargaining in the public service is concerned.

There are virtually no clear cut procedures for collective bargaining in the public service save the so called Tripartite Negotiating Forum which is more of a talk-shop than a collective bargaining forum. Furthermore, the public service legislation currently in force in Zimbabwe does not provide for the protection of employees' rights to fair labour standards. The right to collective bargaining, right to strike and right to form trade unions is virtually non-existent in the public service.

These are some reasons which have been advanced to explain the peculiar nature of collective bargaining in the public service. Firstly, it has been argued that the state's room to manoeuvre

depends very much on receipts from taxation and it is ultimately responsible to the voters for the way in which it utilizes and manages these resources in its role as employer. Secondly, according to certain legal and even socio-cultural traditions, the status of public servants is incompatible with the concept of collective bargaining or even the right to organize.

This is debatable. In the modern world it would be a great injustice to divide and rule workers by giving private sector employees certain rights which are not given to public sector employees. The situation of the public service is specifically dealt with in the Labour Relations (Public Service) Convention, 1978 (No. 151), and Recommendation, 1978 (No. 159) Convention No. 98, Article 7 of Convention No. 151 allow some flexibility in the choice of the methods of determining conditions of employment in the public service.

It envisages procedures enabling conditions of employment to be negotiated between the public authorities and the organizations concerned, or such other methods as will allow representatives of public employees to participate in the determination of these matters. Article 6 of Convention No. 98 allows public servants engaged in the administration of the state to be excluded from its scope. However, other categories of public servants should enjoy the guarantees of the Convention and therefore be able to negotiate collectively their conditions of employment including wages.

While the principle of the autonomy of the parties to collective bargaining is valid as regards the public servants covered by the Convention, the special/peculiar characteristics of the public service described above require some flexibility in application. It is submitted that the legislative provisions should establish a framework within which public service employees and their organizations are able to participate fully and meaningfully in designing the overall bargaining framework. This implies that they must have access to all the financial, budgetary and other data enabling them to access the situation on the basis of facts.

The conditions of service in the public sector are like a modern day form of slavery because employees do not have an expressly guaranteed legal right to collective bargaining. For them such a right is an illusion and remains a pie in the sky until such a time the harmonization of labour laws is effected. This is also compounded by the fact that trade unions are viewed with a jaundiced eye in the public service. That explains the wide rift or disparity between public service employees and their private sector counterparts. This has created a typical divide and rule situation because labour legislation is fragmented.

The only equitable solution to address this vice is to harmonize the labour legislation so that public service employees fall under the ambit of the Labour Act and all the regulations made

thereunder just like their private sector counterparts. In the premises, the legislature is implored to take an urgent and robust approach to harmonize labour laws to avoid a situation whereby public service employees are marooned on an island of poverty in a sea of abundant resources. The social contract between the State and its citizens must be respected so that there is economic empowerment of society and its people to avoid the adage that when people are economically dissatisfied they resort to politics. What ordinary people want in life may not necessarily be politics of political offices but economic survival by getting their daily bread and butter which is essentially politics of the stomach. After all, those who occupy political office are also workers who join such offices to eke out or earn a living for themselves and their dependents.

CONCLUSION

Conclusively there is glaring need to train both employers and employees in Zimbabwe to grasp the letter and spirit of collective bargaining and wage negotiations. For as long as the parties perpetually remain ignorant about the dynamics of collective bargaining, deadlocks will be inevitable, precious time will be lost with employers and employees haranguing each other and that is counter -productive. With the new constitutional dispensation, Zimbabwean law is poised to give life and meaning to the right to strike as the impetus and the tone has already been set. There is need for a paradigm shift to ensure that action speak louder than words expressed in legislation so that the right to strike ceases to be a pipeline dream but a reality. Undoubtedly full compliance with ILO requirements on the right to strike requires more proactive action by the State and other social partners but there is beaming light at the end of the tunnel.

BIBLIOGRAPGHY

BOOKS AND ARTICLES

J Grogan Workplace Law, Fifth Edition, Juta and Co Ltd, 2000

M Gwisai, Labour and Employment Law in Zimbabwe- Relations under Neo Colonial Capitalism, University of Zimbabwe Publications, 2006

M Finnemore, Introduction to Labour Relations in South Africa, Tenth Edition, LexisNexis, 2009

L Madhuku, Labour Relations in Southern Africa,1998, unpublished

Freedom of Association and Collective Bargaining 81st Session, 1994, International Labour Conference, International Labour Office, Geneva.

J Grogan, Workplace Law, Tenth Edition, Juta and Co. Ltd, 2010

P Davies and M Freedland, Kahn Freund's Labour and Law, Stevens and Sons Ltd, Third Edition, 1983

T Poolman, Equity, the Court and Labour Relations, Butterworths, 1988

JB Cronin and RP Grime,Labour Law, Butterworths,1970

D Ziskind, Labour Laws in the Middle East Tradition in Transit, Litlaw Foundation,1990.

Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of ILO, Chapter 10 (hereinafter referred to as "The Digest of Decisions and Principles").

Khan Freund, quoted in P. Davies and M Freedland, Khan Freund's Labour and The Law, 3rd ed, 1983(Stevens and Sons, London) p 292

L Madhuku, The Right to Strike in Zimbabwe, Zimbabwe Law Review (1995), p 115

L Madhuku's Article, The Right to Strike in Zimbabwe, Zimbabwe Law Review(1995) p 113.

Labour and Employment Law in Zimbabwe (2006), 1st ed, Zimbawe Labour Centre, Harare, at 345.

LEGISLATION

African Charter on Human and People's Rights as read with Clause 6(h) of the Pretoria Declaration on Economic, Social and Cultural Rights in Africa (2004)

Constitution of the Republic of South Africa, 108 of 1996("the Constitution").

Labour (Declaration of Essential Services) Notice, 2003;

Malawi(Constitution) Act, 1994 (No. 20 of 1994).

Statutory Instrument 137 of 2003 Labour Relations (Protection Against Any Acts of Interference Between Workers' Organisation and Employers' Organisation) Regulations, 2003, Statutory Instrument 131 of 2003.

The Constitution of Zimbabwe Amendment No. 20 Act

The Constitution of Botswana

The Constitution of Zambia

The Indian Constitution.

The Constitution of South Africa

Labour Act [Chapter 28:01]

CASE LAW

Carnaud Metal Box(Pvt) Ltd v Mwonzora and Ors SC-9-2009.

Chisvo and Ors v Aurex (Pvt) Ltd 1999(2) ZLR 334.

First Mutual Life Assurance v Muzivi SC-62-2003

Lyng v Auto Workers, 485 U.S. 360,368 (1988)

Moyo v Central African Batteries(Pvt) Ltd 2002(1) ZLR 615(S), Mukundwi and 42 Others v Chikomba Rural District Council LC/H/01/05,

Cole Chandler Agencies (Pvt) Ltd v Twenty-five named employees SC-161-1998.

Tel-One (Pvt) Ltd v Communications and Allied Services Workers Union SC-26-2006, Rutunga and Ors v Chiredzi Town Council and Anor SC-117-2002.

Wholesale Centre v Mehlo and Others 1992(10 ZLR 376, Kadoma Magnesite v RHO 1991 (1) ZLR 283,

Masiyiwa v TM Supermarkets 1990(1) ZLR 283, ZIMPOST v Communication and Allied Workers Union SC-23-2009.