



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ~~YES~~/NO.

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO.

(3) REVISED.

06/11/2014

SIGNATURE

In the matter between:

Case No: 12758/2014

Date heard: 16 September 2014

Date of judgment: 06 November 2014

**MOTOR INDUSTRY STAFF ASSOCIATION**

Applicant

and

**IAN ANTHONY MACUN N.O.**

1<sup>st</sup> Respondent

**MINISTER OF LABOUR N.O.**

2<sup>nd</sup> Respondent

**MOTOR INDUSTRY BARGAINING COUNCIL**

3<sup>rd</sup> Respondent

**NATIONAL UNION OF METALWORKERS OF SOUTH  
AFRICA**

4<sup>th</sup> Respondent

**RETAIL MOTOR INDUSTRY ORGANISATION**

5<sup>th</sup> Respondent

**FUEL RETAILERS' ASSOCIATION OF SOUTHERN  
AFRICA**

6<sup>th</sup> Respondent

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**JUDGMENT**

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A.M.L. PHATUDI J:

[1] The applicant seeks an order declaring:

1.1 The decision of the first respondent<sup>1</sup> to extend the period of operation of the Motor Industry Bargaining Council (MIBCO) Main Collective Agreement to 31 August 2014 and further to 31 January 2015 to be unlawful and invalid and

1.2 To review and set aside notices published in Government Gazette that extended the period of operation of the MIBCO Main Collective Agreement in terms of section 32(6) of the LRA to 31 August 2014 and the MIBCO Administrative Collective Agreement from 24 January 2014 to 31 January 2015.<sup>2</sup>

[2] At the commencement of the hearing, Mr Pretorius,<sup>3</sup> appearing for MIBCO, raised on *limine* point on jurisdiction. He submits that this court lacks jurisdiction and the application stands to be dismissed on that leg alone. He brought to my attention the two conflicting High Court judgments in respect of jurisdiction. He refers me to **Valuline v Minister of Labour**<sup>4</sup> where Koen J found the High Court to be having concurrent jurisdiction with Labour Court to entertain a review based on the principle of legality on the one hand. On the other hand he handed up a

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<sup>1</sup> Ian Anthony Macun, cited in his representation capacity as the Director: Collective Bargaining

<sup>2</sup> Notice of Motion – paginated pages 2 and 3

<sup>3</sup> Adv. G.C. Pretorius SC

<sup>4</sup> 2013 (4) SA 326 (KZP)

judgment<sup>5</sup> by Davis J who found that the High Court lacks jurisdiction. He asserted that ‘ the purpose of LRA was to create a specialist court, that is the Labour Court which is required to deal with all matters arising from the LRA in terms of claims which are based thereon.’<sup>6</sup>

[3] Mr Pretorius submits that if I uphold Davis J, then the merits of this application falls to be dismissed. He apprised me that Davis J relied on the Constitutional Court decision in **Chirwa v Transnet Limited and Others**<sup>7</sup> in coming to the conclusion he did. Based on that background, I find it inevitable to first deal with the question of jurisdiction.

### **Jurisdiction**

[4] The issue of concurrent jurisdiction created by the provisions of section 157(1) and (2) of the LRA had a grappling history that was brought about by conflicting interpretation.

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<sup>5</sup> See: O Thorpe Construction and Others v The Minister of Labour and Others (9380/2013) [2013] ZAWOHC (09September 2014) marked reportable

<sup>6</sup> Ibid paragraph [36]

<sup>7</sup> 2008 (4) SA 367 (CC)

[5] In **Valuline v Minister of Labour**,<sup>8</sup> Koen J dealt with the issue of the High Court having jurisdiction on the basis of the principle of legality.<sup>9</sup> He, however, found it necessary to consider the exact parameters of section 157(2).<sup>10</sup> The only time he made reference to section 157(2) is when he set out what section 158(1) (g) does is to provide an place it beyond any doubt that where the Labour Court has jurisdiction, whether exclusive or concurrent with the High Court and the subject matter of such dispute entails a review and relief sought upon a review, then the Labour Court will have jurisdiction over such a matter. He, in footnote 24 stated that ‘In **Gcaba v Minister of Safety and Security and Others 2010 (1) SA 238 (CC)** ... the Constitutional Court held that section 157(2) should not be understood to extend the jurisdiction of the high court to determine issues which (as contemplated by section 157(1) have been expressly conferred upon the labour court by the LRA. Rather, it should be interpreted to mean that the labour court will be able to determine constitutional issues which arise before it in the specific jurisdictional arrears which have been created for it by the LRA and which are covered by section 157(2) (a) (b) and (c). Any reliance on the decision in *Gcaba ...* or *Chirwa v Transnet Ltd and Others ...* as decisive of the issue of jurisdiction seems in my view misplaced ...’

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<sup>8</sup> 2013 (4) 326 (KZP)

<sup>9</sup> Ibid paragraph [21] – [38]

<sup>10</sup> Paragraph [37]

[6] In short, Koen J seem to be saying that the Constitutional Court decision in Gcaba and Chirwa need to be followed on the basis that ‘both those matters involved the conduct that was held not to constitute administrative action but dealt with entirely different matters that the issue of legality before his court.’<sup>11</sup>

[7] In following the *ratio decidendi* penned by Ngcobo J (as he then was) in Chirwa v Transnet, Davis J quoted from paragraphs [110] – [111] as follows: ‘The objects of the LRA are not just textual aids to be employed with the language which is ambiguous. This is apparent from the interpretive injunction of s 3 of LRA which requires anyone applying the LRA to give effect to its primary objects and the constitution. The primary objects of the LRA must inform the interpretive process and the provisions of the LRA must be read in the lights of its objects. Thus where interpretations of the LRA is capable of more than one plausible interpretation, one which advances the objects of the LRA and the other which does not a court must prefer the one which effectuate the primary objects of the LRA ... When enacting the LRA Parliament ... went on to entrust the primary interpretation application with rules to specific and specially constituted tribunals and forums and prescribed particular procedure for resolving disputes arising under the LRA.’

[8] Davis J analysed the *ratio* set out in Chirwa and Gcaba with various other SCA decisions when coming to the conclusion that the LRA created

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<sup>11</sup> Valuline v Minister of Labour – opcit footnote 24 at paragraph [29]

a specialist court in labour matters, being the Labour Court with similar status to the High Court which matters arising from the LRA in terms of claims which are based thereon.

[9] In dealing with the concurrent jurisdiction Ngcobo J (as he then was) unpacked the provision of section 157(1) and (2). He, at paragraph [113] stated that the purpose of section 157(1) was to give effect to the declared object of the LRA to establish specialist tribunals 'with exclusive jurisdiction to decide matters from it. To this extent, he proceeded [section 157(1)] has given exclusive jurisdiction to the Labour Court and Labour Appeal Court to deal with matters arising from the LRA.'<sup>12</sup>

[10] Ngcobo J further penned at paragraph [115] that the manifest purpose of section 157(2) was to consider constitutional jurisdiction to labour court almost identical to the jurisdiction conferred on the High Court. Added thereto, he stated that the 'primary purpose of section 157(2) was not so much to confer jurisdiction on the High Court to deal with Labour [matters] but rather to empower the Labour Court to deal with causes of action that are founded on the provisions of the Bill of Rights which arise from employment and labour relations.'<sup>13</sup>

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<sup>12</sup> Ibid – paragraph [113]

<sup>13</sup> Ibid – paragraph [120]

[11] It is trite that the doctrine of precedent “*stare decisis et non quieta morere*” (to stand by the decisions and not to disturb settled matters) has since been settled that lower courts are bound by the decisions of higher courts.<sup>14</sup> The Constitutional Court decisions, as the apex court, are binding on all lower courts.<sup>15</sup>

[12] The majority in Chirwa found that the declared intention of the LRA is ‘to establish the Labour Court and the Labour Appeal Court as Superior courts with exclusive jurisdiction to decide matters arising from the LRA’<sup>16</sup> It is further held that ‘the objects of the LRA are not just textual aids to the employed where the language is ambiguous.’<sup>17</sup> It was further held that ‘where a provision of the LRA is capable of more than one plausible interpretation, one which advances the objects of the LRA and the other which does not, a court must prefer the one which will effectuate the primary objects of the LRA.’<sup>18</sup>

[13] In this case, there is no constitutional issue that is raised. All the applicant seeks is to declare the decision to extend the periods of operation of the MIBCO, Main Collective Agreements and MBICO

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<sup>14</sup> See also – Gcaba v Minister of Safety and Security – 2010 (1) SA 238 at paragraph [58]

<sup>15</sup> From SCA documents

<sup>16</sup> Chirwa v Transnet – opcit – paragraph [105]

<sup>17</sup> Ibid paragraph [110]

<sup>18</sup> Ibid

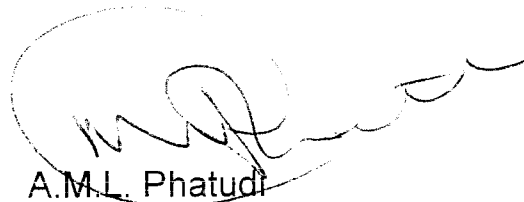
Administration Collective Agreement to specific dates unlawful and invalid. The issues of Collective Agreements and their extensions fall, in my view, within the function expressly provided for in the LRA and which falls exclusively within the jurisdiction of the Labour Court.

[14] I have, in conclusion, arrived at the conclusion that the matter falls exclusively within the jurisdiction of the Labour Court.

[15] Costs follow the event. The respondents succeed with their on *limine* point that entitles them to their costs including costs occasioned by the employment of two counsel to respondents who so employed two counsel. The following order is thus made.

Order:

The application is dismissed with costs including costs of employment of two counsel



A.M.L. Phatudi

Judge of the High Court



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