

IN THE HIGH COURT FOR ZAMBIA

COMP/IRCLK/94/2011

INDUSTRIAL RELATIONS DIVISION

HOLDEN AT LUSAKA

BETWEEN:

HEDLEY HOWE

AND

ARMAGUARD SECURITY LIMITED



COMPLAINANT

RESPONDENT

BEFORE:

MR. JUSTICE M. K. CHISUNKA

APPEARANCES:

For the Complainant: Mr. H. M. Mulunda & P. H. Namugala of L.M. Chambers of PNP Advocates.

For the Respondent: Mr. V. Kayawe – In-House Counsel.

R U L I N G

Legislation Referred to:

- 1. Industrial and Labour Relations Act, Cap 269 of the Laws of Zambia.***
- 2. High Court Act, Cap 27.***
- 3. Constitution of Zambia Act No.2 of 2016.***

Cases Referred to:

- 1. GDC Logistics Zambia Ltd v. Joseph Kanyata and 13 Others, Selected Judgment No.17 of 2017.**

Introduction

1. This ruling decides an interlocutory application by the Respondent for an order to dismiss action for want of prosecution for being in breach of the time set or limited by Section 85(3)(b)(ii) of the Industrial and Labour Relations Act (As amended by S.19(3)(b)(ii) of Act No.8 of 2008) which provides that:

“the Court shall dispose of the matter within a period of one year from the day on which the Complaint or application is presented to it”.

2. The application was filed on 30th August, 2017 by way of Notice of Intention to Raise Preliminary Issue. The Respondent desires the Court to determine whether this Court can competently hear and dispose of this complaint outside the period set or limited by law.
3. The Respondent filed written submissions on 22nd September, 2017 in support of his application. There were no written submissions filed by the Complainant.

Background

4. The brief background to this application is that the Complainant commenced an action against the Respondent on

31st May, 2011 by Notice of Complaint initially claiming compensation for unlawful termination of employment, payment of service benefits and accrued leave days.

5. The Complainant was granted leave to amend his Complaint which he did on 8th September, 2015 and now seeks damages for unlawful, wrongful and or unfair dismissal.
6. The record shows that, the matter has been fraught with adjournments from November, 2011 to November, 2015 initiated by the parties, but mostly by the Complainant. Nine adjournments were initiated by the Complainant and four by the Respondent.
7. Hearing of this case commenced on 16th November, 2015 and on that day, the Respondent was not before Court and the matter proceeded in their absence.
8. On 23rd August, 2017 when the matter came up for continued hearing, the Complainant's Advocate requested for a short adjournment on account that his client, the Complainant, was away on official duties. The Respondent did not object to the short adjournment but raised issue on the time it had taken to conclude this matter given the provisions of S.19 of Act No.8 of the ILRA (amendment) and wondered whether the Court had competence to continue with the case considering that the law provides that matters before the Industrial Relations Court

should be disposed of within one year of the matter having been commenced.

9. I noted that the point raised by Counsel was a fundamental issue which required to be decided judiciously. I directed that Counsel should raise and file a Notice to Raise a Preliminary Issue and fashion out the question to be determined by the Court. I gave both parties a time period within which to file their submissions after the Notice to Raise a Preliminary Issue had been filed.

10. This is the context and background to the present application.

The Parties Respective Positions

The Respondent

11. The gist of the Respondent's submission is to the effect that this Court ceased to have jurisdiction a year after the Complaint herein was lodged (on 1st June, 2012) by virtue of the provisions of Section 19(3)(b)(ii) of the Industrial and Labour Relations Amendment No.8 of 2008 and therefore the Complaint herein failed by that technicality. The said section provides that:

“the Court shall dispose of the matter within a period of one year from the day on which the complaint or application is presented to it.”

12. In aid of his submission, Counsel drew the attention of the Court to the case of Haikande Hichilema and Geoffrey Bwalya

Mwamba vs. Edgar Chagwa Lungu, Inonge Wina, Electoral Commission and Attorney-General 2016/CC/0031 where it was held that:

“As Articles 101(5) and 103(2) of the Constitution limit the period within which a Presidential Election Petition must be heard by this Court to Fourteen days after the filing of the election petition, the court cannot competently hear a petition outside this period...Our position, therefore, is that the Petition stood dismissed for want of prosecution when the time limited for its hearing lapsed and therefore, failed by reason of that technicality. This is because the Petitioners failed to prosecute their case within fourteen days of it being filed. That being the case, there is no petition to be heard before this Court as at today.”

13. Counsel submitted that it was trite law that where a statute had set time limit within which a matter ought to be heard and concluded the Court cases to have jurisdiction to hear and determine that matter once that time limit has elapsed and that the matter should stand dismissed for want of prosecution.
14. In summary, it was submitted that Court was mandated by law to dispose of this matter within a period of one year from the day the Complaint was filed on 31st May, 2011 and that the matter ought to have been concluded by 1st June, 2012. Further that for this reason the Complaint in this Court should stand dismissed for want of prosecution as the time limited or set for its hearing and disposal had lapsed and therefore failed by reason of that technicality. This Court

could therefore not competently hear and dispose of this Complaint outside this period.

The Complainant's Position

15. Despite my order and direction that the Complainants should file their written submissions by 29th September, 2017, none were received from the Complainants even at the time of writing this Ruling. This Court therefore does not have the benefit of the Complainant's written position to the present application.

The Issue for Determination

16. I have carefully considered the process filed, the record, argument of Counsel for the Respondent and the authorities cited in this application. From this I discern the issue to be whether or not this Court has jurisdiction and can competently hear and dispose of this Complaint outside the period set by S.19(3)(b)(ii) of Act No.8 of 2008.
17. A convenient starting point in resolving the issue is to review the jurisdiction and other statutes that apply to this Court.

The Law

18. The Industrial Relations Court was previously established under the Industrial Relations Act Cap 269 and its mandate was as outlined in Section 85. It was set up as a special court to hear and rule on labour-related disputes. It had and

continues to have special powers and specific rules that apply to it and the main object of the Court was to do substantial justice.

19. One of the special characteristics of its operations was that it was obliged to hear and dispose of Complaint's before it within a specific period, that is to say within, one year of the Complaint having been filed.
20. The Amendment to the Constitution Act No.2 of 2016 makes the Industrial Relations Court a division of the High Court by virtue of Article 133 of the Constitution of Zambia. This effectively means that the former Industrial Relations Court is a division of the High Court through the Constitutional amendment. Though it retains the rules of the Industrial Relations Court Act Rules in terms of its operations, the substantive provisions of the High Court Act now prevail over the provisions of the Industrial and Labour Relations Act.
21. In terms of Section 6 of Act No.1 of 2016, existing laws continue to apply so far as they are not inconsistent with the Constitution, as amended, with such modifications, adaptations, qualifications and exceptions as may be necessary. This being the case, the substantive provisions that applied to the Industrial Relations Court established under Cap 269 cannot, and to the extent that they would be inconsistent with the Constitution, apply to the High Court.

The Industrial Relations Division is not and must be distinguished from the Industrial Relations Court.

22. On the strength of the above, I hold that S.19 of Act No.8 of 2008 does not apply to the Industrial Relations Division of the High Court. Section 16 of Act No.1 of 2016 addresses the issue of proceedings pending before Court or tribunal and provides that these may continue before the same Court or tribunal or be transferred to a corresponding court or tribunal established under the constitution as amended.
23. I also hold that the current Complaint herein was, by operation of law, transferred to the High Court and to all intents and purposes they are proceedings pending determination by the High Court.

Decision

24. Given what I have said above, I refuse to dismiss the Complaint on grounds advanced by the Respondent and declare that this Court has jurisdiction to competently hear this matter.

Orders

25. It is hereby declared that this Court has jurisdiction and can competently hear and determine the Complaint before it.
26. The application to dismiss action for Want of Prosecution is dismissed.

27. No order as to costs.

28. Leave to appeal granted.

Delivered at Lusaka this.....day of January, 2018.

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M. K. CHISUNKA
HIGH COURT JUDGE

