



**THE KEMPTON MAKAMURE  
LABOUR LAW JOURNAL**

**VOLUME 1 2004**

**JURISPRUDENCE AND JURISDICTION  
OF THE LABOUR COURT UNDER  
THE NEW LABOUR ACT**

**Product of the  
Kempton Makamure  
Labour Law Lecture Series**

**FACULTY OF LAW  
University of Zimbabwe**

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# The Kempton Makamure Labour Law Lecture Series and Journal Team

The *Kempton Makamure Labour Law Lecture Series* has a vision to develop a leading Southern Africa labour law development platform in the service of the toiling masses, consistent with the dialectical and historical materialist world outlook that Kempton held and fought for most of his life.

**Coordinators:** Cde M. Gwisai  
Ms S. Kanyangarara

**Series Organisers:** Mucheche H  
Matsikidze R  
Zvarevashe S

**Chief Editor** Matsikidze R

**Editorial Board:** Matimati M  
Rubaya L  
Mucheche H  
Zisengwe S  
Chingoma G  
Zvarevashe S  
Thomas Sibanda

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3. Delta Corporation
4. Legal Practitioners (individuals)
5. Southern Africa Women s Law Centre
6. Zimbabwe Labour Centre
7. Various Legal Practitioners and individuals

To assist, fund, support us and become a Friend of the Kempton Makamure Labour Law Lecture Series please get in touch at:

**FACULTY OF LAW**  
University of Zimbabwe  
PO Box MP 167  
Mount Pleasant, Harare  
Tel / Fax. (04) 333556  
E-mail:- [faculty@law.uz.ac.zw](mailto:faculty@law.uz.ac.zw)

# FOREWORD

The University of Zimbabwe, Faculty of Law is greatly indebted to the late **Cde Kempton Makamure** for his tremendous effort in the development of contemporary jurisprudence in a variety of topics and in particular, in the arena of Labour laws. Indeed we are honoured to have derived great experience from **Cde Kempton Makamure**, a distinguished scholar who has left an indelible mark in the advancement of Labour jurisprudence in Zimbabwe.

The present day Zimbabwe projects a perplexing picture of political, social and economic upheaval. Indeed there are a host of legislative changes in the labour environment. In these challenging times the conventional wisdoms of orthodox legal thinking in the jurisprudential aspects of labour law become inadequate. The publication of lecture series and journals on the works of **Cde Kempton Makamure**, focuses on the work he did in seeking to transcend the limitations of conventional labour laws discourse and it is hoped that this will keep his legacy alive.

The scope of the analysis of the lecture series and journals will be broad. The series will attempt to break the existing arbitrary divisions between the substantive of Labour law and other jurisprudential aspects which shape the legal framework of our labour environment as articulated by **CDE Kempton Makamure**. The ultimate aim is to provide a platform for legal debate which seeks to strengthen our appreciation of labour laws in Zimbabwe. This publication remains incomplete without the corresponding wide readership and in this respect I thank the reader. At the same time I would like to record my appreciation to colleagues in the Faculty who by launching this initiative which has kept **Cde Kempton Makamure's** memory alive. This is a fitting tribute to a man for whom we have fond and abiding memory.

**Mr E. Magade**

Dean of the Law Faculty  
University of Zimbabwe

## Acknowledgments

The organizers of the Series would like to extend our thanks to the participants of the series who made it possible for us to have ideas to write down as a journal.

More so our thanks are extended to Mrs M Mndwa Legal Aid and Advice Scheme and Ms. Abigail Mawonya, Public Law Department and all stakeholders who helped to make these series a success.

Our thanks specifically also goes to our funders Faculty of Law, Delta Corporation, Labour Lawyers of Zimbabwe, Labour Law Centre, Southern Africa Women's Law Centre and various individuals.

## A Note From The Editorial Board

"For who hath despised the days of small things...?"

I have decided to pause this question to you our readers. It just begun as a seminar but we had a vision to have an International Labour Journal a homegrown one, from the Kempton Makamure Labour Law Lecture Series.

Our desire and hope is for the Kempton Makamure Labour law lecture series and the Journal to be internationally recognised. We started small but we are poised for great things. Thanks to our dedicated cadres in the Faculty of Law, to mention a few: -

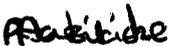
Our lecturers and the series coordinators, Cde M. Gwisai and Ms S Kanyangara. We honour them for their undying zeal to see the revamping of the Faculty of Law into a powerhouse of law development in Zimbabwe. Moreover producing students who view law as a ministry, to serve the people, the oppressed to be set free, the workers and employees to be enlightened and be a united family.

Appreciation should go to the organizers and editors of the series for their gallant and heroic efforts to make the series a possibility and show that students have the ability and consciousness to play a meaningful role in the academic and intellectual life of this institution and society.

To our article contributors, and sponsors your commitment forever shall be remembered.

I do hope that this marks but just the beginning and that united we shall produce more of these journals and move from strength to strength to contribute in our small way to the realization of the vision of liberation and liberty of all of humanity that Kempton fought and dedicated his life to.

Yours faithfully



Rodgers Matsikidze  
Chief Editor.

# **The Jurisdiction of the Labour Court under the New Labour Act – The Dawn of New Era**

*by Justice C.E. Bhunu<sup>1</sup>*

Ladies and gentlemen, comrades and friends, it is a matter of great honour and privilege for me to be afforded an opportunity to make this presentation in honour of the late Kempton Makamure.

I had the good fortune of knowing and associating with the late Kempton Makamure during his lifetime. I first met him in 1980 emerging from the bush after fighting in the brutal war of liberation.

I knew the late Kempton as a great Marxist visionary with a passion for the well-being of workers and peasants at heart. I knew him as a lecturer, politician and a part-time member of the now defunct Labour Relations Board.

The labour court has its origins from the Industrial Conciliation Act [Chapter 267] which became law on the 1<sup>st</sup> January 1960. It then was composed of two bodies the Industrial Court and the Industrial Tribunal.

The Industrial court acted as an appeal court against the decisions of the registrar regarding trade union and employer's unions. The Industrial Tribunal heard cases referred to it by Industrial Councils and Boards. It also acted as an advisory board to the Minister on labour disputes.

The functions of the Industrial court were taken over by the Administrative Court in 1979 and Presidents of the Administrative Court became ex-officio members of the Industrial Tribunal.

In 1985 the government established the Labour Relations Board which heard appeals from labour officers and the registrar. Its decisions were appealable to the Labour Tribunal. The Tribunal's decisions were appealable to the Supreme Court on both points of law and fact with the High Court retaining its general powers of review.

The Labour Relations Board was abolished in 1992 and the Act was amended to make the decisions of the Tribunal appealable to the Supreme Court on points of law only.

The Tribunal however continued to hear appeals from decisions of the labour board which were pending before it prior to its dissolution. Appeals which were not pending were not saved. The net result was that aggrieved litigants who had not yet lodged their appeals with the Tribunal at the time the Board was disbanded lost the right to appeal to any court. This in my view was prejudicial and a serious injustice to such litigants. The law should have been amended in such a way that aggrieved parties were able to appeal to the Tribunal within the prescribed time limits.

In 1993 government introduced the concept of registered codes of conduct which authorised the in-house resolution of labour disputes in terms of the registered codes of conduct. After exhausting domestic remedies parties had the right to appeal to the Tribunal.

Where the parties' contract of employment was not governed by a registered code of conduct, labour disputes were resolved by labour officers whose decisions could be referred to a senior labour relations officer for a fresh hearing and determination.

The determination of the senior labour relations officer was appealable to the Labour Relations Tribunal on both points of law and fact.

The Minister could also refer matters for arbitration especially where parties reached a deadlock during collective bargaining or the termination of collective job action.

The Minister's determination in terms of the Retrenchment Regulations were appealable to the Tribunal so was the Registrar's determination in terms of the Act pertaining mainly to the registration and de-registration of Trade Unions.

Prior to March 1996 labour disputes between government and its employees were not appealable to the Tribunal. They could only be reviewed by the High Court. The law is however amended in 1996. Decisions of the Public Service Commission became appealable to the Tribunal.

The only employees over whom the Tribunal had no jurisdiction were members of the uniformed forces such as soldiers, police officers, prison officers and members of the Central Intelligence Organisation as well as constitutional appointees such as Judges, the Attorney-General and Public Service Commissioners.

In March 2003 the Labour Tribunal was transformed into a fully fledged Labour Court. The Labour Court just like the Labour Relations Tribunal before it is a special court established in terms of Section 92 of the Constitution as read with Section 83 of the Labour Relations Act [Chapter 28:01] as amended by the Labour Amendment Act 17 of 2002 which became law on 7<sup>th</sup> March 2003.

Its functions, powers and jurisdiction are spelt out under section 89 which provides as follows:

"1. The labour court shall exercise the following functions

- (a) hearing and determining applications and appeals in terms of this Act;
- (b) hearing and determining matters referred to it by the Minister in terms of this Act;
- (c) referring a dispute to a labour officer, designated agent or a person appointed by the Labour Court to conciliate the dispute if the Labour Court consider it expedient to do so;

- (d) appointing an arbitrator from the panel of arbitrators referred to in subsection (4) of section ninety-eight to hear and determine applications;
- (e) doing such other things as may be designated to in terms of this Act or any other enactment.

2. (a) In the case of an appeal

- (i) .....
- (ii) .....
- (iii) *exercise the same powers of review as would be exercisable by the High Court in relation to the decision, order or action that is appealed against or any proceedings connected therewith.*  
(my emphasis)

In the case of *Thomas Tuso v City of Harare* HH1-041 it was held that the above provision gives exclusive jurisdiction to the labour court in all labour matters in the first instance.

Prior to the above provision becoming law in March 2003 the High Court had enjoyed parallel jurisdiction in labour matters with the Labour Tribunal by virtue of its unlimited inherent jurisdiction and its general powers of review under the High Court Act. Such powers have however been severely curtailed by the lawmaker. Its review powers in respect of labour matters appears now restricted to reviewing decisions of the Labour Court.

The Labour Court like the Tribunal before it has both appellate and review jurisdiction equivalent to that of the High Court in respect of labour matters.

In the *Tuso case* (supra) I made the point that now, that the lawmaker has accorded review powers to the Labour Court, litigants would have little or no justification for approaching the High Court before exhausting domestic remedies. Thus even if one was to assume that the High Court has retained its inherent jurisdiction despite the amendment, the High Court would in the majority of cases decline to hear and determine labour relations matters before they have been heard by the Labour Court.

The Labour Court just like the Tribunal before it is an informal court. It is not bound by any rule of procedure or evidence. Its object is to dispense simple speedy and cheap industrial justice unhampered by legal jargon and technicalities.

In the case of *Dalny Mines vs Musa Banda* SC 39/99 cited in the *Tuso case* (supra) the Supreme Court held that it is undesirable to determine labour matters on technicalities. What this means is that as far as possible labour relations matters should be determined on the merits rather than on technicalities.

The new Act provides a shift from the conventional adversarial dispute resolution mechanisms towards alternative dispute resolution mechanisms placing more emphasis on mediation, conciliation and arbitration. These are more suited modes of resolving labour disputes as they are less confrontational than the adversarial system. It should also be noted that the appeals against decisions of the Labour Court lie to the Supreme Court on points of law only. As regards points of fact the Labour Court is the court of last resort. Decisions of the Labour Court are reviewable by the High Court as I have already pointed out.

It should however be noted with concern that both the High Court and the Supreme Court are composed of general practitioners as judges whereas the Labour Court is presided over by specialist labour judges. It is therefore unsatisfactory in my view that the work of specialists should be subjected to appeal and review by general practitioners.

It is therefore my considered view that there is need to establish a labour appeal court presided over by specialist labour law judges. The labour appeal court will have the same powers as are currently exercised by the Supreme Court in respect of all labour matters. The Supreme Court will retain its status as the constitutional court as is the case in South Africa and the United Kingdom.

Having said that I am not quite too sure whether I have done justice to the case at hand but nevertheless I rest my case.

## **Notes**

1. Judge of the High Court and the last sitting Chairman of the Labour Relations Tribunal



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