# **LABOUR DISPUTES IN ZIMBABWE IN THE CONTEXT OF DISPUTES OF RIGHT AND DISPUTES OF INTEREST.**

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# **INTRODUCTION**

In Zimbabwe labour disputes primarily fall under the jurisdiction of the Labour Court. This court has unfettered powers to hear labour appeals and reviews from other fora. It is common cause that labour disputes emerge at workplace level and this primarily result out of the clash of interests between employers and employees mainly due to issues to do with retrenchment, downsizing of companies, employee redundancy, economic difficulties, the enforcement of employee discipline or disputes resulting from acts of gross misconduct by the employees and so on. A closer look at these causes of action will reveal that labour disputes in Zimbabwe have categories or classes, i.e. disputes of right and disputes of interest, which distinction this article seeks to unpack.

# **AN OVERVIEW OF LABOUR DISPUTES IN ZIMBABWE**

It is critical to make a general synopsis of labour disputes in Zimbabwe before contextualising them into disputes of right and disputes of interest. Political and economic challenges in Zimbabwe have been the most common grounds for the mushrooming of labour disputes in Zimbabwe, with disputes escalating from 1998 up to present.[[2]](#footnote-2) This has profoundly affected the social and economic landscape in the country, with most employers developing a negative attitude towards recruiting employees especially on a full-time basis. It becomes crucial for one to give a background on the general nature of labour disputes in Zimbabwe, the causes of such disputes, implications thereof and lastly an appraisal of the legal framework which governs labour disputes in Zimbabwe.[[3]](#footnote-3)

# **LEGAL MEANING OF DISPUTES OF RIGHT AND INTEREST IN TERMS OF THE LABOUR LAWS OF ZIMBABWE**

A dispute of right is about existing legal rights e.g. breach of contract of employment, violation of conditions of service, non-payment of contractual salaries and benefits in terms of a Collective Bargaining Agreement (CBA), Labour Act or Constitution of Zimbabwe. Dispute of interest is about creating new rights that are not yet there e.g. salaries or wages increases or new employment benefits.

# **HISTORICAL OVERVIEW**

Labour disputes in Zimbabwe can be traced back to the time of colonialism were subjugation, oppression and the unjust exploitation of black workers by the white colonial masters was common.[[4]](#footnote-4) It was during independence that the government of Zimbabwe made efforts to enact legislation aimed at protecting the rights and interests of workers and this should be applauded as this ushered a new dispensation in terms of which workers’ rights become one of the top priority of our government.[[5]](#footnote-5)

However, the downside of government efforts was witnessed in 1998 up to present with the volatile hyperinflationary era leading to acrimony between the employee and the employer as salaries and pensions were eroded due to loss of economic value of the Zimbabwean dollar. It is safe to say that from that period up to now Zimbabwe has never recovered to its full economic potential, with slight improvements in economic performance only recorded during the era of the Government of National Unity.[[6]](#footnote-6) Most of the disputes recorded in early 2000 led to widespread protests and crippling strikes which further worsened the economic slump in the country. It is from this background that labour disputes are still rampant in Zimbabwe.

# **NATURE OF LABOUR DISPUTES IN ZIMBABWE**

Labour disputes in Zimbabwe are categorised and often manifest in a variety of forms with some of them political in context and thereby generating countrywide attention whilst some are purely economic and are often in-house in nature, with the company or organisation in question and the employees concerned having to deal with the matter through arbitration, through the courts or through out of court settlement procedures.[[7]](#footnote-7) Labour disputes develop in the form of strikes, lockouts, demonstrations and protests and some of them degenerate into legal disputes to be solved through arbitration procedures.

# **STRIKES**

Strikes are notorious in that they can attract nationwide as well as international attention and governments the world over are never comfortable with such an exercise by employees.[[8]](#footnote-8) Strikes can be expressed through stay-aways and sit-ins and may be accompanied by demonstrations. During the reign of the former President of Zimbabwe, Robert Mugabe, strikes were rampant but with the Second Republic workers’ rights through strikes have been diminished with the Zimbabwe Congress of Trade Unions, which used to lobby for the strikes, losing its steam and relevance.[[9]](#footnote-9) However it should be realised that strikes are an effective and drastic way of registering discontentment by workers and must be restored in a democratic country such as Zimbabwe.

# **LOCKOUTS**

Lockouts are an effective way used by employers in response to strikes and can usually yield results as they can force employees to negotiate with the employer.[[10]](#footnote-10) As a result of lockouts, employees may end up bargaining less and accepting terms which are not very favourable to their cause.

# **DEMONSTRATIONS AND PROTESTS**

Employees often use demonstrations to register their frustrations in relation to poor wages, salaries and poor working conditions. Demonstrations are usually used by civil servants so as to force government to negotiate with their representatives.[[11]](#footnote-11) However such demonstrations often end up not bringing the desired consequences as in most cases they are brutally suppressed by the government through the police. There is not much difference between demonstrations and protests as the *modus operandi* is just one and the same including the government’s response to such protests. Most of the demonstrations and protests end up being violent as they may be hijacked by drivers of political agendas thereby weakening the voice of the worker.[[12]](#footnote-12)

# **CAUSES OF LABOUR DISPUTES IN ZIMBABWE**

Although it can be argued that labour disputes are a reflection of the economic and political situation in a country, some of them are a result of acts of indiscipline or misconduct on the part of employees or alternatively as a result of breach of the terms of the employment contract by the employer.

# **ECONOMIC INSTABILITY**

This factor has been highlighted previously as the mother cause of labour disputes in the country.[[13]](#footnote-13) Employees have failed to bargain properly as a result of economic instability, with most workers settling for less as they prefer to keep their jobs rather than to be viewed as problematic by their employer.[[14]](#footnote-14) However most workers struggle to satisfy their needs and to provide for their families and end up engaging in strikes, demonstrations and protests so as to register their discontentment.[[15]](#footnote-15)

# **POOR WORKING CONDITIONS**

Some employers, mainly in the manufacturing, agriculture, and mining sectors do not prioritize employees’ working conditions, exposing them to hazardous working conditions detrimental to their health and safety.[[16]](#footnote-16) For example, some employees are forced to work for long hours without any meaningful compensation thereby threatening their health security and well-being. Such practices often lead to labour disputes as employees seek restoration of their rights as stipulated in their employment contracts and protected in terms of the labour laws of Zimbabwe.[[17]](#footnote-17)

# **WEAK LABOUR LAWS**

If one critically looks at the prevailing legislative provisions on labour laws several gaps and weaknesses will be noted and these are often exploited by the employers at the expense of employees.[[18]](#footnote-18) In some cases the government takes a lackadaisical approach in responding to emerging issues in the labour sector thus compromising the rights of the employees.[[19]](#footnote-19) To make matters worse, the enforcement mechanisms put in place by the government on breach of labour laws are often slow and weak, with employers breaching labour laws with little or no consequence for their action.[[20]](#footnote-20) Such inaction by the government often leads to the development and escalation of disputes between employer and employee.[[21]](#footnote-21)

# **POLITICAL INTERFERENCE**

Before operation restore legacy and the advent of the Second Republic in November 2017, the political environment in Zimbabwe was volatile since 2000 and this has played a tremendous role in the emergence of labour disputes in Zimbabwe. Sour relations have developed between the government and the workers as a result of suppression of the rights of the workers through the ruthless thwarting of strikes and demonstrations.[[22]](#footnote-22) Workers are now vulnerable due to the government’s weakening of trade unions and crushing of political dissent as political activists also act as checks and balances over the enactment of fair labour laws by the government.[[23]](#footnote-23)

# **GLOBAL ECONOMIC FACTORS**

Zimbabwe is a signatory of various international treaties and conventions which impose obligations on the country to act in accordance with ratified treaty provisions.[[24]](#footnote-24) As such global factors can influence the relationship between the employer and employee with employees voicing their concerns whenever they feel the government is passive or failing to align the labour laws with international standards.[[25]](#footnote-25)

# **THE LEGAL FRAMEWORK GOVERNING LABOUR DISPUTES IN ZIMBABWE**

There are various legislative provisions and statutory instruments governing labour relations in Zimbabwe and these are explained in the succeeding paragraphs.

# **THE LABOUR ACT (CHAPTER 28:01)**

This is the principle legislation governing labour law in Zimbabwe.[[26]](#footnote-26) This Act is comprehensive as it provides for the sum total of rights and responsibilities of the employees and the employers.[[27]](#footnote-27) The Act also provides for issues to do with collective bargaining, the resolution of disputes as well as on how trade unions can be established in Zimbabwe.[[28]](#footnote-28) However, just like any other statutory enactment, the Act is subject to numerous criticisms and there is need for constant reviews of same to ensure that it gets aligned to time developments.

# **THE CONSTITUTION OF ZIMBABWE**

The Constitution is the supreme law of the landand its impact is also felt in the labour sector.[[29]](#footnote-29) The Constitution of Zimbabwe provides for workers to be treated in a fair and just manner and to be awarded wages and salaries commensurate to their efforts.[[30]](#footnote-30) Furthermore the Constitution provides for workers to be accorded fair working conditions as well as to be afforded organizational rights such as the right to joins trade unions and the right to engage in strikes and demonstrations.[[31]](#footnote-31) It should be realised that more should be done in order to align the labour laws to the Constitution as some of the provisions of the Act are not in line with the spirit and letter of the Constitution.

# **EMERGING ISSUES IN LABOUR DISPUTES**

In recent years, the workers have been tremendously short-changed over the issue of fulfillment of their rights.[[32]](#footnote-32) This has tremendously resulted in an increase in labour disputes especially in the public sector with the government unwilling to improve the conditions of service of civil servants.[[33]](#footnote-33) Civil servants such as teachers and nurses have gone on strike under the second republic but this has been met with serious threats of suspension and other disciplinary action measures including the nonpayment of salaries.[[34]](#footnote-34) The government has resorted to arbitrary measures such as the no work no pay measure and this has escalated disputes between the employer and employee.[[35]](#footnote-35) In addition to the above the advent of the Covid-19 pandemic precipitated more problems to the employees leading to a decrease in the worker’s bargaining power as some workers were laid off whilst some are now working for reduced hours.[[36]](#footnote-36)

# **IMPLICATIONS OF LABOUR DISPUTES**

The implications of labour disputes in Zimbabwe are diverse and far reaching as they can affect every aspect of the social, economic and political sector in the country. These implications can retard economic growth in the country and draw a negative image of Zimbabwe as a country as it leads to difficulties in the country’s potential to be a favorable destination for foreign direct investment. These implications of labour disputes in the country will be discussed latter herein.

# **GENERAL DEFINATION OF DISPUTES IN RIGHT AND DISPUTES IN INTEREST**

A labour dispute is basically a disagreement or a bone of contention between an employer and an employee or between a group of employees and a group of employers.[[37]](#footnote-37) A dispute of right is generally defined as a dispute which ensues whenever parties to the employment contract do not agree on the interpretation of clauses, terms or conditions which are found in employment contracts, in collective agreements guidelines or as outlined by laws and regulations governing labour laws of a country.[[38]](#footnote-38) In other words a dispute of right centers on the interpretation, validity and existence of collective bargaining agreements or the breach of it.[[39]](#footnote-39) The rights are already there but the parties to the contract of employment seems to be at variance over the meaning of the terms and are therefore at each other’s throat. It is a legal claim to which a party in the employment relationship has an established right. In this type of dispute, the focus is on determining who has the correct legal position or entitlement based on established laws, contracts or agreements.[[40]](#footnote-40)

On the other hand, a dispute of interest is defined as any disagreement between an employer and employer which cannot be classified as a dispute of right. A dispute of interest is thus a dispute which results from the creation of new rights through conciliation.[[41]](#footnote-41) A dispute of interest is rightly put as one in which the claimant party seeks a benefit or advantage to which he has no legal entitlement where as a dispute of right is one concerning the alleged infringement of a legal right, or the conferment of a benefit to which the claimant is legally entitled.[[42]](#footnote-42) With a dispute of interest there is no existing legal right in contention but the parties are seeking either to establish new rights or to obtain the best bargain under the existing market and economic conditions.[[43]](#footnote-43)

A dispute of interest is a wrangle over employment matters to which a party does not have an established right. The focus of a dispute of interest is the creation of new rights and is not based on any established legal or contractual right. These types of disputes have a bearing on the creation of new rights such as higher wages or improved conditions of service.[[44]](#footnote-44) Examples of interest disputes include inter-alia, wages, such as demands for salaries, disputes over creation of new rights and changes to working conditions. In other words, it refers to a dispute which has no basis in the law, an agreement, or a collective agreement, and it is resolved on equitable principles.

# **THE DIFFERENCES BETWEEN DISPUTES OF RIGHT AND DISPUTES OF INTEREST**

The above conceptualization of disputes of rights versus disputes of interest can expose the differences which exists between the above two concepts. The first difference to be noted between a dispute of rights and a dispute of interest is through the extent through which the conflict occur, with a dispute of right arising were there are already existing some of rights of which parties are at cross purpose over how the rights must be interpreted or on how they should be implemented.[[45]](#footnote-45)

Whilst this is so when it comes to a dispute of interest, the parties to the disagreement do not have specific rights defined by the law and are relying to further their grounds of argument on the creation of new rights based on the law and consideration of equity and justice.[[46]](#footnote-46) Therefore it is safe to say that disputes of rights are based on rights which are already established whilst under disputes of interests the rights are not yet there and may be subject to the interpretation by the courts based on relevant law and jurisprudence.

A dispute of right can arise as a result of terms of a contract or as stipulated by the law whilst a dispute of interest exist in a vacuum as it is a claim based on new rights subject to argument by the courts of law.[[47]](#footnote-47) In Nigeria disputes of interests are classified as phase one disputes whilst disputes of rights whilst disputes of rights are classified as phase two disputes.[[48]](#footnote-48) A dispute of right may be distinguished to a dispute of interest in relation to the alleged breach through which one seeks a remedy in the courts of law for a dispute of right whilst in a dispute of interest one seeks to obtain a gain or advantage without necessarily having any legal right which is specified. This is cemented by the explanation proffered by Grogan in which he says;

*“A dispute of interest is one in which the claimant party seeks a benefit or advantage to which he has no legal entitlement, a dispute of right is one concerning the alleged infringement of a legal right or the conferment of a benefit to which the claimant is legally entitled”[[49]](#footnote-49)*

Another difference which can be noted is that disputes of interest will result to the establishment of new rights if they are successful whilst disputes of rights do not create new rights since the rights are already posited by the law.[[50]](#footnote-50) It is important to also note that since a dispute of right is based on clearly established rights, such disputes are resolved through the courts of law whilst disputes of interest which are largely based on the opinion of the parties can be resolved through other processes such as negotiation or collective bargaining of the parties.[[51]](#footnote-51) Disputes of interests therefore have flexible resolution mechanisms as compared to disputes of rights which use the rigid and complex formal court procedures.

The distinction between these two concepts also lies with semantics or terminology in various jurisdictions. In other jurisdictions such as Italy, the terms legal disputes versus economic disputes are commonly used with legal disputes arising as a result of differences to the meaning and interpretation imposed on the law or terms of a contract (disputes of rights) whilst economic disputes arise not as a result of established rights but are subject to new conditions which have the potential to create new rights which may be binding in the future.[[52]](#footnote-52) Provis asserts that disputes of rights can be categorised as matters of fact since they manifest through clearly defined contractual agreements or well defined legal provisions which can be interpreted by the courts whilst disputes of interests are limited to values which are uncertain in terms of how they will be interpreted since there is no right that is clearly set.[[53]](#footnote-53)

The above distinctions of disputes of rights and disputes of interests are important as they define the extent of rights and the resolution mechanism to be employed in order to resolve a divergence between employer and employee. However it is important to note that in jurisdictions such as the United Kingdom distinctions of disputes of rights and disputes of interests are irrelevant as collective bargaining is outlawed.[[54]](#footnote-54) It can be argued that the above differences are crucial as they clearly give direction on how a dispute is going to be handled and can simplify the procedures to be followed to solve labour disputes in a country thereby saving time instead of disputes degenerating into complex and protracted battles which does not give any advantage to any of the parties involved.

# **DISPUTES OF RIGHTS AND DISPUTES OF INTERESTS IN THE CONTEXT OF ZIMBABWE LABOUR LAWS**

The starting point on disputes of rights as opposed to disputes of interests is the Labour Act which recognises the distinction between the two and clearly articulate the course of action which must be followed whenever such disputes arise.[[55]](#footnote-55) Section 2 of the Labour Act defines a dispute of right as;

*“any dispute involving legal rights and obligations including any dispute occasioned by an actual or alleged unfair labour practice, a breach or alleged breach of this Act or of any regulations made under this Act, or a breach or alleged breach of any of the terms of a collective bargaining agreement or contract of employment*.”[[56]](#footnote-56)

The above definition confirms the arguments already proffered above that disputes of rights arise as a result of the differences which exists in the application of rights existent in statutes, contracts, international law, treaty laws or obligations binding to Zimbabwe and from customary practices or from collective agreement.

Whilst this is so the act further defines a dispute of interest as;

*“Any dispute other than a dispute of right.”[[57]](#footnote-57)*

The above definition as contained in the Act means a dispute of interest does not have any legal rights which are already outlined but parties seek to navigate a new terrain in which they intent to posit new rights or to use the economic and market conditions existing during that time to solicit best bargains.

# **COURTS/TRIBUNALS WITH THE AUTHORITY TO HEAR DISPUTES OF RIGHTS AND DISPUTES OF INTEREST IN ZIMBABWE**

The Labour Act clearly defines the bodies or persons who have the authority to entertain and to adjudicate over labour disputes.[[58]](#footnote-58) It should be noted that any resolution of Labour disputes by bodies or persons not authorized to handle labour disputes by the Labour Act are null and void. The following expose will briefly assess the bodies or persons with the powers to entertain labour disputes in this country. For a more detailed discussion of these authorities, one can go through the Labour Act itself.

# **LABOUR OFFICERS**

The powers of labour officers to hear labour cases is provided for by section 93 of the Labour Act which provides as follows;

***93. Powers of labour officers***

*(1) A labour officer to whom a dispute or unfair labour practice has been referred, or to whose attention it has come, shall attempt to settle it through conciliation or, if agreed by the parties, by reference to arbitration.*

*(2) If the dispute or unfair labour practice is settled by conciliation, the labour officer shall record the settlement in writing.*

*(3) If the dispute or unfair labour practice is not settled within thirty days after the labour officer began to attempt to settle it under subsection (1), the labour officer shall issue a certificate of no settlement to the parties to the dispute or unfair labour practice.  
[Subsection amended by section 33 of Act 7 of 2005].*

*(4) The parties to a dispute or unfair labour practice may agree to extend the period for  
conciliation of the dispute or unfair labour practice referred to in subsection (3).[[59]](#footnote-59)*

In terms of the above provisions of section 93 of the Act it can be argued that labour officers have extensive powers to deal with any disputes, whether they are disputes of rights or disputes of interests as long as the right procedure has been followed in referring such disputes to the labour officers who have the powers to solve the matter.[[60]](#footnote-60) The Act makes it clear that the labour officer should attempt to solve the matter through conciliation as a first priority or through arbitration procedures but if it fails a certificate of no settlement must be issued by the labour officer.[[61]](#footnote-61)

# **DESIGNATED AGENTS**

Designated agents are also mandated to adjudicate over labour matters as stipulated by the Labour Act. They derive their powers from section 63 of the Act which provides as follows:

***63 Designated agents of employment councils***

1. *For the purpose of enabling it to exercise its powers and perform its functions in terms of this Act, an employment council may, and when so directed by the Registrar shall, advise the Registrar of persons whom it wishes to be appointed as its designated agents.*
2. *If the Registrar approves of the persons advised in terms of subsection (1) he shall appoint them as designated agents of the employment council and shall issue them with certificates of appointment.[[62]](#footnote-62)*

# **ARBITRATORS**

Arbitration is provided for in terms of section 93 (1) of the Act which mandates that labour officer must first attempt to solve any matter properly referred to him or her through conciliation before any arbitration or adjudication procedures can be invoked.[[63]](#footnote-63) Under this form of dispute resolution mechanisms only disputes of interest can be referred to arbitration after a certificate of no settlement has been invoked by the labour officer in terms of s93 (3) of the Act.[[64]](#footnote-64)

# **LABOUR COURT**

This is a creature of statute as it acts in line with the stipulations of the statute from which it was born out of.[[65]](#footnote-65) Section 89 of the Labour Act provides for the powers of the Labour Court and as such the jurisdiction of the Labour Court is confined to what is contained in the four corners of the Act.[[66]](#footnote-66) The Constitution also provides for the establishment of the Labour Court of Zimbabwe.[[67]](#footnote-67) The court can be viewed as a court of first instance but it also has powers to review cases and to act as a court of appeal for labour matters.

# **HIGH COURT**

The High Court is a court of first instance with original jurisdiction to handle all matters in Zimbabwe except those it is exclude from handling by statute.[[68]](#footnote-68) Therefore the High Court can entertain matters which are outside the purview of the Labour Court but which involves labour issues for example in circumstances were parties are seeking the enforcement of orders such as a mandamus, an interdict or a declaratory order or registration of arbitral awards.[[69]](#footnote-69) This means the High Court can solve disputes of rights and disputes of interests so as to declare the extent of rights which accrues to the parties to the disputes at hand.

# **THE SUPREME COURT**

This Court serves as the Court of Appeal for all cases in Zimbabwe except for those which are constitutional in nature. Therefore, the Supreme Court is an appellate court with jurisdiction to hear appeal cases but appeal to the Supreme Court from the Labour Court is not automatic as leave of the Court must be sought first for the appeal which is restricted to points of law only.[[70]](#footnote-70)

# **THE CONSTITUTIONAL COURT**

This is a special court which has the powers to hear constitutional matters in Zimbabwe.[[71]](#footnote-71) Therefore the Court can hear appeals from the High Court or Labour Court on any labour case with issues to do with violations or breach of constitutional rights.[[72]](#footnote-72)

# **ADJUDICATION OF DISPUTES OF RIGHTS**

Given that disputes of right are disputes are of a legal nature, the best way to resolve them is always the use of judicial or quasi-judicial processes such as disciplinary procedures, grievance procedures and arbitration.[[73]](#footnote-73) A dispute of right is not settled by negotiation. Resolving a dispute of right often at times involves the interpretation and application of relevant laws or legal principles in order to determine the rightful outcome since such a conflict is based on a legal or contractual right hence the basis is that a party has a legal right emanating from the provision or the contract.[[74]](#footnote-74)

In Zimbabwe, most disputes which are handled by the courts can be classified as disputes of rights. It can thus be said that disputes of rights are justiciable meaning they can be resolved through the application and interpretation of the source of the rights generating issues of conflict.[[75]](#footnote-75) The Labour Act is clear on the jurisdiction of the Courts and other quasi-judicial organs to use adjudication, conciliation and arbitration so as to solve disputes of rights whenever the terms or conditions stipulated in the Labour Act has been violated.[[76]](#footnote-76) The government has the duty to appoint officers of the court, arbitrators, labour officers and designated agents to adjudicate over those disputes.[[77]](#footnote-77)

The impartiality of the adjudication process involving a dispute of right is not seriously impeded as the rights are already there only waiting to be declared as they are by a competent authority enshrined with the powers to do so.[[78]](#footnote-78) As a result of the fact that disputes of rights are adjudicable, it is trite that such disputes can rarely be solved through strikes and lockouts as the resort to courts is always the agreed methods.The notion behind avoiding industrial action of strikes, lockouts and demonstrations for disputes of rights seems to be the fact that such matters can be solved with certainty, with the parties in breach or violation of the law or any term stipulated in a contractual document or any other source of rights held accountable. Moreover, if strikes and lockouts were permitted for disputes of rights then there will be chaos in the country as such disagreements are experienced on a daily basis and in most companies and organisations.

# **RESOLUTION OF DISPUTES OF INTERESTS**

As alluded before, disputes of interests are usually a matter of opinion as they are not based on any defined legal principles nor are they contained in any defined code or agreement.[[79]](#footnote-79) Resultantly such disputes can be classified into two categories, that is disputes of interests which are non adjudicable but arbitrable and disputes of interests which are non adjudicable but can be resolved through the drastic actions of strikes and lockouts.[[80]](#footnote-80).

# **NON-ADJUDICABLE BUT ARBITRABLE DISPUTES OF INTERESTS**

These are disputes of interests which can be resolved through the processes of voluntary and compulsory arbitration procedures as enshrined in the Labour Act.[[81]](#footnote-81) Under such conditions it is the duty of the arbitrator to invoke objective standards to solve the dispute through a determination over what the law will be as there is no law governing such a dispute.[[82]](#footnote-82) Therefore the arbitrator cannot just use his common sense or reasoning without necessarily looking at reasonably established standards of the law to come up with a coherent, satisfactory, balanced and acceptable judgment over the dispute. Parties may also submit principles which they may want to be applied so as to solve a dispute of interest and these principles are called principles of settlement which can be used by the arbitrator to come up with an enforceable award.

# **NON-ADJUDICABLE DISPUTES THROUGH WHICH STRIKES AND LOCKOUTS CAN BE INVOKED**

These are disputes which can only be solved through engaging in industrial action as they are based on wide economic interests in which the employees seek to gain or obtain advantages through a bargain. The dispute may be as a result of deteriorating economic conditions in which the employees will be demanding a pay rise due to low salaries or wages which are no longer commensurate with the economic environment.[[83]](#footnote-83) Employees may also bargain for other benefits which are not stipulated in any statute or contractual document so as to improve their welfare. In such cases a multifaceted approach is used to organise for strikes and demonstrations by Trade unions so as to force the government to negotiate terms favourable to the employee.

Be that as it may; in order to protect industrial relationships from anarchy and lawlessness, the Labour Act sets out structures and processes on how disputes in the workplace must be resolved. It prohibits collective job action over disputes of rights. While collective job action is fundamental to the resolution of disputes of interest, the Labour Act has put in place strict procedural requirements and exclusions before collective job action can be considered lawful. In cases where collective job action poses social and economic risks to society in general, such as in essential services, the law prohibits recourse to industrial action and disputes will have to be resolved through arbitration. Labour disputes can pose very serious problems in any organization. While the distinction between disputes of right and disputes of interest may have legal significance, it has little economic significance.

# **CONCLUSION**

In summary, the Labour Act (Chapter 28:01) divides labour disputes into two. These are disputes of right which emanate from established legal or contractual rights of employees whereas disputes of interest which are create future rights. Disputes of right include unfair dismissal, failure to pay employees or unfair discrimination whereas disputes of interest include collective bargaining, wages and working conditions. Rights disputes are best resolved through judicial and quasi-judicial proceedings whereas collective job action is only limited to interests’ disputes.

As briefly outlined herein, the distinction between disputes of rights and disputes of interests boils down to the manner in which such disputes are resolved in the event of a conflict. As shown, disputes of rights are dealt with through the conciliation, arbitration and through adjudication by the courts system. Whilst this is so disputes of interests are mainly dealt with through the processes of strikes and lockouts. Whilst the above distinction is important in Zimbabwe, it can be observed that in other jurisdiction such as the United Kingdom such distinction has little significance or relevance as collective bargaining processes are outlawed in that country. Going forward Zimbabwe must improve its enforcement mechanisms in resolving disputes which involves civil servants as they constitute a larger percentage of the working population in the country and they are important for development and economic growth.

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2. Nyamande and Anor v Zuva Petroleum (Private) Limited SC 43/15.

1. LLM Commercial Law (South Africa), LLM Labour Law (Zambia), LLB Hons (UZ-Zimbabwe): Former Executive Dean of Law (Zimbabwe) and Head Partner at Caleb Mucheche and Partners Law Chambers, Harare, Zimbabwe, Founder and President of Labour Association of Zimbabwe formed on 15 December 2019, First Country Representative for African Labour Law Society (ALLS), First Chairman of the Executive Committee of the Association for Labour Practitioners in Zimbabwe formed in 2024 and officially launched in Harare at Monomotapa Hotel on 26 March 2025, Labour Law, Conciliation and Arbitration Lecturer at Women’s University in Africa, Founder and President of Zimlaw Trust, Founder and President of the International Centre for Conciliation, Mediation and Arbitration in Zimbabwe. [↑](#footnote-ref-1)
2. **Bonda I & Tsvangirai FP** *Alternative dispute resolution mechanisms to manage workplace disputes among national employment councils in Zimbabwe*. The Dyke MSU Press 2022 in which he attributes most disputes to political interference in Zimbabwe. [↑](#footnote-ref-2)
3. **Moyo Sam**, ‘*The Land Question in Zimbabwe Journal of Southern African Studies 29 (4) 773-791 (2003);* **Moyo Sam** *Reclaiming the land: The new agrarian reforms in Zimbabwe African Studies Review* 45 (3) 39-62 (2002). The author bemoans the colonial imbalances and inequalities created during that time as the main reason why labour disputes continue up to now in Zimbabwe. Most of the legislative provisions inherited by the government from the colonial regime in labour law remain unchanged thereby fuelling labour disputes in the country. [↑](#footnote-ref-3)
4. Ibid. The government is slow in its efforts to align labour laws to the Constitution of Zimbabwe Amendment No 20 (2013) which is a progressive document that seeks to promote equity and justice as well as to guarantee fundamental rights and freedoms to every person. [↑](#footnote-ref-4)
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9. **Zhou Gwendoline** “*Economic Instability and Labour Relations in Zimbabwe: The role of inflation in increasing labour disputes,”* International Journal of Development and Economic Sustainability 8 (3) 34-50 (2021). [↑](#footnote-ref-9)
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12. **Mupfumi Milton** “*Examining Labour Disputes in Zimbabwe: The Economic and Political Factors”* Zimbabwean Journal of Law and Policy 6 (1) 101-118 (2018). [↑](#footnote-ref-12)
13. **Kanyenze Godfrey Chigara M and Moyo N** “*Labour Market Dynamics and Industrial Relations in in Southern Africa Labour capital and Society”* 44 (1) 1-20 (2011). [↑](#footnote-ref-13)
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16. Ibid. [↑](#footnote-ref-16)
17. **Akinpelu Olufemi** **A** *“The role of trade unions in resolving industrial conflicts in Nigeria”* African Journal of Economic and Management Studies 8 (1) 75-89 (2017). [↑](#footnote-ref-17)
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20. **Johnson Emily and Mark Thompson**, “*The Impact of economic conditions on Labour disputes: Evidence from the Manufacturing Sector*” Journal of economic Perspectives 34 (3) 75-92 (2021) DOI: 10.1257/jep.2021. 034.. [↑](#footnote-ref-20)
21. Ibid. [↑](#footnote-ref-21)
22. **Williams Sarah** *“Labor Relations and dispute resolution: The role of management practices*” Industrial Relations Research Journal 45 (1) 23-40 (2019) DOI: 10.1177/0019793918801234. [↑](#footnote-ref-22)
23. **Gwisai Munyaradzi** “*Labour and employment law in Zimbabwe: Relations of work under neocolonial capitalism*” Harare, Zimbabwe Labour Centre and Institute of Commercial Law University of Zimbabwe (2007). [↑](#footnote-ref-23)
24. **Mariwo Tsitsi** “*Working conditions and labour relations in the private security industry in Zimbabwe”:* A research paper (2008) Issue Paper No 27 Harare ILO Publications. [↑](#footnote-ref-24)
25. Ibid. [↑](#footnote-ref-25)
26. **The Labour Act** (Chapter 28:01). [↑](#footnote-ref-26)
27. The Labour Act (Chapter 28:01) as subsequently amended and supported by other statutory instruments on the rights of workers. [↑](#footnote-ref-27)
28. The preamble of the Labour Act provides that it is an act to define the fundamental rights of employees and to give effect to the international obligations of the Republic of Zimbabwe, to define unfair labour practices, to provide for the control of wages and salaries, to provide for the formation, registration and functions of trade unions amongst other functions. [↑](#footnote-ref-28)
29. S2 Constitution of Zimbabwe Amendment No 20 2013 provides that the constitution is the supreme law of the land and any practice, tradition custom or law which is inconsistent with it is void to the extent of its inconsistency. [↑](#footnote-ref-29)
30. S65 Constitution of Zimbabwe Amendment No 20 2013. [↑](#footnote-ref-30)
31. Ibid. [↑](#footnote-ref-31)
32. The case of ***Nyamande and Anor v Zuva Petroleum (Private) Limited SC 43/15*** precipitated labour problems on workers as they could now be fired on 3 months’ notice without any compensation. However, this was remedied by Statutory Instrument of 2015 which reversed the Zuva Judgement. [↑](#footnote-ref-32)
33. **Bangure Wiseman**: *“A contextual historical antithesis: A critical analysis of the Supreme Court Judgement in Don Nyamande and ANOR v Zuva Petroleum (Private) Limited SC 43/15”* available at http//www.dbnattorneys.co.zw. [↑](#footnote-ref-33)
34. In 2023 Hopewell Chin’ono a prominent investigative journalist criticised the government’s approach in resolving issues to do with wages and salaries for civil servants as arbitrary and in breach of the rule of law. Chin’ono argued that the government should collective engage civil servants and reward them with salaries commensurate with their qualifications. [↑](#footnote-ref-34)
35. Ibid. [↑](#footnote-ref-35)
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39. **CT Emejuru, OVC Okene**, “*The disputes of rights versus disputes of interests’ dichotomy in Labour law: The case of Nigerian Labour Law* (2015) River State University of Science and Technology P 136. [↑](#footnote-ref-39)
40. [**https://www.sundaymail.co.zw/resolving-disputes-under-new-labour-legislation-5**](https://www.sundaymail.co.zw/resolving-disputes-under-new-labour-legislation-5) [↑](#footnote-ref-40)
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42. **Grogan, J. (2007).** *“Workplace law”*. Cape Town: Juta p344. Workplace Law is a practical guide to complex areas such as dismissal, unfair labour practices, employment equity, collective bargaining and industrial action. [↑](#footnote-ref-42)
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44. [**https://www.sundaymail.co.zw/resolving-disputes-under-new-labour-legislation-5**](https://www.sundaymail.co.zw/resolving-disputes-under-new-labour-legislation-5) [↑](#footnote-ref-44)
45. Arthur Marara in that Sunday Mail explains that in a disagreement pertaining to a dispute of right an employee already has rights which are established and knows what he/she needs the employer to do for the dispute to be extinguished. [↑](#footnote-ref-45)
46. **A.A Tajudeen and O.K Kehinde *“****Government public policies and the dynamic of employment relations in developing countries”:* The experience of Nigeria (2007) 4 (6) Pakistan journal of Social science p 761. [↑](#footnote-ref-46)
47. Ibid. [↑](#footnote-ref-47)
48. **John Niland** “*The light on the Horizon: Essentials of an Enterprise Focus in M Easson and J Shaw Transforming Industrial Relations”* (Sydney: Pluto Press 1990 P193. [↑](#footnote-ref-48)
49. **John Grogan** *Workplace Law* P344. [↑](#footnote-ref-49)
50. **NF Duffy and C Mulvey** “*The Sources of Union Power Policy Paper No 11”* Australian Institute for Public Policy (Australian Institute for Public Policy (Australia: Perth 1987). [↑](#footnote-ref-50)
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54. Ibid. [↑](#footnote-ref-54)
55. The Labour Act (Chapter 28: 01). [↑](#footnote-ref-55)
56. S2 Labour Act (Chapter 28:01). [↑](#footnote-ref-56)
57. Ibid. [↑](#footnote-ref-57)
58. Labour Act (Chapter 28:01). [↑](#footnote-ref-58)
59. S93 Labour Act (Chapter 28:01). [↑](#footnote-ref-59)
60. Ibid. [↑](#footnote-ref-60)
61. Ibid. [↑](#footnote-ref-61)
62. S63 of the Labour Act (Chapter 28:01). [↑](#footnote-ref-62)
63. S93 (1) Labour Act (Chapter 28:01). [↑](#footnote-ref-63)
64. S93 (3) of the Labour Act (Chapter 28:01). [↑](#footnote-ref-64)
65. S89 Labour Act (Chapter 28:01). [↑](#footnote-ref-65)
66. Ibid. [↑](#footnote-ref-66)
67. S172 Constitution of Zimbabwe Amendment No 20 2013. [↑](#footnote-ref-67)
68. High Court Act (Chapter 7:06). [↑](#footnote-ref-68)
69. High Court Act (Chapter 7:06). [↑](#footnote-ref-69)
70. The Supreme Court Act (Chapter 7:13). [↑](#footnote-ref-70)
71. Constitution of Zimbabwe Amendment No 20 (2013). [↑](#footnote-ref-71)
72. Ibid. [↑](#footnote-ref-72)
73. <https://www.newsday.co.zw/columnists/article/243913/labour-disputes-disputes-of-right-versus-disputes-of-fact> [↑](#footnote-ref-73)
74. <https://www.sundaymail.co.zw/resolving-disputes-under-new-labour-legislation-5> [↑](#footnote-ref-74)
75. If we take for example the case of Masukusa v National Foods we can find out that the dispute was a dispute of right as it evolved the breach of the terms of contract by the respondent who failed to maintain discipline at the workplace. The case was adjudicable as the courts had to use the provisions of the Labour Act to prefer charges of acts of misconduct on the part of the respondent which can warrant his dismissal. [↑](#footnote-ref-75)
76. The starting point is S2 of the Labour Act (Supra) which states that a dispute of right is a dispute involving any violation of the terms of the Labour Act. Now this means most disputes referred to the courts or those referred for conciliation, arbitration in terms of s62, 93 of the Labour Act alleging the violation of any provisions of the Labour Act can be classified as disputes of rights. [↑](#footnote-ref-76)
77. S93 of the Labour Act (Chapter 28:01). [↑](#footnote-ref-77)
78. This is also a factor which differentiate between disputes of rights versus disputes of interests as disputes of rights can be interpreted impartially by a competent court whilst if disputes of interests are referred to court it may be difficult for the courts to act impartially as they invoke principles of the law to attempt to settle the matter rather than to apply general principles of the law in which judicial gymnastics may be applied depending on how a judge views economic interests or power dynamics at that time. [↑](#footnote-ref-78)
79. In Department of Home Affairs v Public Servants Association and Others (2017) ZACC 11 SA, the courts made it clear that a distinction between disputes of interests and disputes of rights is important to decide whether or not the issue was going to be adjudicated through the courts of law. [↑](#footnote-ref-79)
80. Ibid. [↑](#footnote-ref-80)
81. **OC Okafor** “*The precarious place of labour rights and movements in Nigeria’s dual economic and political transition 1999-2005”* (2007) 51 (1) Journal of African Law p 68. [↑](#footnote-ref-81)
82. ILO Social Dialogue: Recurrent Discussion under the ILO Declaration on Social Justice for a Fair Globalisation ILC.102/VI, 2013 paras 138-139. [↑](#footnote-ref-82)
83. This is the kind of dispute which civil servants are ceased with since the declaration of the RTGS as at par with the USD and the subsequent dumping of the USD salaries by the government of Zimbabwe. this has resulted to a dispute of interest as the civil servants are alleging that the salaries they are paid are not reflective of the real economic conditions at the time as most goods are charged in USD. [↑](#footnote-ref-83)