DISTRIBUTABLE (10)

ERICKSON MVUDUDU
v
1) AGRICULTURAL AND RURAL DEVELOPMENT AUTHORITY (ARDA) (2) ATTORNEY GENERAL OF ZIMBABWE

CONSTITUTIONAL COURT OF ZIMBABWE
GARWE JCC, MAKARAU JCC & GOWORA JCC
HARARE: 31 MAY 2021 & 3 NOVEMBER 2021

Applicant in person

T. W. Nyamakura, for the first respondent

O. Zvedi, for the second respondent

AN APPLICATION FOR AN ORDER OF LEAVE FOR DIRECT ACCESS TO THE CONSTITUTIONAL COURT

GOWORA JCC: This is an application for direct access to this Court made in terms of s 167(5) of the Constitution of Zimbabwe, 2013 ("the Constitution"), as read with r 21 of the Constitutional Court Rules, 2016 ("the Rules").

The applicant intends to approach the Court in terms of s 85(1) of the Constitution, seeking an order that his rights as enshrined in the Constitution were infringed by the first respondent's non-executive board members, its board, the arbitrators' awards, Labour Court judgments, and the Supreme Court. The rights so infringed being:

- The right to equal protection of the law in terms of s 56(1),
- The right to privacy in terms of s 57 (c) and (e).
- The right to access information in terms of ss 62(2) and 62(3),
- Labour rights in terms of ss 65(1) and 65(4),
- The right to administrative justice in terms of ss 68(1) and 68(2)
- The right to a fair hearing in terms of ss 69(2) and 69(3), and
- The right to property in terms of ss 71(3) and 71(4).

At the commencement of the hearing Mrs *Zvedi*, on behalf of the Attorney-General took a preliminary point regarding the citation of the Attorney-General as a party to these proceedings. It was her view that there was no law being impugned in the application and that, as a consequence, the joinder of the Attorney-General as a party was irregular. She applied for his removal as a party to the proceedings.

The applicant was of the view that the Rules required his citation but was constrained to concede that the citation had been done in error. Mr *Nyamakura* on behalf of the first respondent did not object to the application which was granted by consent. The Attorney-General was therefore removed from the proceedings and excused from further participation. This left one respondent as a party, and any reference to the respondent will be in respect of the first respondent herein.

FACTUAL BACKGROUND

The applicant was formerly employed by the respondent as its General Manager *cum* Chief Executive Officer. On 26 February 2009, he was sent on special leave, and on 19 May 2009, he was notified by the respondent of its decision to terminate his employment.

Aggrieved by the decision to terminate his employment, the applicant filed a complaint of unfair dismissal. The matter proceeded to arbitration. The arbitrator found in his favour, set aside the dismissal, and ordered the reinstatement of the applicant with effect from the date of his dismissal. Thereafter, negotiations for reinstatement having failed, the matter was again referred to the arbitrator for quantification of damages *in lieu* of reinstatement.

The arbitrator quantified his award for damages *in lieu* of reinstatement and ordered the respondent to pay the same. The applicant, being dissatisfied with the arbitrator's award, appealed to the Labour Court on several grounds pertaining to the question of his reinstatement, the date of termination of his employment, his correct monthly salary, and his entitlement to contractual benefits. The respondent, in turn, cross-appealed, defending the propriety of its decision not to reinstate the applicant and challenged the arbitrator's award of punitive damages and, further to this, his failure to deduct certain amounts allegedly owed by the applicant to the respondent.

The Labour Court dismissed the appeal and partially allowed the cross-appeal to the extent of setting aside the arbitrator's award of punitive damages. Consequently, the applicant appealed to the Supreme Court, and the Court ordered a minor favourable adjustment to the contractual benefits that the applicant was entitled to. The matter was thereafter remitted to the arbitrator to deal with the adjustment.

Before the arbitrator, the applicant raised several preliminary issues, which were dismissed. The applicant proceeded to appeal against that interim award to the court *a quo*. That appeal was struck off the roll on the basis that he had improperly appealed against an

interim order. Aggrieved, the applicant filed an application for leave to appeal to the Supreme Court. The matter was set down for the hearing of the application for leave to appeal at which stage the applicant made an oral application for the joinder to those proceedings of an application for referral to this Court. The application for joinder was dismissed, and the two matters were heard separately.

In its judgment, viz, *Erickson Mvududu v Agricultural and Rural Development Authority* LC/H/23/21 dated 26 March 2021, the Labour Court made a finding that the application for referral was frivolous and vexatious. The application for leave to appeal to the Supreme Court was still pending at the time of the hearing of this application. It proceeded to dismiss the application for referral. Aggrieved by the dismissal of the referral application, the applicant filed the present application on 21 April 2021.

Even though he was the party bringing the suit, contrary to settled procedural principle, the applicant raised a number of preliminary issues for determination. He averred *in limine* that the respondent had no authority to terminate his employment, to appoint, suspend or discharge him, to pay such remuneration and allowances to him, and to grant such leave of absence to him, being a Board member in terms of the Agricultural and Rural Development Authority Act [*Chapter 18:01*] ("the Act"). As such, he submitted that the arbitrator and all courts involved in the matter ought not to have granted audience to the respondent without first determining the issue of its *locus standi in judicio*.

In so far as the judgment of the Labour Court is concerned, the applicant contends that the decision violates his right as enshrined in s 56(1). He avers that the conclusion that his application was frivolous or vexatious was in itself a violation of the Constitution. His

argument is that the conclusion by the Labour Court that the decision of the Supreme Court on the matter could not be challenged was outside the scope of ss 44 and 45 of the Constitution. He contended that where a court misconstrues a law, applies it incorrectly, or acts outside the law, there exists a *prima facie* infringement of the right to equal protection of the law.

It was the applicant's contention that the existing judgments in this matter were obtained through fraudulent misrepresentation of facts by the respondent who lied to the courts and misrepresented to the courts that it had powers to terminate the applicant's employment when it did not have such powers. In that regard, he alleged that there was no termination in the first place. As such, he alleged that the application was neither frivolous nor vexatious as found by the Labour Court.

The applicant, therefore, submitted that his application enjoyed prospects of success as the Board, which included him, was not the appointing authority and therefore had no powers to terminate or discharge him, neither did the respondent. He also contended that his salary was incorrectly calculated and that the courts misconstrued the law or acted outside the law to the extent that they rendered improper decisions. It is on this premise that the applicant argued that his rights had been infringed. He submitted that he has no other remedy and stated that there was no constitutional matter before the Supreme Court; hence there was no room to appeal.

The application was opposed by the respondent. It averred that the present application for direct access was improper as there was an application for referral to the Constitutional Court that was dismissed by the Labour Court, which raised similar issues to the ones that the applicant was now raising. It was also argued that the present application did not

raise any constitutional issues but that the essence of the application was to seek the reopening of the labour issues between the parties, which have been dealt with conclusively up to the highest court of the land.

It was further contended that, in the draft order of the intended substantive application, what the applicant was seeking was the setting aside of all decisions and payment of alleged arrear salaries and benefits, thereby indirectly seeking reinstatement. It was submitted that issues to do with unlawfulness or otherwise of the termination of the applicant's employment contract and the remedy therefor had already been determined to finality by the Supreme Court and hence the matter was now *res judicata*.

In that regard, the respondent submitted that the application was frivolous and vexatious and, further to that, it was not in the interests of justice that it be granted as it did not enjoy any prospects of success. It did not raise constitutional issues. It was also submitted that in all proceedings leading up to the Supreme Court, the applicant never at any stage challenged or disputed the respondent's standing in the proceedings. Lastly, it was averred that the applicant had another remedy which is to seek the enforcement of the damages which he was awarded for the alleged unfair dismissal.

In the notice accompanying the present application for direct access, the applicant makes the statement that he is seeking leave, following upon the dismissal of his application for referral of a constitutional question to the Court. It becomes pertinent therefore to determine whether or not this is the type of application contemplated by law consequent to a dismissal of an application for referral and, if so, whether or not the application as currently framed is properly before the Court.

Whether this matter is properly before the court

The Labour Court had before it an application for the referral of alleged violations of the applicant's rights by all the parties and entities mentioned above. The facts upon which the application for referral was based are identical to those alleged in the application for direct access. In view of the procedure adopted by the applicant, it becomes necessary for the sake of completeness that the relief sought before the Labour Court and this Court be set out in full. The constitutional issues that the applicant sought to be referred were the following:

1. That the non-executive Board members, the respondent's Board or the respondent had no and have no *locus standi* and have no right to be heard in this court in terms of ss 4, 6, 7, 8, 9, 11, 13, 23, 20(1) First Schedule [s 21(1) (sic)] – POWERS OF AUTHORITY, paras 12 and 33 of the Agricultural and Rural Development Authority Act [*Chapter 18:01*] as read with s 5 of Statutory Instrument 15 of 2006 to take any action it took in this matter. The Arbitrators' awards, Labour Court judgments and Supreme Court judgment are nullities at law. The non-executive Board members, the respondent's Board, the respondent, the Arbitrators and the courts are infringing the appellant's fundamental rights as enshrined in ss 11 and 18(1) of the former Constitution of Zimbabwe and ss 3(1)(a), 3(1)(b), 3(1)(c), 3(1)(h), 44(2), 47, 56(1), 57(c), 65(1), 65(4), 68(1), 68(2), 71(3), 71(4), 85(1), and 165(1) of the Constitution of Zimbabwe Amendment (No. 20) Act, 2013.
2. The non-executive Board members, the respondent's Board, the respondent, the Arbitrators and the courts have no authority to terminate the applicant's contract of employment in terms of ss 23, 20(1) First Schedule [s 21(1)] (sic) – POWER OF AUTHORITY, paras 12 and 33 of the Agricultural and Rural Development Authority Act [*Chapter 18:01*] as read with s 5 of Statutory Instrument 15 of 2006. The non-executive Board members, the respondent's Board, the respondent, the Arbitrators and

the courts are infringing the appellant's fundamental rights as enshrined in ss 11 and 18(1) of the former Constitution of Zimbabwe and ss 3(1)(a), 3(1)(b), 3(1)(c), 3(1)(h), 44(2), 47, 56(1), 57(c), 57(e), 62(2), 62(3), 65(1), 65(4), 68(1), 68(2), 68(3), 71(3), 71(4), 85(1), and 165(1) of the Constitution of Zimbabwe Amendment (No. 20) Act, 2013.

3. The non-executive Board members, the respondent's Board, the respondent, the Arbitrators and the courts have no authority to unilaterally refuse and endorse the refusal to reinstate the applicant in terms of s 89(2)(c)(iii) of the Labour Act [*Chapter 28:01*], ss 23, 20(1) First Schedule [s 21(1) (sic) – POWERS OF AUTHORITY, paras 12 and 33 of the Agricultural and Rural Development Authority Act [*Chapter 18:01*] as read with s 5 of Statutory Instrument 15 of 2006. The non-executive Board members, the respondent, the Arbitrators and the courts are infringing the appellant's fundamental right as enshrined in ss 11(a) and 18(1) of the former Constitution of Zimbabwe and s 56(1) of the Constitution of Zimbabwe Amendment (No. 20) Act, 2013.
4. The non-executive Board members, the respondent's Board, the respondent, the Arbitrators and the courts have no power to violate the applicant's right to protection of the law by ordering quantification of damages without a legal termination of the applicant's contract of employment. The non-executive Board members, the respondent's Board, the respondent, the Arbitrators and the courts are infringing the appellant's fundamental rights as enshrined in s 20(1) First Schedule [s 21(1) (sic)] – POWERS OF AUTHORITY, paras 12 and 33 of the Agricultural and Rural Development Authority Act [*Chapter 18:01*]; ss 6 and 7 of the Labour Act [*Chapter 28:01*]; s 5 of Statutory Instrument 15 of 2006; ss 11(a), 16(1), 16(3) and 18(1) of the former Constitution of Zimbabwe and ss 3(1)(a), 3(1)(b), 3(1)(c), 3(1)(h),

44(2), 47, 56(1), 57(c), 57(e), 62(2), 62(3), 65(1), 65(4), 68(1), 68(2), 68(3), 71(3), 71(4), 85(1), and 165(1) of the Constitution of Zimbabwe Amendment (No. 20) Act, 2013.

5. In *casu*, the non-executive Board members, the respondent's Board, the respondent, the arbitrators and the courts have no authority to invoke the principle of retrospectivity without legal termination of the applicant's contract of employment. The non-executive Board members, the respondent's Board, the respondent, the arbitrators and the courts are infringing the appellant's fundamental rights as enshrined in ss 11, 18(1) of the former Constitution of Zimbabwe and ss 3(1)(a), 3(1)(b), 3(1)(c), 3(1)(h), 44(2), 47, 56(1), 57(c), 57(e), 62(2), 62(3), 65(1), 65(4), 68(1), 68(2), 68(3), 71(1), 71(3), 71(4), 85(1), and 165(1) of the Constitution of Zimbabwe Amendment (No. 20) Act, 2013.
6. The applicant's backpay (salaries and benefits), insurance benefits and pension benefits are vested rights which cannot be taken away without compensation. The respondent's management, the non-executive Board members, the respondent's Board, the respondent, the arbitrators and the courts cannot take away the applicant's salary and benefits in terms of s 13(2) of the Labour Act [*Chapter 28:01*]. The respondent's management, the non-executive Board members, the respondent's Board, the respondent, the arbitrators and the courts are infringing the appellant's fundamental rights as enshrined in s 16(1) of the former Constitution of Zimbabwe and ss 66(2), 62(3), 71(1), and 71(4) of the Constitution of Zimbabwe Amendment (No. 20) Act, 2013.
7. The non-executive Board members, the respondent's Board, the respondent, the arbitrators and the courts have no authority to set the remuneration of the applicant in terms of s 20(1) First Schedule [s 21(1)(*sic*)] – POWERS OF AUTHORITY, para 12

of the Agricultural and Rural Development Authority Act [*Chapter 18:01*], s 161(1) of the former Constitution of Zimbabwe and s 71(1) of the Constitution of Zimbabwe Amendment (No. 20) Act, 2013.

8. The applicant's premature termination of employment, illegal termination of employment and/or invoking the principle of retrospectivity take away the applicant's vested right to backpay (salaries and benefits) and infringe the appellant's fundamental rights as enshrined in s 16(1) of the former Constitution of Zimbabwe and ss 62(2), 62(3), 71(1) and 71(4) of the Constitution of Zimbabwe Amendment (No. 20) Act, 2013.

In the meantime, the relief sought from the Court following the grant of an order for direct access is framed in the following manner:

1. That the applicant's rights to the protection of the law enshrined in s 56(1) of the Constitution of Zimbabwe, to access information enshrined in ss 62(2) and 62(3) of the Constitution of Zimbabwe, to labour rights enshrined in ss 65(1) and 65(4) of the Constitution of Zimbabwe, to administrative justice enshrined in ss 68(1) and 68(2) of the Constitution of Zimbabwe, to a fair hearing enshrined in ss 69(2) and 69(3) of the Constitution of Zimbabwe and to right to property enshrined in ss 71(3) and 71(4) of the Constitution of Zimbabwe were infringed by the Arbitrator's Interim Award dated 14 July 2010, the Arbitrator's Award dated 28 October 2010, the Labour Court's in its Judgment No. LC/H/87/14, the Supreme Court in its Judgment No. SC 58/2015, the Arbitrator's Interim Arbitration Award of 26 July 2017, the Labour Court's Judgment No. LC/H/279/2018, the Labour Court's Judgment No. LC/H/23/2019 and the Labour Court's Judgment No. LC/H/23/2021 in the matter of *Erickson Mvududu*

v Agricultural and Rural Development Authority in that the hearings *a quo* and the courts *a quo* failed to appreciate that they were disabled to render such decisions.

ACCORDINGLY IT IS ORDERED:

2. That the Arbitrator's Interim Award dated 14 July 2010, the Arbitrator's Award dated 28 October 2010, the Labour Court in its Judgment No. LC/H/87/14, the Supreme Court in its Judgment No. SC 58/2015, the Arbitrator's Interim Arbitration Award of 26 July 2017, the Labour Court's Judgment No. LC/H/279/2018, the Labour Court's Judgment No. LC/H/232/2019 and the Labour Court's Judgment No. LC/H/23/2021C be and are hereby declared null and void and of no force or effect and are set aside.
3. That the dismissal of the applicant from employment by the first respondent's Board and the first respondent on 19 May 2009 was unlawful, null and void and accordingly, it is hereby set aside.
4. That the first respondent be and is hereby ordered to pay the applicant his arrear salary, allowances and benefits with effect from 1 March 2009.
5. That the respondents (if they oppose this application) jointly and severally pay the costs of this application the one paying the other to be absolved.

The Labour Court had to decide whether or not the application for referral on the questions as framed in the draft had merit. The application for referral was determined on the merits by the Labour Court. The reasoning by the court in such an application is an important factor in assessing whether or not the court exercised its mind properly in coming to the conclusion that the application was frivolous or vexatious. It is therefore necessary to set out the reasoning *in extenso*. The learned judge of the Labour Court stated:

> "The issues that the applicant is seeking to raise are not directly relevant, or do not arise from the proceedings before the court. No constitutional infringement has been alleged

in relation to the proceedings of the application for leave to appeal. The applicant seeks to impugn all decisions that have been handed down and all awards that have ever been handed down in his case and they are not few considering that his dismissal was in May 2009 and to date the matter is still in the courts. It has been to the Supreme Court, the then apex court of the land and back.

The challenges that are now being raised as constitutional issues were decided up to the Supreme Court level and cannot now be revisited and if they must, it cannot be this Court that can revisit a decision of the Supreme Court. The Labour Court has no such jurisdiction.

The issues also raised as constitutional issues must also be such that the Labour Court has jurisdiction over them. The Labour Court has no powers of reviewing process that has been through the courts up to Supreme Court. This court can also not even review decisions of other Judges of the Labour Court which were handed down by the other Judges. The court cannot even review actions taken by management at the respondent workplace unless it is referred through the proper channels.

For example, one of the alleged constitutional breach alleged is;

> "The most serious infringement of the applicant's fundamental rights is the fact that the applicant was unlawfully dismissed without any misconduct charges being laid against him, let alone, without following appropriate procedure in termination of the applicant's contract of employment…"

That this was a breach of the applicant's contract was settled up to the Supreme Court level and he was awarded damages for the unfair loss of his employment. We cannot keep on going back to the breaches which have already been settled by the courts.

There must be an end to litigation, once the Supreme Court settled the dispute that is the end of the road save for the quantification issues.

The applicant alleges that all the awards, all the Labour Court judgments and the Supreme Court judgments were disabled. If there was anything wrong with the Supreme Court judgment, it can no be brought back to the arbitrators and the Labour Court. The issues raised, the manner in which they are being raised seem to lend credence, to the fact that the appellant is just being frivolous and vexatious.

In deciding whether the matter being raised is frivolous, the court has been referred to the case of *Martin v Attorney – General* and 1993 (1) ZLR 153 (S). in that case, the court stated that:

> "In the context of s 24(2), the work "frivolous" connotes, in its ordinary and natural meaning the raising of a question marked by lack of seriousness, one inconsistent with logic and good sense, and clearly so groundless and devoid of merit that a prudent person could not possibly expect to obtain relief from it. The word "vexatious" in contradistinction, is used in the sense of the question being put forward for the purpose of causing annoyance to the opposing party, in the full appreciation that it cannot succeed; it is not raised *bona fide*, and a referral would be to permit the opponent to be vexed under a form of a legal process that was baseless."

> It is this Court's considered view that in raising preliminary points which seek to challenge a decision of the Supreme Court before the arbitrator and again before the Labour Court and also in seeking to reopen the dispute on the merits of the fairness of the decision when the Supreme Court has already pronounced itself on that issue, the applicant's conduct is indeed marked by a lack of seriousness and the conduct is inconsistent with logic and good sense. He surely cannot expect to succeed in getting the arbitrator and this court to review a decision by the Supreme Court.
>
> The applicant cannot seriously expect the arbitrator and the Labour Court to reopen the dispute at this stage. The applicant must be taken to appreciate that he cannot succeed. He is merely being vexatious.
>
> In the result, the application is held to be frivolous and vexatious."

A perusal of the draft order attached to the application for referral to the Court for determination on the merits reveals that it is the same relief as sought in the main application sought to be filed herein.

When regard is had to the judgment of the court *a quo*, it is evident that the learned judge considered whether the application for referral was justified. The learned judge was alive to the requirement that the court exercises its mind on the question of whether the request for referral was frivolous or vexatious. The court sought reliance from the *dicta* in *Martin v Attorney General & Anor (supra)* as is evident from the judgment of the court *a quo* above.

What is at issue for consideration herein is whether or not a person is precluded from applying to this Court for redress under s 85 where an application for referral is refused by a subordinate court. The question posed herein was discussed and decided in in *Martin v A-G (supra)*, wherein the court stated at p 156 D - F:

> "The fallacy of the contention is self-evident. Suppose that a judicial officer, solely due to animosity towards an accused, in bad faith and without any warrant, were to rule that the question raised by him was frivolous or vexatious and so order his remand in custody pending trial. Could it then be said that the accused was only entitled to approach the Supreme Court for relief under s 24(3)? I think not. Such action by the judicial officer concerned would, as mentioned before, itself constitute an infringement of the accused's entitlement to protection of the law. Moreover, and most importantly, since at the

conclusion of any remand proceedings there is no right of appeal, no remedy under s 24(3) would be available to that accused."

S 24(3) of the former Constitution which was under consideration in *Martin* (*supra)* provided as follows:

"Where in any proceedings such as are mentioned in subsection (2) any such question as is therein mentioned is not referred to the Supreme Court, then without prejudice to the right to raise that question on any appeal from the determination of the court in those proceedings, no application for the determination of that question shall lie to the Supreme Court under subsection (1)."

In construing the section the court went on to state at p 158 F – 159 A:

"On the other hand, if a judicial officer, after applying conscientious and objective thought to the question raised in the proceedings before him, were to express the opinion that it was frivolous or vexatious, the requesting party would, in consequence, have no *locus standi* to apply to the Supreme Court for redress under s 24(1). He would only be entitled, if an appeal lay from the determination of the proceedings, to raise the question in reliance upon the provisions of s 24(3).

For these reasons I am satisfied that the present application was correctly brought under s 24(1) of the Constitution. The order made by the magistrate was, in the circumstances, beyond his jurisdiction. This court must now place itself in the position it would have been had the magistrate, as he ought to have done, referred to it the question raised before him."

However, in a subsequent matter, *S v Mbire* 1997 (1) ZLR 579, the Supreme Court spelt out that it was only in rare and special situations such as were found to exist in *Martin v A-G,(supra),* that an application under s 24(1) would be entertained against a refusal for referral under s 24(2).

The applicant seeks leave for access to the Court in terms of s 167(5) of the Constitution. When regard is had to the *dicta* in *Martin V A-G* it is clear that once a finding is made that the application for referral is frivolous or vexatious the requesting party is precluded from approaching the court under s 85 for the determination of the question. The position is

different where the requesting party alleges that those proceedings on their own violated his right. That is not the contention *in casu*. The applicant intends to obtain an omnibus order for the setting aside of all proceedings between himself and the respondent.

What is evident is that the Labour Court has made a determination of the questions sought to be raised by the applicant and found no merit in the alleged constitutional violations. The court made a decision that there must be finality to litigation and that there is no legal basis on the papers filed by the applicant to substantiate an allegation of the violation of his rights. The court stated that there is no legal recourse open to the applicant to have all the processes surrounding his dispute with the third respondent to be reopened. This is the relief he seeks before the Court. A pronouncement having been made on the issue, it is now *res judicata*. The judgment of the Labour Court is extant and remains so until and unless set aside. It has not been set aside and binds all parties thereto.

In view of the position of the Court as a specialised court, an applicant for direct access must show that it is in the interests of justice for access to be granted. One of the factors for consideration by the Court is whether or not the application has prospects of success. In *Lytton Investments (Pvt) Ltd v Standard Chartered Bank Limited and Another* CCZ 11/18, the court stated:

> "The Court turns to determine the question whether the applicant has shown that direct access to it is in the interests of justice. Two factors have to be satisfied. The first is that the applicant must state facts or grounds in the founding affidavit, the consideration of which would lead to the finding that it is in the interests of justice to have the constitutional matter placed before the Court directly, instead of it being heard and determined by a lower court with concurrent jurisdiction. The second factor is that the applicant must set out in the founding affidavit facts or grounds that show that the main application has prospects of success should direct access be granted."

The Court has spelt out what an applicant is required to establish in order to gain access to its portal. In *casu*, the applicant has failed to show that the application has prospects of success. The Labour Court determined that the application was frivolous and vexatious. That judgment precludes him from making an application for direct access. The prospects of success of the main application have been found wanting. Accordingly, unless and until the judgment is set aside, the parties hereto must adhere to it.

In the premises, the application is dismissed with no order as to costs.

GARWE JCC: I agree

MAKARAU JCC: I agree

G. N. Mlotshwa & Company, first respondent's legal practitioners