CASES DECIDED JANUARY – JUNE 2004

Appeal – Court Martial Appeal court – certificate of appeal – when required

Attorney-General v *Masasi* HH-77-04 (Hungwe J)

See below, under MILITARY LAW (Court martial).

Appeal – criminal appeal – appellant absenting himself from country beyond time stipulated by court – whether a fugitive from justice – fears for personal security – relevance of

S v *Sylow* S-7-04 (Sandura JA, Cheda & Gwaunza JJA concurring)

While on bail pending appeal after his conviction on charges of theft by conversion, the appellant was allowed by the court to leave the country for a limited period. He did not return in the time stipulated, and an unauthenticated medical certificate was produced as the reason for his failure to return. He also argued that he feared for his security if he returned. His bail was estreated and a warrant was issued for his arrest. The High Court declined to hear an application to allow the appeal to be heard in his absence on medical grounds; it found that he must be regarded as a fugitive from justice. On appeal to the Supreme Court, held: (1) the state of the appellant's health was not a valid reason for his failure to return to the country by the stipulated date. (2) The fears for his personal security had been grossly exaggerated. He could easily return to this country without being noticed by any of the people he allegedly feared. Even if he harboured the fears alleged by him, that would not assist him. It would simply show that he had intentionally placed himself beyond the reach of the law. The inescapable inference must, therefore, be that he did not return because he intended placing himself beyond the reach of the law so that if his appeal did not succeed he would not return to the country to serve the prison sentence. He was, therefore, a fugitive from justice, and the court *a quo* correctly declined to hear his appeal.

Appeal – noting of – effect – appeal against order discharging interim interdict or provisional order – does not revive interdict or order

WLSA & Ors v *Mandaza* HH-35-04 (Hungwe J)

The noting of an appeal normally suspends the judgment appealed against. However, where the order appealed against was one discharging a provisional order under which an interim interdict was granted, the appeal does not revive the discharged provisional order or interim interdict, unless a fresh application for an interim interdict is made.

Banking – bank – customer's account with – credit made to account on strength of negotiable instrument – instrument subsequently dishonoured – right of bank to debit account with amount previously credited even if no overdraft facilities agreed upon

Zimbank v *Chibune & Anor* HH-67-04 (Hungwe J)

In the normal course of banking practice a bank is entitled to reverse a credit it has entered on a customer's account in respect of a negotiable instrument or cheque deposit when the instrument in question is later dishonoured. The law treats the relationship between banker and customer as a contractual one. The reciprocal rights and duties included in the contract are to a great extent based upon custom and usage. It is now accepted that the basic, albeit not the sole, relationship between the banker and customer in respect of a current account is one of debtor and creditor. The fact that the bank might permit the customer to draw cheques against uncleared effects, despite there being no agreement in this regard, would not excuse the customer in law from liability to make payment to the bank. If the effects are not cleared, it is the customer who must bear the loss, not the bank. The bank is entitled to debit the customer's account with the amount drawn, even if there is no agreement for overdraft facilities.

Company – director – authority — ostensible authority to enter into contract — when can be presumed by person contracting with company – transaction carried out in flagrant disregard of procedures laid down to enhance transparency – no ostensible authority

Victoria Falls Steam Train Co v *Wankie Colliery Ltd* HH-3-04 (Makarau J)

The rule in *Turquand's* case is to the effect that a party dealing with a company has the right to infer that the authority on the part of a director to transact on behalf of the company has been granted by the necessary internal procedures. The contracting party must itself be acting in good faith and the entire transaction must have been carried out in good faith. It must be a genuine and legitimate transaction in all other respects, save the internal formalities necessary to clothe it with the authority laid down in the statutes of the company. The third party also must have been a genuine outsider to be afforded protection by the rule. The corporation is then estopped from raising the incomplete internal arrangements to avoid liability on the contract. Where, however, the transaction is tainted by *mala fides*, the rule does not apply to bind the company to a transaction that it would not have authorised in the first place. A transaction carried out in flagrant disregard of the procedures established to ensure that sales of assets of a publicly owned company are carried out in a transparent manner would not be protected by the rule.

Constitutional law – Constitution of Zimbabwe 1980 – Declaration of Rights – s 13(1)(e) – refusal of bail where accused charged with "economic" offences, even though no *prima facie* case shown – constitutionality of provision

S v *Makamba* S-11-04 (Ziyambi JA)

The amendment to the Criminal Procedure and Evidence Act [*Chapter 9:07*], in terms of which an accused person must be detained for at least 7 days on a mere allegation of committing a specified "economic" offence, without the State having even to show a *prima facie* case, is patently unconstitutional.

Constitutional law – Constitution of Zimbabwe 1980 – Declaration of Rights – s 15(1) – inhuman or degrading punishment or treatment – meaning of – s 24 – application under – powers of Supreme Court – whether can award damages

Chituku v *Min of Home Affairs & Ors* HH-6-04 (Makarau J)

Treatment of an arrested, detained or convicted person that affronts the dignity of that person or exceeds the limits of civilised standards of decency and involves the unnecessary infliction of suffering or pain is inhuman and degrading. If the High Court is satisfied that the actions complained of violate the rights of the plaintiff as granted under the Constitution, it could grant suitable relief to redress the injury. This is part of the inherent jurisdiction that the court enjoys. The plaintiff is not restricted to bringing an application under s 24 of the Constitution. The right to dignity is recognised in the Roman-Dutch law as an independent right that can be protected by the *actio injuriarum*, the *actio injuriarum* being wide enough to encompass any action that violates the *corpus* or *dignitas* of the plaintiff. Inhuman and degrading treatment affronts the dignity or self-respect of an individual and could found a claim.
***Semble*: that in an application under s 24 of the Constitution, the Supreme Court has the power to award damages.**

Constitutional law – Constitution of Zimbabwe 1980 – Declaration of Rights – s 18 – right to protection of the law – s 18(12) – hearing to be in public – issue of Ministerial certificate that disclosure of any matter not in public interest – duty of court to make provision for disclosure *in camera* — Minister declining to disclose reasons for declaring person to be prohibited immigrant – Minister's certificate not a bar to disclosure of reasons to the court

***Ngaru* v *Chief Immigration Officer & Anor* S-26-04 (Gwaunza JA, Chidyausiku CJ, Sandura JA, Ziyambi JA & Malaba JA concurring)**

The applicant, a Zimbabwean citizen, married a citizen of another country while he was working in Zimbabwe in terms of a work permit. When his work permit expired, the respondent Minister eventually declared the husband to be a prohibited immigrant. He refused to disclose the reasons why he did so, claiming that s 22(2) of the Immigration Act [*Chapter 4:02*] entitled him to decline to disclose the reasons, on the grounds that it was not in the public interest for him to do so. There was no averment that the marriage was one of convenience. It was argued for the applicant that it

was impossible for her to discharge the onus of showing the interference with her rights was not reasonably justifiable in a democratic society and that the Minister could and should disclose the reasons in court. Held: (1) unless the court was made privy to the Minister's reasons and had the opportunity to hear the applicant's submissions in light of those reasons, it would not be able to determine whether the interference with the applicant's right to freedom of movement was reasonably justifiable in a democratic society. (2) Because of the provisions of s 18(12) of the Constitution, the Minister's certificate could not lawfully bar the disclosure of the reasons to the court.

Constitutional law – Constitution of Zimbabwe 1980 – Declaration of Rights – s 18 – right to protection of the law – law creating offence of strict liability for publishing false information – too broad in effect

Constitutional law – Constitution of Zimbabwe 1980 – Declaration of Rights – s 20 – right to receive and impart information without interference – requirement for journalists to be accredited – not a contravention of section if criteria and qualifications for accreditation not too onerous – entitlement of person to be accredited if criteria met

Constitutional law – Constitution of Zimbabwe 1980 – Declaration of Rights – s 20 – right to receive and impart information without interference – entitlement of Media and Information Commission to be party to drawing up of code of conduct for journalists and to enforce such code – not a restriction on rights protected by s 20

Constitutional law – Constitution of Zimbabwe 1980 – Declaration of Rights – s 20 – right to receive and impart information without interference – law making it an offence for journalist to collect or disseminate information without the permission of his employer – too vague in objective – not constitutional

Association of Independent Journalists & Ors v *Minister of State for Information & Ors* S-136-02 (Chidyausiku CJ; Cheda, Ziyambi & Malaba JJA concurring, Sandura JA dissenting in part)

The applicants, an association of journalists and two individual journalists, brought an application under s 24 of the Constitution, seeking an order declaring that ss 79, 80, 83 and 85 of the Access to Information and Protection of Privacy Act [*Chapter 10:27*] violated their rights under s 20 of the Constitution (the right to receive and impart information without interference) and s 18(9), in that it deprived them of the right to be heard before a decision affecting their rights is made. Section 79 of the Act provided for the accreditation of journalists; s 80 criminalised certain abuses of journalistic privileges; s 83 outlawed the practice of journalism without accreditation; and s 85 provided for the development of a code of conduct by the Media and Information Commission in consultation with interested parties. Section 85 also conferred on the Commission disciplinary powers and provided guidelines on sanctions for misconduct. Held: (1) Section 20(1) of the Constitution of Zimbabwe guarantees an individual's right to freedom of expression, but does not expressly guarantee the exercise of that right through any means of one's choice. There is nothing in the language of s 20(1) that suggests that the legislature intended to confer on an individual a constitutional entitlement to work as a journalist. However, any law that seeks to regulate the practice of journalism has to conform with the stringent requirements for a law abridging the right conferred by s 20 of the Constitution to be valid. It is vital to the proper functioning of the press that the legal framework should ensure and enhance the independence of the press from both governmental and commercial control. A law providing for the licensing of the media falls under the exception of a law providing for public order. A person who complies with the requirements of s 79 is entitled to accreditation; the Commission does not have a discretion. If the requirements for accreditation were too onerous, the regulations setting out the requirements could be held to be unconstitutional, but the existing regulations could not be so held. It followed that s 83, which penalised practising as a journalist without accreditation, was also constitutional. (2) Section 80(1)(a), which provides that a journalist who falsifies or fabricates information and publishes falsehoods is guilty of a criminal offence, creates create strict criminal liability and is so broad in its sweep that its provisions are unconstitutional, being that they are *ultra vires* s 18 of the Constitution. (3) Section 80(1)(c), which criminalises the conduct of a journalist who is not a freelance journalist who collects or disseminates information without the permission of his employer, is too vague in its objective to justify the limiting of the freedom of expression. Such a matter belonged in the realm of labour law. (4) It was not unconstitutional for the Commission to be party to the drawing up of a code of conduct and for its enforcement. The Act provided adequate safeguards in terms of a fair hearing and the appeal procedures.

Constitutional law – Constitution of Zimbabwe 1980 – Declaration of Rights – s 20 – right to freedom of expression, to receive and impart ideas etc – lawyer-client privilege – subsumed under generality of section – Postal and Telecommunications Act [*Chapter 12:05*] – s 98(2) – right given to President to direct interception of postal articles etc – s 103 – right given to President to give directions to licensees – a breach of rights guaranteed by s 20 – unfettered discretion given with no mechanism to prevent abuse – not justifiable in a democratic society

Law Society of Zimbabwe v *Minister of Transport & Anor* S-59-03 (Chidyausiku CJ, Sandura, Cheda, Malaba & Gwaunza JJA concurring)

Under s 98(2) of the Postal and Telecommunications Act [*Chapter 12:05*], the President is given the power to direct that postal articles or telecommunications be intercepted if, in his opinion, it is necessary in the interests of national security or the maintenance of law and order to do so. Section 108 of the Act gives him the right to give to "licencees" (which includes cellular telephone provides and internet service providers) such directions of a general character as appear to him to be requisite or expedient in the interests of national security or relations with the government of a country or territory outside Zimbabwe. The Law Society brought an application under s 24 of the Constitution, seeking an order declaring those sections invalid and of no legal force or effect because they are inconsistent with s 20 of the Constitution, which provides for the right to freedom of expression, communication and so on. The Society contended that the privileged status of legal communications between legal practitioner and client goes beyond the general protection to all persons by the Constitution, is time honoured and is enshrined in common law and in s 8 of the Civil Evidence Act [*Chapter 8:01*]. It argued that the sections did not fall within any of the exceptions permissible under s 20(2) of the Constitution. Secondly, and in the alternative, it contended that even if the impugned sections fell within the exceptions set out in s 20(2) they were too vague to satisfy the requirement as provided by law and were not reasonably justifiable in a democratic society. Held: (1) the lawyer-client privilege is not absolute, but is subject to such exceptions as the right of accused persons to fully defend themselves; communications that are criminal in themselves or that are intended to obtain legal advice to facilitate criminal activities; and when safety of the public is at risk. The sanctity of lawyer-client privilege is largely applicable in the domain of litigation or court proceedings. A proper reading of s 20 shows that the privilege, as such, is not constitutionally guaranteed; it is only guaranteed to the extent that it is subsumed in the right to freedom of expression, which includes freedom from interference with one's correspondence. (2) Sections 98(2) and 103 are a derogation of the right to freedom of expression conferred by s 20 of the Constitution. They confer on the President unfettered powers to intercept correspondence and communications, the only limitation being is that he has to hold the "opinion" that it is necessary in the interests of national security or necessary for the maintenance of law and order. There is no requirement that his "opinion" be based on reasonable grounds or good cause; the only restriction the President should, in respect of certain directives, consult the Minister, an appointee of the President, who is accountable to him. The effect of the failure to provide statutory mechanisms to control or limit the exercise of the power conferred by the Act on the President leads to an unfettered discretion to intercept mail and communication. The sections provide no guidance as to what a citizen should not do to avoid conduct that might lead to the exercise of the powers conferred by the sections. In the absence of such limitations and control mechanisms the powers conferred on the President are too broad and overreaching to be reasonably justified in a democratic society. The impugned sections are thus so vague that the citizen is unable to regulate his conduct in such a way as to avoid the interception of his mail or communication and would therefore be struck down.

Constitutional law — Constitution of Zimbabwe 1980 — Declaration of Rights — s 22(1) — right of freedom of movement and to reside in any part of Zimbabwe — right of citizen to have spouse reside with her in Zimbabwe – right must be balanced against State interests – need for State to show that some State interest affected

Mudyanduna v *Mukombero & Ors* S-63-03 (Gwaunza JA, Chidyausiku CJ, Sandura JA, Cheda JA & Malaba JA concurring)

The applicant, a Zimbabwean woman, married a Nigerian man in Zimbabwe, both under customary law and in a civil ceremony. He had previously unsuccessfully applied for a residence permit but at the time of the marriage was in Zimbabwe on a visitor's permit. The couple subsequently had a child. The immigration authorities sought to deport him. The applicant sought an order declaring that her constitutional right to reside freely in Zimbabwe would be affected if the man were to be deported. It was contended for the respondents that the right of a State to regulate the entry and residence of aliens within its borders was a principle of international law and that at times the interests of the State in protecting its citizens take precedence over individual constitutional rights. Held: (1) On the facts, the marriage was not one of convenience. (2) The applicant's rights under s 22 could be restricted in the interests of defence, public safety, public order, public morality or public health. This meant that her entitlement must be balanced against these State interests. There was however no evidence that the refusal by the respondents to grant the husband a residence permit was linked to the need to protect any State interest.

Editor's note: see also below, under IMMIGRATION (Marriage of convenience).

Constitutional law — Constitution of Zimbabwe 1980 — Declaration of Rights — s 22(1) — right of freedom of movement etc — right of citizen of Zimbabwe to have spouse reside with her in Zimbabwe — when such right may be interfered with —removal of prohibited persons — State's right to deport prohibited persons — husband already a prohibited person under immigration laws when marriage took place – status not altered by marriage – citizen's rights not infringed if husband deported

Criminal procedure – bail – refusal of where accused charged with "economic" offences – no requirement for State to show even a *prima facie* case – constitutionality of provision

S v *Makamba* S-11-04 (Ziyambi JA)

The amendment to the Criminal Procedure and Evidence Act [*Chapter 9:07*], in terms of which an accused person must be detained for at least 7 days on a mere allegation of committing a specified "economic" offence, without the State having even to show a *prima facie* case, is patently unconstitutional.

Criminal procedure – charge – company – need to cite company as accused – not sufficient to charge director in representative capacity

S v *Wilson & Ors* HH-114-04 (Kamocha J, Karwi J concurring)

The first appellant was managing director of a company which published a newspaper and the second appellant was the editor. They were both, along with a reporter, convicted of criminal defamation. The first accused was purportedly charged as representative of the company although the company was not itself cited as an accused. Held: A director or employee can only be cited as a representative of a company where the company itself is facing criminal charges. It was therefore improper to cite the first appellant as a representative of the company.

Criminal procedure – plea – guilty – procedure following – need for magistrate to be satisfied that plea is genuine and that there is no defence – requirement to alter plea to one of not guilty if any doubt raised, even if such doubt raised in mitigation

S v *Makuvatsine* HH-102-04 (Uchena J, Garwe JP concurring)

Where the accused pleads guilty and the court proceeds in terms of s 272 of the Criminal Procedure and Evidence Act [*Chapter 9:07*], it is important for the magistrate to constantly remind himself of the need to exercise care in canvassing the essential elements of the offence. The magistrate must be careful to guard against the conviction of a person whose answers to questions raise doubt, or do not satisfy him of the accused's guilt or whose answers reveal that the accused may have a defence. The section is aimed at ensuring that only genuine and legally valid pleas of guilty result in convictions, while those with possible defences or are apparently doubtful are altered to not guilty, particularly in the case of persons who are not legally represented. This extends to what the accused person may say in mitigation. If he, even at that stage, says something that causes the magistrate officer to doubt the legal validity of the plea or be not satisfied with the accused's admission of essential elements, acts or omissions or to believe that the accused may have a valid defence to the charge, the magistrate should alter the guilty plea to one of not guilty and require the prosecution to prove the element, act or omission causing doubt or dissatisfaction.

Criminal procedure – record – status of – exclusive memorial of proceedings – amendment of record – limited circumstances in which record may be amended

S v *Muendawoga* HH-10-04 (Bhunu J)

Once a judicial officer has made a written record of court proceedings, that record constitutes the exclusive memorial of the proceedings. Judicial officers, save in exceptional circumstances, are strictly bound by the written record made during the course of proceedings. They may not subsequently supplement, amend or vary the record. Once the proceedings are recorded the record speaks for itself. No one can speak on its behalf, including the author. The record should be left to speak for itself at all material times without interference or adulteration, although patent errors may be corrected or rectified.

Criminal procedure (sentence) – general principles – community service – community service officers – recommendations of – need for court to consider such recommendations – if recommendation not accepted, need for court to state reasons

S v *Banda* HB-72-04 (Cheda J)

Community service officers are trained officers of the court whose main function is to assess the suitability of a candidate for community service. Their recommendations should not be disregarded without good cause. If a recommendation is not accepted, it is essential that the trial court show that it considered the recommendation and why it ignored it. Failure to do so is a misdirection.

Criminal procedure (sentence) – general principles – factors to be taken into account – views expressed by complainant as to what sentence should or should not be imposed – such views to be given proper weight

S v *Kelly* HH-33-04 (Mungwira J, Uchena J concurring)

The attitude of the complainant in a criminal case is relevant to sentence. Where the complainant indicates that it is not his desire to have the accused incarcerated, a sentencing authority ought to attach weight to the expressions of the complainant, as such a factor has an impact on the form of sentence imposed.

Criminal procedure (sentence) – general principles – globular sentence for multiple offences – limited circumstances in which globular sentence appropriate

S v *Chayisva* HH-17-04 (Chinhengo J)

In deciding to pass a globular sentence on a person convicted of more than one offence, a judicial officer must be guided by the following factors (which are not exhaustively stated):
(a) the offences are the same or of a similar nature; and
(b) the offences are closely linked in time; or
(c) they arise out of the same transaction.

Criminal procedure (sentence) – general principles – multiple counts – treating as one for sentence – principles – when a globular sentence may and may not be imposed

S v *Damba & Anor* HH-69-04 (Makarau J)

Where an accused is convicted of multiple offences:
1. The general rule is to impose a separate sentence for each conviction.
2. Where the multiple counts are similar in nature and not merely kindred, and are closely related in terms of time, the sentencing court has an option to either take each count separately or to take all counts as one.
3. The option to take all counts as one need not be taken. It is however preferable that it be taken.
4. The option to take all counts as one is not available where the multiple charges are not similar in nature, even if they are closely linked in terms of time.

5. The option to take all counts as one is not available where the multiple counts are not closely linked in terms of time even if they are similar in nature, unless they are committed as part of an ongoing course of conduct especially in fraud and theft by conversion matters, involving the same complainant and using the same *modus operandi*.

Criminal procedure (sentence) – common law offences – assault with intent to do grievous bodily harm – police officers torturing suspect by beating him on soles of feet – custodial sentence warranted

S v *Reza & Anor* HH-2-04 (Chinhengo & Makarau JJ)

See above, under CRIMINAL LAW (Common law offences – assault with intent to do grievous bodily harm).

Customary law – marriage – validity – how tested – duration of marriage – not relevant to determine validity

Chivise v *Dimbwi* HH-4-04 (Makarau J)

The validity or otherwise of a customary marriage is not tested by how long it has endured but by whether certain formalities and rituals at customary law have been performed. The duration of the union is irrelevant for most practical purposes under customary law. It is however relevant when considering the equitable distribution of the matrimonial estate under the provisions of s 7 of the Matrimonial Causes Act [*Chapter 5.13*].

Customs and Excise – customs duty – value of imported goods – assessment of – selling rate for foreign currency – fixing of – power to fix rate given only to Commissioner-General of the Zimbabwe Revenue Authority – not competent for Minister of Finance to fix selling rate

Benchman Investments (Pvt) Ltd v *Commisisoner-General, Zimbabwe Revenue Authority* HH-90-04 (Hlatshwayo J)

When the applicant sought to import certain motor vehicles, its agent was informed that there value would be assessed using the "selling rate" of local currency to foreign currency fixed by GN 359A of 2002 as read with SI 225 of 2002. This would have resulted in a huge and unexpected increase in the customs duty payable. These two instruments were purportedly made by the Minister of Finance. Held: The notice constituted an attempt by the Minister to designate the selling rate for the purposes of s 115 of the Customs and Excise Act. The power to designate the selling rate was indisputably conferred on the respondent, not on the Minister, so the Notice was invalid.

Customs and excise – forfeiture of goods – boat used for purpose of smuggling – owner unaware of use being made of boat – seizure not peremptory

Ndaza v *Zimbabwe Revenue Authority* HH-79-04 (Kamocha J)

The applicant was in the business of leasing boats on Lake Kariba. A person hired one of his boats and was intercepted attempting to smuggle goods into Zambia. The hirer and his collaborators were arrested and convicted of smuggling offences; the smuggled goods were forfeited. The respondent seized the applicant's boat (presumably acting in terms of s 193 of the Customs and Excise Act [*Chapter 23:02*]). It argued that s 188 of the Act made seizure and forfeiture peremptory, irrespective of whether the owner of the boat knew or ought to have known that the vessel was going to be used for criminal activities by the hirers. Held: to hold this would be to create an offence of strict liability. Smuggling cannot be classified as one of the public welfare offences for which strict liability is appropriate and is accordingly not a strict liability offence. It must be established that there was intention or *culpa* on the part of the owner for liability to attach, and in this case it was accepted that there was no intention or negligence on his part. Accordingly, the boat should be released to the applicant.

Damages – assessment – principles – declining value and reduced purchasing power of money – debt sounding in money – any award must be paid in terms of nominal value, not an amount which has equivalent purchasing power

Damages – assessment – principles – loss resulting in expenditure of foreign currency – permissible for make award in foreign currency

Muzeya NO v *Marais & Anor* HH-80-04 (Chinhengo J)
Where making a claim for a debt sounding in money, the principle of nominalism requires that any award must be paid in terms of its nominal value irrespective of any fluctuations in the purchasing power of currency. This principle does

not apply to loss of future earnings or future support or where a comparison has to be made of previous awards in quantifying non-patrimonial loss.

Where a loss incurred in Zimbabwe will result in expenditure of foreign currency (as where the victim of an accident has to receive treatment outside the country), it is permissible for the court to make an award in foreign currency.

Delict – *actio injuriarum* – extent of – act violating dignity of plaintiff – includes inhuman or degrading treatment of an arrested or detained person

Chituku v *Min of Home Affairs & Ors* HH-6-04 (Makarau J)

See above, under CONSTITUTIONAL LAW (Constitution of Zimbabwe 1980 – Declaration of Rights – s 15(1) – inhuman or degrading punishment or treatment).

Delict — *actio injuriarum* — wrongful attachment — liability of deputy sheriff or messenger — liability of judgment creditor and attorney

Tendere v *Harare City Council* S-66-03 (Chidyausiku CJ, Sandura, Cheda, Ziyambi & Malaba JJA concurring)

See above, under COURT (Officers of — messenger of court and sheriff).

Education – non-governmental school – fees charged by – fees in excess of amount approved by Secretary of Education – courses open to Ministry – no power given to Minister or Secretary to close school

St George's College PTA & Anor v *Minister of Education & Ors* HH-112-04 (Kamocha J)

The Parent-Teachers' Association of a private school mandated the Board of Governors to charge whatever fees were necessary to ensure that educational standards were maintained. The fees charged were above the maximum approved by the Secretary of Education. The Minister caused police to prevent the school from opening and students from attending. Held: If fees above the maximum were charged, it was for the Secretary to take action, which included prosecution. The Minister was not responsible for approving fees. Neither the Secretary nor the Minister had the legal power to close a school. Because the Minister had earlier conceded that the closure of another school was unlawful, costs on the higher scale would be awarded.

Employment – appeal – under Labour Act – against decision of Labour Court – appeal only on question of law – what is a question of law – misinterpretation of facts or basing conclusion on non-existent facts a question of law

TM Supermarket v *Mangwiro* S-57-03 (Gwaunza JA, Chidyausiku CJ & Cheda JA concurring)

An appeal to the Supreme Court against a decision of the Labour Court may only be made on a question of law, which means, among other things, any question which is within the province of a judge instead of the jury. The determination of whether or not a function that was delegated to an employee was one that the employer could delegate was a question of law. A misinterpretation of the facts can also amount to a question of law, as can the basing of a conclusion on non-existent facts.

Employment – appeal – against determination of disciplinary committee under disciplinary code – Labour Relations Tribunal – powers on appeal – where able to determine matter on merits, should do so – when should remit matter for hearing *de novo*

Employment – contract – termination – grounds for – gross negligence in performance of duties – meaning of

Employment – disciplinary proceedings – code of conduct – consultant or observer present and participating in proceedings – no provision for such in code of conduct – presence impliedly forbidden and irregular – proceedings voidable at instance of employee unless irregularity shown not to have caused prejudice

Merchant Bank of Central Africa v *Dube* S-6-04 (Sandura JA, Cheda & Gwaunza JJA concurring)

The respondent was charged with gross negligence in the performance of his duties at the bank he worked for. At the disciplinary hearing at which he was found guilty, a consultant was present who gave his opinion as to whether the acts

charged constituted negligence. The Labour Relations Tribunal, on appeal, held that the consultant's presence constituted an irregularity voiding the proceedings and set them aside, stating that the bank could institute fresh proceedings. Held: (1) the consultant's presence vitiated the disciplinary proceedings, it not being provided for in the code of conduct and the bank not having shown that the irregularity did not prejudice the respondent. (2) The Labour Relations Tribunal should not have determined the matter on the basis of the procedural irregularity. It should have either determined the matter on the merits or, if it was unable to do that, remitted it for hearing *de novo*. In the present case, the Tribunal could, and did in fact, come to a conclusion on the merits. (3) An entire failure to give consideration to the consequences of one's actions or omissions, or a total disregard of one's duty, would constitute gross negligence. On the facts, the respondent was guilty of gross negligence and his dismissal was justified.

Employment – appeal – against determination of disciplinary committee under disciplinary code – Labour Relations Tribunal – Tribunal making finding without factual basis and setting aside decision to dismiss employee – need to show that decision to dismiss was unreasonable in circumstances – effect of failure so to show

Circle Cement (Pvt) Ltd v *Nyawasha* S-60-03

The respondent, who was employed by the appellant company as sister-in-charge of the occupational health, safety and environment department, obtained a place on a course of study at the local university for a diploma in community health. Without having obtained leave of absence from her workplace, she commenced attendance at the University until she was recalled to work, it having been discovered that she had not been granted leave of absence. She had been away from work without leave for nineteen days. She was charged with absence from work for five or more working days without the employer's permission or without reasonable excuse in contravention of the registered employment code of conduct. She admitted that she had not obtained leave of absence from her head of department, but alleged that she was confused as to the person from whom she had been expected to seek leave. She knew before she attended the course that the appellant had no provision for study leave. It was not her defence to the charge that she had a reasonable excuse for her absenteeism. The disciplinary committee recommended her dismissal. On appeal, the Labour Relations Tribunal found that she was genuinely mistaken as to the need to formally apply for leave and set aside the dismissal so that a lesser punishment could be imposed. Held: (1) the suggestion by the Tribunal that the respondent conducted herself in the manner she did because she was genuinely mistaken as to her contractual obligation had no factual basis. Once the appellant had taken the view that the act of misconduct committed by the respondent was a repudiation of contract, the question of a penalty less severe than dismissal would not arise unless it was established that the appellant acted unreasonably in taking a serious view of the offence. (2) There was no basis for contending that the respondent had a reasonable cause for being away from work for nineteen days because she was doing a course from which she would have acquired knowledge, the use of which would have benefited her employer. There was nothing that showed the existence in her mind a belief that she was doing the course to benefit her employer and that the belief caused her to stay away from work for the period in question.

Employment — contract — parties — alienation of undertaking in which person is employed — effect – employee accepting terms less favourable than previous terms – propriety of

Dhege v *Bell Medical Centre* HB-50-04 (Ndou J)

The applicant was employed at a hospital in terms of a contract in terms of which one of his benefits was the provision of a motor car. In this regard, the contract provided that after the employee had used the car for 3 years of more, the employer "may offer the car for sale to the employee to whom the car had been issued for business or personal use". The hospital was sold as a going concern to the respondent. The respondent did not offer the same benefits as the previous employer. In particular, there was no mention of a motor car. The applicant notified the respondent that he wished to purchase the car. He received no reply. When he subsequently resigned, he took the car and offered to pay an appropriate price for it. The applicant sought an order compelling the respondent to sell the car to him; the respondent sought an order for the return of the car. The applicant argued that he was entitled to the car, as under s 16(1) of the Labour Act [*Chapter 28:01*], employees shall not be offered less favourable conditions on transfer or alienation of a going concern. The respondent argued that under s 16(2), it was proper for employees to accept less favourable conditions. Held: (1) The applicant signed the new contract of employment after some deliberations and negotiations, which implied that when he signed the contract, he fully accepted the terms and conditions therein in an informed manner. (2) The contract did not oblige the employer to sell the car to the applicant; it had a discretion. The option to offer for sale cars used by employees was a privilege and not a right. Since the respondent could choose either to sell or not to sell, the applicant could not claim a right to purchase. Even if there was a general practice to sell cars to employees, that did not convert a privilege into a right.

Employment – contract – termination – monies owed to employee on termination – deductions from – what may be deducted – money stolen from employer – not lawful for employer to recover stolen money from terminal benefits

S v *Simon* HH-84-04 (Bhunu J)

The accused was convicted on his plea of theft from his employer. In assessing sentence, the magistrate refused to order compensation on the grounds that the employer could recover the money from the accused's terminal benefits. Held: the circumstances under which an employer may make deductions from an employee's salary or effect set off are specific and exhaustive. Money owed on account of theft is not one of them. By suggesting that the employer could recover its stolen money from the accused's terminal benefits the trial magistrate was directing the employer to act illegally. Compensation should have been ordered.

Editor's note: this decision appears to contradict that given in *Ndebele* v *Industrial Crops Research Institute* HB-65-02, where it was held that the right given by s 13 of the Labour Relations Act [*Chapter 28:01*] to an employee, at the conclusion of a contract of employment, to receive his pay and benefits does not override the employer=s right to set off any liquidated debts owing to him by the employee.

Employment – contract – termination – suspension pending application to terminate employment – when suspension valid – when legislative requirements complied with – letter of suspension issued 4 days after act of misconduct complained of

Ferguson & Ors v *ZCTU & Ors* HB-57-04 (Ndou J)

The respondents were employees of the applicants. There was a labour dispute and the respondents went on an admittedly unlawful strike. A hearing was convened by the Labour Officer and it was agreed among the applicants, union representatives and the labour officer that the respondents should write letters of apology and the applicants would consider whether to reinstate them or not. The respondents, in spite of this, persisted in their strike. Four days later the applicants issued letters formally suspending the employees from duty in terms of the applicable labour regulations. The applicants sought an order *inter alia* authorising them to continue with the disciplinary hearings. It was argued for the respondents that the applicants had failed to comply with the provisions of the legislation, in that the letters of suspension were not issued "forthwith" and did not give reasons for suspension. Held: In deciding whether there has been a compliance with the legislative requirements the object sought to be achieved and the question of whether this object has been achieved are important. The reason for suspension was clear from the letter. The object of the Regulations was not frustrated or materially impaired by the applicants proceeding in the manner they did.

Employment — contract — termination — wrongful dismissal — damages for — requirement for dismissed person to mitigate loss by looking for reasonable alternative employment – not a requirement that he actually secure employment – factors to consider in assessing whether he attempted to mitigate his loss

Fokoseni v *Lobels Bakery* S-20-04 (Gwaunza JA, Sandura & Ziyambi JJA concurring)

The position is now settled that a person who has been wrongfully dismissed from his employment must mitigate his loss without delay, by seeking alternative employment. Once it is accepted that the person attempted to find employment, it should therefore be accepted that he did not "sit around and do nothing". There is a difference between looking for employment and securing it. Cognisance should be taken of the fact that prospects of actually securing employment differ from one person to the other, being influenced by such considerations as the prevailing economic climate, the skills (if any) of the person concerned, experience, age and so on.

Employment – Labour Court – jurisdiction of – limited jurisdiction of High Court to hear labour matters – extent of Labour Court's jurisdiction

Tuso v *City of Harare* HH-1-04 (Bhunu J)

See above, under COURT (High Court – jurisdiction – labour matters).

Employment – strike – right to strike – strike in defence of an immediate threat to the existence of a workers' committee – management effectively dissolving managerial workers' committee by regrading committee members as non-managerial

– a direct attack on existence of committee, entitling members to strike

Employment – workers' committee – managerial workers' committee – right of managerial employees to form committee – dispute over composition of committee – must be referred to Tribunal, not to a labour relations officer

First Mutual Life Assurance v *Muzivi* S-62-03 (Chidyausiku CJ, Cheda and Malaba JJA concurring)

The respondent was employed by the appellant at a grade regarded as a managerial employee. He and others of the same grade decided that they should form a managerial workers' committee to represent their interests. Other employees in another grade, who were regarded for practical purposes as managers, also became members of the committee. The appellant disputed their right to do so and referred the dispute to a labour relations officer. The officer referred the matter to the Labour Tribunal, but also directed the committee to suspend its operations until the Tribunal had made a ruling. While the Tribunal's ruling was pending, the appellant regraded the respondents and his colleagues to non-managerial posts, which move had the practical effect of dissolving the committee. The respondent and his colleagues went on strike. The appellant retaliated by dismissing him. Held: (1) In terms of s 104 of the Labour Act [*Chapter 28:01*], employees are entitled to go on strike without observing any formalities if their action is in defence of an immediate threat to the existence of a Workers Committee. (2) As there was a dispute over whether members of the committee were managerial employees, the matter should have been referred to the Tribunal directly, not to a labour relations officer. The labour relations officer had no jurisdiction to adjudicate in the dispute and her order suspending the committee was incompetent. It could not therefore be argued that there was no committee in existence. (3) By regrading the respondent and his colleagues and making them ineligible to serve on a managerial workers' committee, the appellant was making an actual and direct attack on the existence of the managerial workers committee. The members were thus entitled to go on strike.

Employment – unfair labour practice – refusal to negotiate wages – "negotiate" – meaning of – a discussion leading to a conclusion – refusal to grant an increase not a refusal to negotiate

TM Supermarkets v *TM National Workers' Committee* S-19-04 (Cheda JA, Sandura & Gwaunza JJA concurring)

The respondent workers' committee demanded a wage increase for various of the appellant's employees. The appellant refused to grant an increase. The Labour Tribunal found that the appellant had committed an unfair labour practice as defined in s 8 of the Labour Act [*Chapter 28:01*], in that it had refused to negotiate in good faith with the workers' committee. Held: negotiation means a discussion between the parties leading towards a conclusion on a certain issue. It does not necessarily mean a discussion in which one party gives in to the demands of the other. The fact that the appellant refused to award what the respondent asked for suggests that the issue was discussed. The fact that the appellant did not agree to the demands did not mean that there was no negotiation. There is a difference between refusing to negotiate and refusing to grant an increase.

Evidence – medical evidence – criminal case – need for doctor to be called when affidavit unclear or inconsistent with oral testimony

S v *Reza & Anor* HH-2-04 (Chinhengo & Makarau JJ)

See above, under CRIMINAL LAW (Common law offences – assault with intent to do grievous bodily harm).

Family law – husband and wife – divorce – distribution of property following divorce – customary law marriage – need for legislative intervention to clarify requirements

Chivise v *Dimbwi* HH-4-04 (Makarau J)

Decisions by the superior courts on the distribution of the matrimonial property after a customary law marriage has been terminated have caused confusion that can only be resolved by legislative intervention.

Family law – husband and wife – property rights – matrimonial home – rights of wife to the matrimonial home – limits on – what matrimonial home is – right of husband to dispose of matrimonial home

***Maponga* v *Paponga & Ors* HH-21-04 (Makarau J)**

The applicant was the wife of the first respondent. They had set up a matrimonial home in one town but later moved elsewhere, though retaining ownership of the first house. While they were living in the other town, the first respondent's son by a previous marriage lived in the first house, the first respondent having unilaterally ceded his rights in the property to his son. The applicant's marriage foundered. She sought an order declaring the first house to be the matrimonial home and allowing her to reside there without interference. Held: (1) Whether a particular abode constitutes the matrimonial home is a fact to be determined by where the parties set up home and ordinarily reside. It does not have any direct bearing on the property owned by either or both of the parties. It usually coincides with the property owned by either of the parties but this is not necessarily the qualifying factor. (2) The rights of a wife to property belonging to her husband are personal against the husband and arise from her right to *consortium* and the right to be maintained by him. (3) The wife's status as such does not grant her any right to property that the husband has that is not the matrimonial home. She only has limited rights to the matrimonial home that she and the husband set up. These rights are personal against the husband and can be defeated by the husband providing her with alternative suitable accommodation or the means to acquire one. The husband can sell the roof from above her head if he does so to a third party who has no notice of the wife's claims, thus completely alienating the matrimonial home without making any reference to the wife. (4) Only where the third party associates with the husband to defraud the wife of her right on the matrimonial home is the wife's right, derived from her status, is upheld. However, the wife must prove collusion between her husband and the third party to render her homeless. Such collusion was not shown in this case.

Immigration – prohibited immigrant – declaration by Minister that person is a prohibited immigrant – reasons for declaration – Minister not entitled to refuse to disclose reasons to the court

***Ngaru* v *Chief Immigration Officer & Anor* S-26-04 (Gwaunza JA, Chidyausiku CJ, Sandura JA, Ziyambi JA & Malaba JA concurring)**

***See above, under* CONSTITUTIONAL LAW (Constitution of Zimbabwe 1980 – Declaration of Rights – s 18).**

Immigration – Immigration Act [*Chapter 4:02*] – s 36(1)(a)(ii) – using forged passport – use must be for one of the stated purposes – using passport for another purpose not a contravention of section

S v *Munyuki* HH-207-03 (Paradza J)

The accused had obtained a forged Malawian passport which showed her to be a citizen of Malawi, which in fact she was not. She presented the passport when she was attempting to buy air tickets. She was convicted on her plea of contravening s 36(1)(a)(ii) of the Immigration Act. Held: the conviction was improper. The section penalised a person who used a forged passport for the purpose of entering, remaining in or departing from Zimbabwe in contravention of the Act. The accused had not "used" the passport for that purpose.

Immigration — marriage of convenience — proof that marriage is one of convenience – factors to consider – speed with which marriage arranged – relative ages of spouses – fact that a child born of the marriage

Mudyanduna v *Mukombero & Ors* S-63-03 (Gwaunza JA, Chidyausiku CJ, Sandura JA, Cheda JA & Malaba JA concurring)

The applicant, a Zimbabwean woman, married a Nigerian man in Zimbabwe, both under customary law and in a civil ceremony. He had previously unsuccessfully applied for a residence permit but at the time of the marriage was in Zimbabwe on a visitor's permit. The couple subsequently had a child. The immigration authorities sought to deport him. They argued that the marriage was one of convenience because it was not possible for all the customary law formalities to have been completed in the limited time available and because the husband was younger than the applicant. The applicant sought an order declaring that her constitutional right to reside freely in Zimbabwe would be affected if the man were to be deported. Held: (1) the onus of showing that the marriage was one of convenience lay on the respondents. (2) The period within which a marriage is arranged and contracted is not decisive. What is decisive is the purpose for which the marriage is contracted, and what happens thereafter. (3) The presumption in favour of a valid marriage is strengthened where a child has been born

to the parties concerned, for then an additional consideration comes into play: the legitimacy of the child. (4) The fact that the applicant was some five years older than her husband was not an indication of the marriage having been one of convenience. The argument to the contrary was premised only on the societal perception and attitude that a man must be older than his wife, not the other way round.

Editor's note: *see also above, under* CONSTITUTIONAL LAW (Constitution of Zimbabwe 1980 — Declaration of Rights — s 22(1) — right of freedom of movement and to reside in any part of Zimbabwe).

Intellectual property – copyright – meaning of – limits to what is protected – artistic works – what is protected – creativity in choice and arrangement of ideas etc – ideas themselves not protected

S v *Chiadzwa* HH-28-04 (Chinhengo J, Makarau J concurring)

See above, under CRIMINAL LAW – statutory offences (Copyright Act [*Chapter 26:10*])

International law B sovereign immunity B international organization granted immunity under Privileges and Immunities Act [*Chapter 3:02*] B extent of immunity from suit – commercial contract entered into by such organization B such an act *jure gestionis* restricting immunity

International Committee of the Red Cross v *Sibanda & Anor* S-48-03 (Sandura JA, Malaba & Gwaunza JJA concurring)

An international organisation, such as the International Committee of the Red Cross, enjoys immunity from suit and legal process subject to the provisions of international law, and the doctrine of restrictive immunity applies to it. This is to the effect that a foreign sovereign would enjoy immunity from suit and legal process where the relevant act which forms the basis of the claim is an act "*jure imperii*", i.e. a sovereign or public act. On the other hand, he would not enjoy such immunity if the act which forms the basis of the claim is an act "*jure gestionis*", i.e. an act of a private law character such as a private citizen might have entered into. It cannot have been the intention of the legislature to grant absolute immunity from suit and legal process to such an organisation when a foreign sovereign did not enjoy such immunity. A contract of employment between such an organization and its employee is an act of a private law character such as a private citizen might have entered into and a dispute over it would be subject to the jurisdiction of the local courts.

Interpretation of statutes – intention of legislature – how to be ascertained – speculative opinion as to what legislature probably would have meant – factors to consider in arriving at such opinion

Mukwereza v *Minister of Home Affairs & Anor* S-27-04 (Gwaunza JA, Sandura & Cheda JJA concurring)

The appellant, a police constable, had been convicted in the magistrates court of assaulting a member of the public. He was sentenced to a fine and in addition a suspended term of imprisonment. The Commissioner of Police discharged the appellant from the Police Force, relying on the provisions of s 48 of the Police Act. It was argued for the appellant that the Commissioner had no such power, as discharge was not permissible where only a fine was imposed and the section would not apply where a sentence was made partly of a penalty which entitled the Commissioner to discharge and partly of a penalty which did not entitle him to do so. Held: (1) The "intention of the Legislature" may signify anything from intention embodied in positive enactment to speculative opinion as to what the legislature probably would have meant, although there has been an omission to enact it. What was at issue is what Parliament might have intended to happen in cases where one part of a sentence fell within the ambit of the section in question, while the other did not. The court could resort to speculative opinion as to what the legislature probably would have meant. (2) In such speculation, the court must consider a number of factors: (a) one of the main purposes of the Police Act is to provide for the control of the Police force; (b) the question of police discipline; and (c) what the Legislature has actually enacted, expressly or impliedly. (3) The police's main responsibility is to maintain law and order. A member who commits an offence that attracts imprisonment acts against such responsibility. The intention of the Legislature is that such a member be dealt with severely. The Legislature must have intended that a member who has been sentenced to a term of imprisonment without the option of a fine, irrespective of other dimensions of the same sentence which may not be applicable, be visited with any of the penalties set out in s 48.

Land – acquisition – acquisition order issued under s 8 of Land Acquisition Act [*Chapter 20:10*] – effect – acquiring authority becomes owner of land even though application pending before Administrative Court for confirmation of order

Airfield Investments (Pvt) Ltd v *Minister of Lands & Ors* S-36-04 (Malaba JA, Chidyausiku CJ & Cheda JA concurring)

The appellant owned a farm. The Minister of Lands issued a notice for the compulsory acquisition of the farm for resettlement purposes. Although the appellant lodged an objection, the Minister then issued a notice under s 8(1) of the Land Acquisition Act [*Chapter 20:10*], acquiring the farm, and allocated the farm to an individual, the fifth respondent. The appellant refused to vacate the farm and hand it to the fifth respondent. It sought an interdict preventing the Minister of proceeding with the acquisition pending the determination of the constitutionality of the relevant sections of the Act. Held: (1) when the Minister issued the notice under s 8 of the Act, the acquiring authority became of owner of the land. All the appellant had left was the right granted by s 9 to remain on the farm for a limited period. (2) The acquiring authority becomes the owner of the land even though an application is pending before the Administrative Court for confirmation of the acquisition order. (3) An interim interdict is not a remedy for past invasions of rights and will not be granted to a person whose rights in a thing have already been taken from him by operation of law at the time he makes an application for interim relief. At the time the appellant applied for the interim relief all the rights of ownership it had in the land had been taken by means of the order of acquisition and vested in the acquiring authority. The acquisition of the land by the State was a *fait accompli,* all rights of ownership having been extinguished on the appellant's part. The appellant was in contravention of s 9 of the Act when it applied for the interdict. An interim interdict could not be granted for the protection of the illegal activities of the appellant.

Landlord and tenant — tenant — statutory tenant – ejectment — grounds for — premises required for personal residential use by owner of property — eviction not permissible unless Rent Board has first determined that eviction fair and reasonable in circumstances

Matambanadzo v *Goven* S-23-04 (Sandura JA, Chidyausiku CJ & Cheda JA concurring)

The respondent bought a flat of which the appellant was tenant. Her lease was due to expire a few months later but when it did she refused to vacate, although the respondent wanted the flat for his personal use. The respondent wrote to the Chairman of the Rent Board, seeking a certificate in terms of s 30(4) of the Rent Regulations 1982, to the effect that the requirement that the lessee vacate the dwelling was fair and reasonable, and the date specified in the certificate for the vacation of the dwelling had passed. After some considerable time the respondent was informed by the responsible Ministry that the Chairman had retired and that he would be informed when a replacement had been appointed. The respondent then obtained an order from the High Court, directing the Chairman to consider the matter within 7 days, failing which the court would grant relief. The court subsequently issued an ejectment order. Held: the certificate was a prerequisite to the granting of the eviction order. Without it, the High Court did not have the power to grant an eviction order.

Legal practitioner – conduct and ethics – conflict of interest – meaning of – lawyer taking instructions from one party then representing opposing party at the action – when information obtained in confidence may be disclosed

Mutanga v *Mutanga* HB-67-04 (Cheda J)

The legal practitioner who appeared for the respondent husband in a matrimonial dispute had originally taken instructions from the applicant wife. Held: Because of the conflict of interest, he should not have acted for the respondent against the applicant from whom he had initially obtained instructions. A conflict of interest is one which would likely to affect adversely the judgment of the lawyer on behalf of or his loyalty to a client or prospective client or which the lawyer might be prompted to prefer to the interest of the client or prospective client. A lawyer must therefore at all costs avoid acting against a former client in circumstances where, whether or not the matter at hand is contentious, there is a likelihood or a danger of leaking information obtained in confidence to the prejudice of the former client. The confidence of the client is absolute and must be preserved by his attorney except to the extent that disclosure may be rendered necessary or permissible. This confidence embraces all oral and documentary information respecting the client's affairs gained in acting for him whether from the client himself or from any other source whatsoever. An exception to this general rule is that an attorney is obliged to disclose confidential information upon request by an executor or administrator of a deceased's estate, curator or trustee provided that such information is essential in the proper administration of justice and nothing else.

Legal practitioner – conduct and ethics – use of intemperate language in statements and pleadings – to be discourage, particularly in labour relations matters

Ferguson & Ors v *ZCTU & Ors* HB-57-04 (Ndou J)

The use of such strong language in pleadings and affidavits, especially in the field of labour relations when emotions are usually high, should be discouraged. Although we live in an egalitarian age and modes of speech in court proceedings which are less than refined are to be expected, there are limits to what should be tolerated in a court of law.

Legal practitioner – privilege – lawyer-client privilege – extent of privilege – not absolute nor specifically guaranteed under Constitution – limitations on lawyer-client privilege

Law Society of Zimbabwe v *Minister of Transport & Anor* S-59-03 (Chidyausiku CJ, Sandura, Cheda, Malaba & Gwaunza JJA concurring)

See above, under CONSTITUTIONAL LAW (Constitution of Zimbabwe 1980 – Declaration of Rights – s 20 – right to freedom of expression, to receive and impart ideas etc – lawyer-client privilege)

Local government – mayor – suspension of by Minister – consequences of suspension – no discretion given to Minister once mayor is suspended – right of Minister to seek interdict where suspension defied

Minister of Local Government v *Mudzuri & Anor* HH-62-04 (Gowora J)

The applicant Minister had suspended the elected Mayor of Harare in terms of s 54(2)(a) of the Urban Councils Act [*Chapter 29:15*]. In defiance of the order, the Mayor attended a meeting of mayors and later reported for duty at the city council. The Minister sought an interdict preventing the Mayor from exercising any of the functions of his office. The Mayor did not seek an order declaring his suspension unlawful and arbitrary, although this was raised during the court hearing. Instead, it was argued that the interdict should not be granted, the argument being that the normal grounds for the grant of an interdict had not been proven. Held: (1) once a mayor has been suspended in terms of s 54(2)(a), he may not carry out any of the functions that are referred to in s 64. The provisions of s 54(2) are peremptory and the Minister has no discretion at all in the matter, as the exercise of the functions of mayor during the period of suspension is prohibited by the Act and not by a decision of the Minister. In the absence of compliance by the mayor with the provisions of the Act, it then behoves the Minister, as the official responsible for the administration of the Act, to ensure that the provisions of the Act are abided with. It would be absurd to find that the Minister did not have a clear right entitling him to seek an interdict. (2) Where an authority charged with certain administrative functions makes a decision which is thereafter openly defied, such defiance causes impairment to the authority of the law. It would be erroneous to conceive of harm or injury merely as actionable wrongs which can be claimable in monetary terms. It could not be doubted that the Minister suffered an injury. (3) There was no other remedy available to the Minister. Accordingly, the interdict would be granted.

Military law – court martial – appeal against decision of – when certificate of appeal required – bail pending appeal – not competent for any court to grant bail

Attorney-General v *Masasi* HH-77-04 (Hungwe J)

The respondent was convicted by court martial and sentenced to a term of imprisonment. The Attorney-General consented to the grant of bail pending appeal but later applied to have the bail order revoked, on two grounds. The first was that the grant of bail pending an appeal from a court martial was not competent; the second was that the respondent had failed to obtain an appeal certificate under s 80(1)(b) of the Defence Act [*Chapter 11:02*]. Held: (1) a certificate of appeal is only required in those instances where the appeal is not based on the usual grounds of appeal i.e. a finding of fact or a conclusion of law or both a finding of fact and a conclusion of law. A certificate may be required where, for example, a convict is not legally represented and is unable to say whether the ground, as formulated by him, is a ground of appeal on a question of law or on a question of fact or both. He will have to seek a certificate of appeal certifying as sufficient the ground as formulated by him. (2) The plain and unambiguous meaning of s 80(4) is that the fact that an appeal or application for an appeal certificate has been lodged shall not interrupt the running of the sentence imposed. It was incompetent for

both parties to have consented to the grant of bail in the face of an express prohibition against an order whose effect would be to suspend the operation of the sentence imposed. As the order was a result of an error common to both the parties and the court, it was competent for the court to correct that order.

Police – police officer – discipline – officer convicted and sentenced in a magistrates court – sentence consisting of fine plus suspended period of imprisonment – subsequent discharge of member by Commissioner – whether Commissioner entitled to discharge member

Mukwereza v *Minister of Home Affairs & Anor* S-27-04 (Gwaunza JA, Sandura & Cheda JJA concurring)

See above, under INTERPRETATION OF STATUTES (Intention of legislature).

Posts and telecommunications – licence to operate cellular telephone service – amendment of licence – requirement to notify licensee and give him opportunity to make representations – regulations having effect of amending licence – regulations invalid

Econet Wireless (Pvt) Ltd v *PTC & Ors* HH-25-04 (Omerjee J)

The applicant company had been issued a licence, valid for 15 years, to operate a limited facility for the transmission and receipt of international cellular telephone traffic, originating and terminating in the applicant's network. The Minister published regulations which put in place a mechanism for the control and monitoring of international telecommunications traffic in the hands of the third respondent, a State-owned cellular telephone company. Held: the effect of the regulations was to amend the applicant's licence. Section 42(2) of the Postal and Telecommunications Act [*Chapter 12:05*] made it mandatory for the Postal and Telecommunications Authority to give prior notice in writing of its notice to amend the licence including the nature of the proposed amendment and to afford the affected party the opportunity to make representations. As no consultation had taken place, the section had not been complied with, and the regulations were null and void insofar as they purported to amend the applicant's licence.

Practice and procedure B application B declaratory order B when application may be treated as such rather than as application for review B allegation that proceedings under consideration were a nullity due to failure to properly appoint presiding official B not an application for review of the proceedings – declaratory order granted

Dogo v *Tedco Mgmt Svcs (Pvt) Ltd* HH-71-04 (Gowora J)

The applicant was dismissed from her employment after having gone on strike. A disciplinary hearing in terms of the applicable code of conduct took place before her dismissal. Well out of the time allowed for instituting review proceedings, she brought an application to set aside the proceedings. Various procedural irregularities were alleged. It was also alleged that the official who dealt with the matter was not properly appointed. It was argued for the applicant that what was being sought was a declaratory order, so it was not necessary to seek condonation for the late institution of review proceedings. Held: (1) most of the points raised related to procedural irregularities which could only be dealt with by way of review and thus were not properly before the court. (2) It was necessary for the respondent to prove that the official had been properly appointed, and it failed to do so. He therefore had no jurisdiction to administer the code of conduct and any act performed by him as a designated officer was as a consequence null and void.

Practice and procedure – attachment – to found jurisdiction – what property may be attached – property in which defendant has beneficial interest – interest falling short of ownership

Stanmarker Mining (Pvt) Ltd v *Metallon Corporation Ltd* S-51-03 (Sandura JA, Cheda & Gwaunza JJA concurring)

An applicant for attachment to found jurisdiction against a *peregrinus* must show that (1) it has a *prima facie* cause of action against the defendant; (2) the defendant is a *peregrinus*; and (3) the defendant is within the area of jurisdiction of the court or property in which the defendant has a beneficial interest is within that area. Such property includes the defendant's incorporeal rights. The test of whether the property can be attached to found jurisdiction is whether what the defendant owns is capable of being attached and sold in execution.

Practice and procedure – execution – sale – validity – attachment invalid as property not wholly owned by judgment debtor – sale also invalid, irrespective of *bona fides* of purchaser

Gonyora v *Zenith Distributors (Pvt) Ltd & Ors* HH-44-04 (Guvava J)

The applicant was married to the fourth respondent. They jointly owned a dwelling house. The fourth respondent was sued for a debt and default judgment was taken against him. The judgment creditor had the house sold in execution. The messenger of court did not, as required by Order 26 r 7(4) of the Magistrates Court Rules, ask the judgment debtor to deliver to him all the documents relating to title to the property. These would have shown that the property was jointly owned. Held: The applicant's portion was not capable of attachment, so the attachment of the house was a nullity. Irrespective of the *bona fides* of the purchaser at the sale in execution, the sale was thus defective and must be set aside.

Practice and procedure – interdict – application – requirements for – need for applicant to be acting lawfully – cannot be granted to protect unlawful activities even pending constitutional application

Practice and procedure – interdict – application – purpose for which interdict sought – interdict sought to protect rights in property – property already taken from applicant by operation of law – interdict may not be granted for such purpose

Airfield Investments (Pvt) Ltd v *Minister of Lands & Ors* S-36-04 (Malaba JA, Chidyausiku CJ & Cheda JA concurring)

See above, under LAND (Acquisition – acquisition order).

Practice and procedure – interdict – final interdict – grant of – grounds for – clear right to interdict – Minister responsible for administration of Act – right to ensure Act complied with – injury suffered or apprehended – no confined to actionable wrongs – defiance of decision by Minister made under Act – Minister suffering injury thereby

Minister of Local Government v *Mudzuri & Anor* HH-62-04 (Gowora J)

See above, under LOCAL GOVERNMENT (Mayor – suspension of by Minister).

Practice and procedure – interdict – grant of – interdict affecting employees' rights under labour legislation – need to balance such rights against rights of employers not to have business interfered with

Ferguson & Ors v *ZCTU & Ors* HB-57-04 (Ndou J)

The respondents were employees of the applicants. There was a labour dispute and the respondents went on an admittedly unlawful strike. In spite of an agreement reached between the applicants, the trade union, and a labour officer, the respondents persisted in their strike. Four days later the applicants issued letters formally suspending the employees from duty in terms of the applicable labour regulations. The applicants sought an order *inter alia* interdicting the employees and the trade union officials from coming near the applicants' premises. Held: The interdict sought would place limitations on all the respondents' freedom of association and the right to organisation as acquired by the rules of international labour law and the national labour legislation. Nonetheless, the applicants had established the right to an interdict which would prevent their business from being interfered with.

Practice and procedure – interdict – interim interdict – order discharging such interdict – appeal against order – does not revive interim interdict – fresh application must be made

WLSA & Ors v *Mandaza* HH-35-04 (Hungwe J)

See above, under APPEAL (Noting of – effect).

Practice and procedure – judgment – claim expressed in foreign currency – when permissible to give judgment in foreign currency – loss resulting in expenditure of foreign currency

Muzeya NO v *Marais & Anor* HH-80-04 (Chinhengo J)

See above, under DAMAGES (Assessment – principles – loss resulting in expenditure of foreign currency).

Practice and procedure – judgment – default judgment – when may be granted – need for claim to be for "a debt or liquidated demand" – meaning of – liability conditional on occurrence of a future event – not a liquid claim – acceptance of liability for damaged items without agreement as to method of ascertaining cost or value of damage – also an illiquid claim

Pioneer Properties (Pvt) Ltd v *Ncube* HH-23-04 (Chinhengo J)

The plaintiff was the defendant's landlord. The lease provided that the lessee was liable for the cost of repair of certain specified items if these were found to be damaged at the end of the lease. The plaintiff cancelled the lease and sued for ejectment. He repaired certain items and claimed the cost from the defendant. The defendant failed to enter appearance to defend and the plaintiff sought default judgment. Held: default judgment may be granted if the plaintiff's claim is for a debt or liquidated demand only. Different procedures apply where the claim is not for a debt or liquidated demand only or where the claim is for a debt or liquidated demand only but argument in relation to any aspect of the suit is considered necessary. A liquidated demand is one based on a liquid document, which is one that on a proper construction evidences by its terms and without resort to extrinsic evidence (a) an acknowledgment of indebtedness; (b) in an ascertained amount of money; (c) the payment of which is due to the creditor. Where the obligation to pay is dependent upon the fulfilment of a condition, there is no obligation to pay until the condition is fulfilled; and where the document shows that the obligation is conditional, then it does not appear from the document itself that any obligation has ever come into existence; and the document is not a liquid document and provisional judgment cannot be given. In this case, the lessee's liability depended on the happening of an event in the future, i.e. that the specified items had been damaged and were no longer in good order. This contingency would render both the liability of the lessee and the lease agreement illiquid because it must be established that the event had happened and that the lessor had in fact incurred the expenditure. Although the defendant accepted liability in advance in terms of the lease, the method by which the value or cost of damage to the items was not provided for. So even though liability was admitted, the plaintiff's claim remained illiquid in view of the absence of agreement on the method of calculating the cost of repairs or the value of the damaged fittings. In addition, the claim was one for damages rather than being a vindicatory one. Consequently, default judgment could not be granted and the plaintiff would have to follow the other procedures provided in the Rules.

Practice and procedure – judgment – setting aside of judgment erroneously granted – nature of error justifying court in setting aside judgment – error limited to error made by court

Tiriboyi v *Nyonijani & Anor* HH-117-04 (Makarau J)

The purpose of r 449 of the High Court Rules 1971 is to enable the court to revisit its orders and judgments to correct or set aside its orders and judgements given in error, in situations where to allow such to stand on the excuse that the court is *functus officio* would result in an injustice and would destroy the very basis upon which the justice system rests. It is an exception to the general rule, and must be resorted to only for the purposes of correcting an injustice that cannot be corrected in any other way. The rule goes beyond the ambit of mere formal, technical, and clerical errors and may include the substance of the order or judgment. The rule is designed to correct errors made by the court itself and is not a vehicle through which new issues and new parties are brought before the court for trial. The three requisites that have to be satisfied for relief under the rule are:

1. that the judgment was erroneously sought or granted;
2. that the judgment was granted in the absence of the applicant; and
3. that the applicant's rights or interests are affected by the judgment.

Misjoinder, where the court is unaware of the interested party who has not been cited, is not an error on the part of the court granting the order and cannot be corrected in terms of r 449.

Practice and procedure – parties – *locus standi* – applicant for rescission – what applicant must show to establish *locus standi*

Matambanadzo v *Goven* S-23-04 (Sandura JA, Chidyausiku CJ & Cheda JA concurring)

The respondent bought a flat of which the appellant was tenant. Her lease was due to expire a few months later but when it did she refused to vacate, although the respondent wanted the flat for his personal use. Without having obtained a certificate from the Rent Board in terms of s 30(4) of the Rent Regulations 1982, to the effect that the requirement that the lessee vacate the dwelling was fair and reasonable, and the date specified in the certificate for the vacation of the dwelling had passed, the respondent obtained an order from the High Court, directing the Chairman to consider the matter within 7 days, failing which the court would grant relief. The court subsequently issued an ejectment order. An application by the appellant for rescission of the first order was dismissed. The appellant's *locus standi* to apply for rescission was challenged. Held: (1) Any party affected by a judgment or order that was erroneously sought or granted in his absence may apply for the rescission of the judgment or order. (2) To show *locus standi*, the applicant must show that he has an interest in the subject-matter of the order sufficiently direct and substantial to have entitled him to intervene in the original application upon which the order was granted. The appellant had such an interest because the effect of the order was the removal of the protection granted to her as a statutory tenant by s 30(4) of the Regulations. She would have been entitled to intervene in the original application for that reason.

Practice and procedure – parties – *locus standi* – former owner of land acquired by State – challenge to allocation of land – no reversionary right to land – only speculative hope that Administrative Court would not confirm acquisition – no *locus standi*

Airport Game Park (Pvt) Ltd & Anor v *Karidza & Anor* S-18-04 (Ziyambi JA, Chidyausiku CJ & Malaba JA concurring)

The applicant companies owned a farm near Harare. The farm was compulsorily acquired by the respondent Minister and allocated to an individual, the first respondent. The applicants sought the ejectment of the first respondent, arguing that the allocation to him was improper for various reasons. Held: the applicants had no *locus standi*. The land had been lawfully acquired and ownership now vested in the Minister. The applicants had no possessory or contractual rights against the first respondent. Nor did they have a reversionary right, based on a condition which provided that, on the happening of a prescribed event, ownership of property reverted to the previous owner. All the applicants had was the hope that the Administrative Court would find in their favour and that the land would revert to them. This did not give them *locus standi*.

Practice and procedure – rescission – application for – who may apply for rescission of judgment or order – any party affected by order erroneously granted in party's absence – when party can be said to be affected

Matambanadzo v *Goven* S-23-04 (Sandura JA, Chidyausiku CJ & Cheda JA concurring)

See above, under PRACTICE AND PROCEDURE (Parties – *locus standi* – applicant for rescission).

Practice and procedure – set down – unopposed matter – party barred for failure to file heads of argument – whether such matter is "unopposed" – when such matter may be set down on unopposed roll

Trustees, Koefman Bros Trust v *Gruer* HH-116-04 (Makarau J)

The applicant sought summary judgment against the respondent. That application was opposed but the respondent's lawyer did not file heads of argument in time and the respondent was barred. The applicant sought to have the matter set down on the unopposed roll, arguing that since the respondent was automatically barred in terms of the rules, the matter was now unopposed and there was no rule barring the applicant from having it enrolled on the unopposed roll. Held: (1) A respondent who does not file heads of argument in terms of r 282(2) is automatically barred. He may not appear in any subsequent proceedings except for the purpose of applying for the removal of the bar. (2) It is strictly not correct to say that in an opposed application where the respondent has not filed heads, the application becomes unopposed. While the respondent has no right of audience to move against the granting of the application, the application is different from one where no opposing affidavit has been filed. In such a case no competing facts or conclusions at law are placed before the court. Where the respondent is simply barred, his opposing affidavit is before the court and it does constitute evidence before the court, enabling the court to resolve the matter on merit as provided for in r 288 (2b). (3) Rule 238, which provides

for the set down of opposed matters upon receipt of the heads of argument by the applicant, does not preclude the setting down of such matters on the unopposed roll in the event that the respondent is barred before the matter is set down on the opposed roll. It saves time and costs for matters where the respondent has been barred for want of heads be dealt with in the motion court. (4) However, the practice has been that matters set down on the opposed roll are always set down on notice to the respondent, whether or not he has been barred, thus giving him a chance to be heard before the matter is determined on the merits or is referred to the unopposed roll. As the respondent had not been given any notice of set down, he would be prejudiced of the matter were to be set down on the unopposed roll.

Property and real rights – immovable property – rights in and to – personal rights – not capable of registration – contract providing for personal right in land – invalidity of

Goncalves v *Rodrigues* HH-197-03 (Ndou J)

The parties, who were not married to each other, lived as husband and wife in a house registered in the name of the woman. The man provided the money for the deposit on the purchase price and paid for several improvements which improved the value of the house. They drew up a notarial deed, which provided that in the event of the relationship becoming difficult and the parties separating, the property would be sold to the best advantage and the proceeds divided. The deed was not registered. The relationship ended and the man brought an action to have the property sold. The woman argued that it should be treated as being of no effect, as it gave a personal right in immovable property. Held: (1) the notarial deed did not comply with the formalities required by the Deeds Registries Act [*Chapter 20:05*] and was thus not validly contracted. The Act provides that registration is required for the derivative acquisition of ownership or limited real rights to land. Here there was no registration of joint ownership of the land in line with the contents of the notarial deed, so according to the Deeds Registry the property was the sole and absolute ownership of the defendant. (2) However, the court will, however, assist parties to an "invalid" contract where considerations of equity and justice justify the prevention or avoidance of enrichment by one party at the expense of the other. The requisites for liability for an action for unjust enrichment are: (a) the defendant must be enriched; (b) the plaintiff must have been impoverished by the enrichment of the defendant; (c) the enrichment must be unjustified; and (d) the enrichment must not come within the scope of one of the classical enrichment actions; (e) there must be no positive rule of law which refused an action to the impoverished person. All the requirements were satisfied in this case: the defendant was enriched by the improvements to the disputed property, with the plaintiff being correspondingly impoverished. There was no justification for the enrichment. Consequently, the plaintiff's prayer would be granted.

Property and real rights – reversionary right – what is – requirement for a condition under which ownership would revert to previous owner on occurrence of a prescribed event

Airport Game Park (Pvt) Ltd & Anor v *Karidza & Anor* S-18-04 (Ziyambi JA, Chidyausiku CJ & Malaba JA concurring)

See above, under PRACTICE AND PROCEDURE (Parties – *locus standi*).

Revenue and public finance – customs duty – assessment of value of imported goods – selling rate of foreign currency – power to fix rate given only to Commissioner-General of the Zimbabwe Revenue Authority

Benchman Investments (Pvt) Ltd v *Commissioner-General, Zimbabwe Revenue Authority* HH-90-04 (Hlatshwayo J)

See above, under CUSTOMS AND EXCISE (Customs duty – value of imported goods).

Revenue and public finance – income tax – fees paid to non-resident – withholding tax on – commission paid to independent operators outside Zimbabwe who sourced clients for safari operator in Zimbabwe – commission paid outside Zimbabwe – not "fees" as defined – Zimbabwean operator not a "payer" as defined

Sunfresh Enterprises (Pvt) Ltd v *Zimbabwe Revenue Authority* HB-78-04 (Cheda J)

The applicant, a Zimbabwean company, ran safari operations in Zimbabwe. Independent operators outside Zimbabwe dealt with clients who required the services in Zimbabwe of the applicant. The applicant's relationship with the independent

operators was that it engaged them to market their operations and the particular animals on offer for hunting. During an audit the respondent, the revenue authority, found that all taxes due and all amounts earned in foreign currency by the applicant had been declared, save for a withholding tax on commission paid to a foreign independent operator. It sought to garnish the amount it claimed was due as non-residents' tax due on fees, due under s 30 of the Income Tax Act [*Chapter 23:06*]. The applicant argued that it was not a "payer" as defined in the 17th Schedule to the Act, nor were the amounts paid to the external operators "fees" as defined. Held: (1) the definition of fees limited the meaning to an amount whose source is within Zimbabwe. In this case, the source was foreign and was paid by the client directly to the agent and not to the safari operator who conducted his business in Zimbabwe. (2) The person paying commission was a non-resident, so the applicant could not be a "payer" as defined. (3) There was no mechanism provided to allow the respondent to make an assessment in respect of taxes not held by the applicant. The commission withheld was outside the country and as such could not be legally assessed by the respondent.

Statutes – Access to Information and Protection of Privacy Act [*Chapter 10:27*] – ss 79, 80, 83 and 85 – constitutionality of sections

Association of Independent Journalists & Ors v *Minister of State for Information & Ors* S-136-02 (Chidyausiku CJ; Cheda, Ziyambi & Malaba JJA concurring, Sandura JA dissenting in part)

See above, under CONSTITUTIONAL LAW (Constitution of Zimbabwe 1980 Declaration of Rights – s 20 – right to receive and impart information without interference).

Statutes – Education Act [*Chapter 25:04*] – s 21 – non-governmental school charging fees above maximum approved by Minister – penalties for charging such fees – no power given to Minister to close school

St George's College PTA & Anor v *Minister of Education & Ors* HH-112-04 (Kamocha J)

See above, under EDUCATION (Non-governmental school – fees charged by).

Statutes – Police Act [*Chapter 11:10*] – s 48 (1) – member convicted and sentenced in a magistrates court – sentence consisting of fine plus suspended period of imprisonment – subsequent discharge of member by Commissioner – whether Commissioner entitled to discharge member

Mukwereza v *Minister of Home Affairs & Anor* S-27-04 (Gwaunza JA, Sandura & Cheda JJA concurring)

See above, under INTERPRETATION OF STATUTES (Intention of legislature).

Statutes – Postal and Telecommunications Act [*Chapter 12:05*] – s 42 – amendment of licence – requirement to notify affected person – regulations having effect of amending licence – no notification to affected person – regulations invalid

Econet Wireless (Pvt) Ltd v *PTC & Ors* HH-25-04 (Omerjee J)

See above, under POSTS AND TELECOMMUNICATIONS (Licence to operate cellular telephone service).

Statutes – Postal and Telecommunications Act [*Chapter 12:05*] – s 98(2) – right given to President to direct interception of postal articles etc – s 103 – right given to President to give directions to licensees – constitutionality of such provisions

Law Society of Zimbabwe v *Minister of Transport & Anor* S-59-03 (Chidyausiku CJ, Sandura, Cheda, Malaba & Gwaunza JJA concurring)

See above, under CONSTITUTIONAL LAW (Constitution of Zimbabwe 1980 – Declaration of Rights – s 20 – right to freedom of expression, to receive and impart ideas etc).

Statutes – Presidential Powers (Temporary Measures) Act [*Chapter 10:20*] – regulations made under s 2 of Act – regulations amending Act of Parliament – validity of such regulations

S v *Makamba* HH-38-04 (Guvava J)

The applicant was arrested on currency charges. The magistrate before whom he appeared refused bail, on the grounds that an amendment to s 32 of the Criminal Procedure and Evidence Act, effected by regulations made under the Presidential Powers (Temporary Measures) Act, precluded her from doing so. It was argued that the regulations amending s 32 were invalid, as regulations cannot amend an Act. Held: the Regulations are different from subsidiary legislation which may be made, for instance, by a Minister in terms of another Act. Under s 2(2) of the Presidential Powers Act regulations may provide for any matter or thing for which Parliament can make provision in an Act of Parliament and thus may amend an existing Act of Parliament.

Unjust enrichment — action for — requirements — defendant's immovable property being improved at plaintiff's expense when parties lived as husband and wife — action based on unjust enrichment justified

Goncalves v *Rodrigues* HH-197-03 (Ndou J)

See above, under PROPERTY AND REAL RIGHTS (Immovable property – rights in and to).

Words and phrases

"debt or liquidated demand"

Pioneer Properties (Pvt) Ltd v *Ncube* HH-23-04 (Chinhengo J)

See above, under PRACTICE AND PROCEDURE (Judgment – default judgment – when may be granted).

"inhuman or degrading punishment or treatment"

Chituku v *Min of Home Affairs & Ors* HH-6-04 (Makarau J)

See above, under CONSTITUTIONAL LAW (Constitution of Zimbabwe 1980 – Declaration of Rights – s 15(1)).

"negotiate" (wages, etc)

TM Supermarkets v *TM National Workers' Committee* S-19-04 (Cheda JA, Sandura & Gwaunza JJA concurring)

See above, under EMPLOYMENT (Unfair labour practice – refusal to negotiate wages).