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LEGAL ANALYSIS OF THE RECENT HIGH COURT JUDGMENT DATED 22 MAY 2026 BETWEEN NATIONAL EMPLOYMENT COUNCIL FOR THE COMMUNICATIONS AND ALLIED SERVICES INDUSTRY VERSUS ECONET WIRELESS (PRIVATE) LIMITED (CASE NO. HCH2348, JUDGMENT NO. HH 384-26), POST ZIMBABWE LABOUR AMENDMENT ACT, 2023

By Commercial and Labour Senior Lawyer Caleb Mucheche – 28 MAY 2026

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Glory to God/Nkosi Nkulunkulu/Mwari Musikavanhu Samatenga Yawe. Ngiyabonga kakhulu/Tinotenda chose/many thanks my Principal NEC Communications and Allied Services esteemed CEO/General Secretary Hon E. Tavengwa and your esteemed NEC Councillord led by Senior Lawyer Hon . J.T Mawire for mandating/instructing Mucheche Laws to fight this case for nearly 12 years legal war for your organisation for the benefit of all NECs (employers, employers associations, federations of trade unions, trade unions, workers committes and employees) in Zimbabwe to be served from extinction/destruction/existential crisis threat, for the longest period 2012-2026 . The legal war minefield was marked by epic legal battles and legal landmines encountered as the battle raged like a veld fire before the High Court up to the Constitutional Court of Zimbabwe. Mucheche Laws. 28 May 2026.

INTRODUCTION

Collective bargaining is the heartbeat or lifeblood of the employer-employee relationship, as it seeks to continuously improve conditions of work or employment for the betterment of the workers and in turn benefitting the employer by spurring productivity from motivated workers. Without the right to collective bargaining, an employment relationship is dead and lifeless, just like the legal adage that without the right to strike, collective bargaining is collective begging. **Section 65(5)(a**) of the Constitution of Zimbabwe entrenches and anchors a justiciable legal right to engage in collective bargaining. Also **sections 2A(1)(f), 24, 25 & 74-82B** of the Labour Act **[Chapter 28:01]** provide a legal framework for the practical enjoyment of the right to collective bargaining at both the works council and employment council levels.

Labour Amendment Act No. 11 of 2023 (hereinafter referred to as the "Labour Amendment Act, 2023"), which was passed as labour legislation in Zimbabwe and became effective on 14 July 2023, fundamentally altered the legal scope of collective bargaining in Zimbabwe. It aimed to address systemic evasion of industry-wide labor standards by large corporate entities, which had

historically exploited gaps in the voluntary employment council system to avoid compliance with collective bargaining agreements.

This friction between corporate voluntarism and statutory obligation came to a definitive head in the recent litigation in **National Employment Council for the Communications and Allied Services v Econet Wireless (Private) Limited (Case No. HCH 2348/25, Judgment No. HH 384-26),** handed down by Mambara J in the High Court of Zimbabwe on 22 May 2026. This paper explores and assesses the background, facts, judicial findings, and broader legal implications of this landmark decision on Zimbabwean labor relations post the 2023 legislative amendments.

ABSTRACT

The judgment in HH 384-26 represents a watershed moment in Zimbabwean labor jurisprudence. It addresses the long-standing tension between the constitutional right to freedom of association and the statutory mandate to comply with industry-wide collective bargaining agreements (CBAs). By offering an authoritative interpretation of the newly amended **section 56** and **section 82** of the Labour Act, the High Court dismantled the defenses of non-representation and voluntary opt-outs historically deployed by major telecommunications operators to evade statutory levies. This paper provides a comprehensive review of this dispute, analyzing how the transition of Employment Councils to quasi-statutory regulators has redefined the boundaries of industrial compliance. It further critiques the wider impact of the 2023 amendments, including ministerial intervention and strike criminalization.

BACKGROUND AND THE LITIGIOUS TRAJECTORY OF THE SECTORAL DISPUTE

The legal battle between the National Employment Council (NEC) for the Communications and Allied Services Industry and the country's leading telecommunications operators, particularly Econet Wireless (Private) Limited and Netone Cellular (Private) Limited, spans more than a decade and a half of intensive litigation. The roots of this dispute lie in the regulatory expansion of the NEC's scope of registration. By General Notice 106 of 2010, published in the Government Gazette of 20 May 2010, the Registrar of Labour gave notice of an application to vary the registration scope of the NEC for the Communications and Allied Services Sector to include the interests of Cellular Communications. This variation aimed to bring emerging telecommunications giants within the same regulatory and collective bargaining framework as traditional postal, courier, and telecommunication providers.

Econet Wireless immediately resisted this variation, initiating a series of administrative and legal challenges against the NEC's registration history and the legitimacy of its registration certificate. Despite formal written confirmation from the Ministry of Labour on 24 February 2011 affirming the authenticity and validity of the varied registration certificate, the operator maintained its opposition. The Registrar of Labour overruled these objections and proceeded to publish the Collective Bargaining Agreement for the Communications and Allied Services Industry under **Statutory Instrument 1** of **2012** in the Government Gazette on 6 January 2012, making its provisions legally binding on the entire sector.

To escape the application of Statutory Instrument 1 of 2012, both Econet Wireless and Netone Cellular launched parallel constitutional and administrative challenges in the High Court of Zimbabwe. They argued that because the NEC was registered as a voluntary employment council, forcing non-member employers to comply with its collective bargaining agreements infringed upon their constitutional right to freedom of association under the then-applicable Constitution of Zimbabwe. The resulting litigation produced several landmark judgments that shaped Zimbabwean administrative and labor law:

Netone Cellular (Pvt) Ltd v Minister of Public Service, Labour and Social Welfare & Anor (HH 211/15): Netone challenged the application of the NEC's **CBA (SI 1 of 2012)** to non-members. Makoni J withheld the court's jurisdiction, ruling that a litigant in open defiance of a subsisting law cannot seek the court's assistance, thus establishing the baseline for the "dirty hands" doctrine in this dispute.

Econet Wireless (Pvt) Ltd v Minister of Public Service, Labour and Social Welfare & Anor (HH 350/15): Econet applied to set aside the expansion of the NEC's registration scope on constitutional grounds. The High Court dismissed the application, emphasizing that operating within an industry requires compliance with its public interest regulatory structures.

National Employment Council for the Communications and Allied Services Industry v Netone Cellular (Pvt) Ltd (SC 124/15): This appeal concerned the scope of **SI 1 of 2012** and the enforcement of statutory levies on non-consenting parties. The Supreme Court set aside Netone's challenges, upholding the validity of the underlying collective bargaining framework.

BACKGROUND AND THE LITIGIOUS TRAJECTORY OF THE SECTORAL DISPUTE

Econet Wireless (Pvt) Ltd v Minister of Public Service, Labour and Social Welfare & Others (SC 31/16): In this definitive appeal, the Supreme Court (Bhunu JA) dismissed Econet's appeal on whether non-member employers are bound by a registered industry CBA. The court relied on the principles set out in Associated Newspapers of Zimbabwe (Pvt) Ltd v Minister of State for Information and Publicity (2004), holding that a litigant cannot seek judicial relief while in open non-compliance with a subsisting law. Bhunu JA famously quoted Lord Radcliffe's observation in Smith v East Elloe Rural District Council (1956) :

> ***"An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of illegality on its forehead and remains effective until quashed by proper process."***

National Employment Council for the Communications and Allied Services Industry v Netone Cellular (Pvt) Ltd & Anor CCZ 17/19: Netone launched a constitutional challenge against Section 82 of the Labour Act under the freedom of association clause. The Constitutional Court dismissed the challenge, confirming section 82 of the Labour Act as a valid, constitutional legal basis for enforcing collective bargaining agreements on non-members within a registered sector.

Despite these clear judicial defeats, the telecommunications operators continued to resist remitting statutory levies to the NEC. They maintained a posture of non-cooperation, exploiting the voluntary classification of the council under the old section 56 of the Labour Act. They argued that until the NEC structurally admitted and represented them in its inner chambers, they were under no obligation to remit dues. This continuous resistance eventually prompted the Zimbabwean legislature to intervene directly through the 2023 labor law amendments.

FACTS OF THE CASE IN NATIONAL EMPLOYMENT COUNCIL FOR THE COMMUNICATIONS AND ALLIED SERVICES V ECONET WIRELESS (PRIVATE) LIMITED CASE NO. HCH 2348/25, JUDGMENT NUMBER HH 384/26

The matter in National Employment Council for the Communications and Allied Services v Econet Wireless (Private) Limited (HCH 2348/25) came before Mambara J as an opposed application. C. Mucheche appeared for the Applicant (the NEC) while M. Mbuyisa represented the Respondent (Econet Wireless). The Applicant sought a compelling order (a mandamus) to enforce the remittance of outstanding statutory dues under **Statutory Instrument 1 of 2012**, read in conjunction with the recently amended Labour Act **[Chapter 28:01].**

The core of the dispute concerned the Respondent's refusal to remit statutory levies as mandated by **section 33(3)** of the CBA, which requires each covered employee to pay 1% of their basic wage or salary, matched by a corresponding 1% contribution from the employer. The Applicant sought:

An order compelling the Respondent to submit a full and accurate schedule, supported by payroll records, of all non-managerial employees covered by the CBA from 14 July 2023 (the date the Labour Amendment Act took effect) to the date of the order.

Direct remittance of all accrued arrear dues calculated from that payroll information.

Ongoing monthly compliance and remittance.

FACTS OF THE CASE IN NATIONAL EMPLOYMENT COUNCIL FOR THE COMMUNICATIONS AND ALLIED SERVICES V ECONET WIRELESS (PRIVATE) LIMITED HCH 2348/25

Econet Wireless strenuously opposed the application, raising several procedural and substantive defenses:

Constitutional Protections (**sections 58** and **65** of the **Constitution of Zimbabwe**): The Respondent argued that compelling it to pay dues to an entity in which it was not represented violated its right to freedom of association under **section 58** and its right to collective bargaining under **section 65** of the **Constitution of Zimbabwe.**

Pre-existence and non-representation: The Respondent argued that because the NEC was established before Econet's incorporation, the operator had no role in designing its structure, making the enforcement of dues unfair without prior representation.

Failure of the Grading Architecture: The Respondent contended that because it had not mapped its internal positions onto the NEC's grading architecture under Section 4 of the CBA, the levies were unquantifiable and could not be enforced.

Non-Joinder of Employees: Econet argued that because the order would require deductions from employee salaries, the failure to join the non-managerial employees as parties was a fatal defect.

Mandamus vs. Debt Collection: The Respondent characterized the action as a debt collection suit disguised as a mandamus. It argued that a mandamus is an extraordinary remedy designed to prevent future wrongs, not to recover past monetary claims, meaning the Applicant had failed to satisfy the requirement of having no alternative remedy.

Unquantified Claim: The Respondent argued that because the Applicant had not pleaded a specific, liquidated sum in its founding papers, the court could not grant final relief.

DECISION OF THE HIGH COURT BY HONOURABLE JUDGE MAMBARA HH 384-26

Honourable Judge Mambara (Mambara J) granted the compelling order in favor of the Applicant, ordering Econet Wireless to comply with all terms and pay costs on the punitive scale of legal practitioner and client. The court's ruling systematically dismantled each of the respondent's defenses:

Constitutional Rights under **sections 58** and **65 of the Constitution of Zimbabwe**: The court held that constitutional rights to association and collective bargaining do not grant an operator a right to stand in "splendid isolation" from the statutory labour framework of its industry. Mambara J emphasized that the right to collective bargaining does not allow an individual operator to suspend an industry CBA until its preferred representational or institutional arrangements are established.

The Power of the 2023 Amendments: The court ruled that the 2023 amendments had directly resolved this tension. Parliament substituted **section 56** of the Labour Act, directing that councils registered under that section must be governed "in every respect as if they were statutory employment councils". Furthermore, the insertion of **section 82(a1)** of the **Labour Act** declared that it is in the public interest for uniform working conditions to be established through collective bargaining, and explicitly stated that it is "not a lawful excuse" for an employer who did not seek representation under Section 56 to deny being bound by the industry's CBA. Mambara J observed that this statutory language was plain and compelled compliance, leaving no room for the respondent's constitutional defenses. Section 58 of the Labour Act was not violated because the order did not compel the respondent to join any particular employers' association; the obligation arose by operation of law.

The Sequence of Representation and Compliance: The court rejected the respondent's argument that it must be satisfied in every institutional detail before the law could bind it. Mambara J noted that the NEC constitution had been amended on 28 February 2024 to allow any willing employers' association within the industry to join and secure pro-rata representation, removing the very barrier Econet complained about. The court criticized the respondent's corporate posture in a notable passage:

> ***"A sectoral giant is not licensed to behave as though labour legislation binds only the smaller players and reaches the largest one only by invitation. The law does not recognise a hierarchy of obedience in which the biggest actor may wait upon bespoke comfort before entering the common regime."***

The Grading and First Schedule Defenses: Mambara J rejected the argument that the absence of integrated grading suspended the obligation to pay dues. The court accepted the Applicant's explanation that the grading provisions in **section 4** of the National Employment Council for Communication and Allied Services collective bargaining agreement (hereinafter referred to as NEC CBA) establish minimum standards, whereas the dues clause in **section 33(3)** of NEC Communication and Allied Services CBA operates on the employee's actual basic wage or salary. To rule otherwise would reward non-cooperation by allowing an employer to use its failure to grade staff as a way to avoid statutory compliance.

Non-Joinder and Downstream Deduction Mechanics: On the non-joinder of employees, the court held that the obligation to remit dues is a statutory duty owed directly to the NEC under the governing labor framework. Enforcing this compliance does not alter individual conditions of service. Any internal payroll deduction issues between Econet and its staff are downstream administrative matters for the employer to handle lawfully, and cannot suspend a primary statutory obligation.

Specific Performance and the Mandamus: The court rejected the argument that the application was a debt collection suit disguised as a mandamus. Mambara J ruled that the failure to remit statutory dues is a continuing, active breach of a legal duty rather than a completed past wrong. An order compelling the performance of a continuing statutory duty, together with the payment of accrued arrears, is a valid exercise of the court's power of specific enforcement. The court distinguished **Mayor Logistics v ZIMRA CCZ 7/14** on this basis.

The Impact of Withholding Data: The court dismissed the argument that the claim lacked liquidity because the exact monetary figure was not pleaded. Mambara J pointed out that Econet had actively refused to provide the payroll information needed to calculate the exact figure. The court held that a litigant cannot withhold the data necessary for calculation and then use that lack of quantification to escape liability. The appropriate judicial response is to compel disclosure and performance together.

In the result, the High Court ordered Econet Wireless to furnish a full and accurate schedule of non-managerial employees within 10 days of service of the order, remit all arrear dues from 14 July 2023 to the date of payment within 20 days, and maintain ongoing monthly compliance.

Punitive costs on the scale of legal practitioner and client were awarded, with Mambara J citing **Bartlett J's observation in Industrial Equity Ltd v Walker 1996 (1) ZLR 269 (H)** that "the music has stopped" and "the time had come to pay the piper".

LEGAL ANALYSIS: THE TRANSITION OF EMPLOYMENT COUNCILS AND THE IMPLICATIONS ON COLLECTIVE BARGAINING

The transition of Employment Councils from voluntary bipartite associations to quasi-statutory regulatory bodies represents a major structural shift in Zimbabwean labor law. To fully evaluate the implications of **NEC Communications and Allied Services v Econet Wireless (Private) Limited HH 384-26**), it is necessary to examine the statutory evolution of **section 56** of the Labour Act [Chapter 28:01].

Under the pre-amendment framework, Employment Councils were voluntary, bipartite bodies formed by agreement between registered trade unions and employers' organizations. In **National Employment Council for the Catering Industry v Catering & Hospitality Industry Workers Union of Zimbabwe SC 08/08**, the Supreme Court confirmed that as voluntary associations, these councils were not legally compelled to admit new members who wished to join. This voluntary status created a regulatory loophole. Unregistered employers frequently argued that because they were not members of the council and had no part in negotiating its collective bargaining agreements, enforcing those agreements against them violated their constitutional right to freedom of association under **section 58** of the Constitution.

The legislature addressed this loophole in the Labour Amendment Act, 2023, by repealing and substituting Section 56. The new **section 56(2)** of the **Labour Act** provides:

> ***"The employment councils formed under this section shall be governed by this Act in every respect as if such employment council is a statutory employment council."***

This amendment established a hybrid model. While councils are initiated by industry players, they operate with the regulatory authority of statutory bodies once registered. To balance this expanded power, the legislature introduced safeguards in **sections 56(4), (5),** and **(6)** of the **Labour Act,** making it a statutory requirement for councils to allocate seats and votes to employer and employee representatives based on the principles of proportional representation and parity of votes. This was supported by a circular from the Registrar of Labour on 23 January 2024, instructing all councils to amend their constitutions to open their membership to new applicants.

Additionally, **section 56(9**) of the **Labour Act** introduced an "observer status" for parties wishing to join an employment council who do not yet meet the threshold to secure a voting seat. Any dispute regarding vote allocation is referable to the Registrar under **section 56(7)** of the **Labour Act**, with a right of appeal to the Labour Court under **section 56(8)** of the **Labour Act.**

The legal consequence of this transition is that the historical "voluntariness" defense is no longer viable. By operating "as if" they are statutory councils, their collective bargaining agreements carry the force of secondary/subsidiary/delegated legislation (Statutory Instruments) that bind every operator within the designated industry, regardless of individual membership status or consent.

The practical challenges of this transition were highlighted by the controversial Labour Court judgment in **DGL Investments Number 5 (Pvt) Ltd v Martin Ndlovu and Another Judgment No. LC/MT/70/23**, delivered by Hon. Moya-Matshanga J on 15 November 2023. In that case, the employer appealed a determination by a Designated Agent (DA) of the National Employment Council for the Mining Industry. The employer argued that because the 2023 amendment had repealed the old **section 56** of the **Labour Act** (which created voluntary councils), the voluntary mining NEC had ceased to exist on the date of promulgation (14 July 2023). Consequently, the employer asserted that the Designated Agent had lost the legal authority and *locus standi* to issue determinations.

Moya-Matshanga J upheld the employer's argument, ruling that voluntary Employment Councils ceased to exist on 14 July 2023. She held that there was no automatic legal transition or saving provision in the Amendment Act transferring jurisdiction from voluntary councils to the new statutory hybrid councils, rendering determinations made by Designated Agents after 14 July 2023 null and void for want of jurisdiction.

This judgment caused immediate concern across the Zimbabwean labor market, with legal analysts warning of a potential collapse of the industry's dispute resolution framework. Prominent labor law experts criticized the DGL Investments ruling for misinterpreting the statutory amendment, arguing that the repeal and substitution of **section 56** of the **Labour Act** did not dissolve existing councils, but rather transitioned their governing framework.

The High Court's ruling in NEC Communications v Econet Wireless (HH 384-26) resolves this confusion. By enforcing compliance with SI 1 of 2012 and ordering the retrospective remittance of dues from 14 July 2023 (the exact date of the amendment's promulgation), Mambara J confirmed that registered employment councils did not suffer a loss of continuity or legal existence.

This application of the rule of law is consistent with other major constitutional jurisprudence in Zimbabwe. A useful comparison is the landmark Constitutional Court case, In Re Prosecutor-General of Zimbabwe on His Constitutional Independence and Protection from Direction and Control (CCZ 13/17, Judgment No. CCZ 8/18). In that case, the Prosecutor-General (PG) challenged High Court and Supreme Court orders directing him to issue certificates *nolle prosequi* to private parties (including Telecel Zimbabwe and Francis Maramwidze) after he had declined to prosecute. The PG argued that Section 260 of the Constitution guaranteed him absolute independence in the discharge of his prosecutorial functions, making his decisions immune to judicial review.

The Constitutional Court dismissed the PG's application, emphasizing that constitutional independence does not place a public official above the Constitution and the law. Under **section 164(3)** of the Constitution, court orders are binding on all persons and governmental bodies, and must be obeyed. To uphold the rule of law under **section 165(1)(c)** of the **Constitution of Zimbabwe ,** the court committed the PG to 30 days' imprisonment (suspended on condition of compliance) and ordered that if he failed to comply, he would be barred in his personal capacity from practicing law.

This constitutional ruling establishes that no actor, whether a high-ranking public official or a major corporate entity, can unilaterally decide to ignore a binding legal obligation. Mambara J applied this same principle of the rule of law in NEC Communications v Econet, confirming that Econet was not permitted to withhold statutory compliance while seeking its preferred institutional

While the 2023 amendments successfully resolved the issue of non-member compliance with CBAs, a broader critique reveals several constitutional and administrative challenges introduced by the same legislation.

First, under **sections 25(2)** and **74(7)** of the Labour Act as amended, when a collective bargaining agreement involves a statutory corporation, statutory body, or state-controlled entity, the responsible line Minister is deemed to be a negotiating party on equal footing with the employer. This structure introduces significant legal and practical difficulties:

Imbalance of Power: Introducing a politically powerful line Minister alongside management creates a dual representation on the employer's side, disrupting the balance of power at the negotiating table.

Chilling Effect: Shopfloor workers' committees may feel intimidated by the direct presence of a state representative, which can discourage open, voluntary collective bargaining.

Violation of ILO Core Conventions: This level of direct ministerial interference in enterprise-level bargaining is arguably out of sync with Zimbabwe's international obligations under **ILO Convention No. 98** (Right to Organise and Collective Bargaining) and **Convention No. 154** (Collective Bargaining) **core conventions**, both of which emphasize the autonomy of negotiating parties.

Second, a major area of concern is the severe criminalization of unlawful collective job actions under the amended **Section 112.** While **Section 104** of the Labour Act and **Section 65(3)** of the Constitution protect the right to strike, the 2023 amendment introduced penalties of up to five years' imprisonment, a level 14 fine, or both, for participating in an unlawful collective job action. Treating an administrative or labor breach as a serious criminal offense carrying a lengthy prison sentence is disproportionate. It recalls colonial-era labor policies, such as the Master and Servants Act, under which African workers were barred from striking and faced criminal prosecution for withdrawing their labour. Furthermore, this criminal penalty is in tension with Section 4A of the Labour Act, which prohibits forced labor, and runs contrary to the letter and

spirit of **ILO Convention No. 87** on Freedom of Association and the Protection of the Right to Organise.

CONCLUSION

The High Court's judgment in National Employment Council for the Communications and Allied Services v Econet Wireless (Private) Limited (HH 384-26) marks a significant milestone in the development of Zimbabwean labour jurisprudence. By confirming the validity of the 2023 amendments, Mambara J established that the era of voluntary-based non-compliance for large-scale operators is over. Sectoral actors can no longer rely on freedom of association arguments to avoid the uniform minimum standards and financial obligations of their respective industries.

The decision provides necessary clarity on the legal continuity of Employment Councils, correcting the jurisdictional confusion caused by the DGL Investments ruling. It reaffirms that the 2023 statutory amendments did not dissolve existing councils, but instead transitioned them into statutory-like regulators capable of enforcing compliance across entire sectors.

However, this transition also highlights the need for ongoing legislative adjustment. While the enforcement of CBAs is now secure, the dual role of line Ministers in public sector bargaining and the severe criminal penalties for strike actions remain key challenges. For the Zimbabwean labour market to remain stable, equitable, and aligned with international standards like ILO Conventions **87** and **98**, future legislative reforms must focus on simplifying the transitional framework for statutory councils, preserving the autonomy of negotiating parties, and decriminalizing administrative labour breaches.