

AMBROSE CHINYOKA  
and  
JACOB MOSES CHAVUNGAMA  
and  
PETER CHAMUNORWA MAVUDZI  
and  
RICHARD RUZVIDZO  
versus  
AGRIPPA G. SORA (in his capacity as Headmaster,  
Prince Edward School)  
and  
C. MUSADAIDZWA (in her capacity as  
District Education Officer, Mbare/Hatfield District)  
and  
E.SHUMBA (in his capacity as Acting Provincial  
Education Director, Harare Metropolitan Province)  
and  
DAVID COLTART (in his capacity as Minister  
of Education, Sport, Arts and Culture)  
and  
THE PUBLIC SERVICE COMMISSION

HIGH COURT OF ZIMBABWE  
MATHONSI J  
HARARE, 13 & 19 June 2013

### **Urgent Chamber Application**

*B. Chikowero*, for the applicants  
*Ms R Hove*, for the respondents

MATHONSI J: The 4 applicants are secondary school teachers who, until recently, have been employed as such at Prince Edward School in Harare. The first applicant joined that school on 1 January 2008 as a mathematics teacher, the second applicant joined on 1 January 2005 as a history teacher, the third applicant joined on 1 August 2008 as a music teacher and the fourth applicant joined on 8 September 2008 as a music teacher before being moved to the English Department.

On 31 May 2013 they were all summoned by the headmaster, the first respondent herein, to his office where they were each served with letters directing them to appear before the third respondent, the Acting Provincial Education Director for Harare Metropolitan Province, via the office of the second respondent, the District Education Officer for

Mbare/Hatfield District for re-deployment to other schools. The reason given for their re-deployment was that there is overstaffing at Prince Edward School and in their respective departments.

The applicants duly attended at the relevant office, where upon they were advised they were being transferred from Prince Edward School but allowed to return temporarily to that school but on 3 June, 2013 their names were promptly entered on the transfer waiting list pending the identification of vacancies for their immediate posting. On 5 June 2013, the applicants submitted a joint letter to the first respondent challenging their intended transfer in the following terms:-

“RE: CONTESTING REDEPLOYMENT ON UNCLEAR APPLICATION OF  
MINISTRY OF EDUCATION, SPORTS AND CULTURE REGULATIONS AND  
UNFAIR CIRCUMSTANCES

Herein as the above matter refers, we wish to contest the decision to redeploy us from Prince Edward School. We are of the understanding that the main criteria set out by Ministry for redeployment on the grounds of over-staffing should be objective and not subjective. The principal basis should be the last in first out into the school and not department.

We implore you to clarify to us how our names were shortlisted. We have also sought legal recourse on the matter”.

This letter of complaint did not deter the third respondent who, on the same day, transferred the first applicant to Highfields Mhuriimwe High School and on 6 June 2013 served him with a formal letter of transfer. The fourth applicant was at the same time transferred to Apex Board Secondary School with immediate effect. It would seem that the second and third applicants are living on borrowed time as, any time they will certainly be dragged kicking and screaming, out of Prince Edward School to some other schools.

Stung by the transfers which are being conducted without notice and certainly without consulting them, the applicants have now approached this court on an urgent basis challenging the transfers. They seek interim relief allowing them to remain at Prince Edward School pending determination of the propriety or otherwise of the decision to transfer them aforesaid.

In my view, the decision to transfer the applicants is an administrative one taken by administrative authorities whose duty it is to deploy and redeploy teaching staff to schools falling under the auspices of the Ministry of Education. If the applicants desire to challenge that decision they should do so by way of a review application as provided for in Order 33 of

the High Court of Zimbabwe Rules, 1971 or in the Labour Court in terms of s 89(d1) of the Labour Act [*Cap 28:01*]. They cannot seek a review by urgent application. They will have to file a separate review application in compliance with the rules of court.

Ms *Hove*, who appeared for all the respondents submitted that this court does not have jurisdiction in the first instance to adjudicate over this matter because it is a labour dispute and therefore in terms of s 89(6) of the Labour Act [*Cap 28:01*], falls within the purview of the Labour Court which also enjoys review powers as provided for in s 89(d1) of the Act.

I do not think there is merit in that argument in view of the fact that I am not sitting to decide the propriety of the transfers or to review that administrative decision. The applicants have made an approach to this court seeking interim relief, that is a stay of the transfers pending the mounting of a challenge against the decision. Whether they will launch that challenge in the Labour Court or elsewhere is not for me to prescribe. I will therefore exercise jurisdiction.

In respect of the interim relief, there is merit in the argument that the transfers were handled in an arbitrary manner without due notice to the affected parties and significantly without according them an opportunity to make representations, in that regard. The applicants were notified on 31 May 2013 of their intended transfer and ordered to report forthwith at the relevant office for execution of the transfer.

No notice was given to them and they not consulted at all. Even as they protested, the authorities went ahead implementing the decision with reckless abandon. Ms *Hove* cited s 13(1) of the Public Service Regulations S.I 1/2000 in making the submission that a member of the Civil Service can be transferred at anytime without their consent to another post. For that reason, the applicants cannot contest their transfer as implemented by the authorities.

It occurs to me that an employee has got a legitimate expectation that he will be consulted before a decision to transfer him is taken. This is particularly so in respect of professionals like teachers who have occupied their teaching posts for a considerable period of time as the applicants in this case. Indeed, in *Taylor v Minister of Education & Anor* 1996(2) ZLR 772(S) the Supreme Court stated at 777 H and 778A that:-

“In general, one thinks that professional employees of long standing, holding senior posts, would not be transferred without account being paid to their stated personal situations and wishes”.

The Appeal Court went on at 780 A-B to state:-

“The maxim *audi alteram partem* expresses a flexible tenet of natural justice that has resounded through the ages. One is reminded that even God sought and heard Adam’s defence before banishing him from the Garden of Eden. Yet the proper limits of the principle are not precisely defined. In traditional formulation it prescribes that when a statute empowers a public official or body to give a decision which prejudicially affects a person in his liberty or property or existing rights, he or she has a right to be heard in the ordinary course before a decision is taken.”

It then concluded at 785 B that:

“It follows that I have no hesitation in endorsing the common law approach of DIDCOTT J and PICKERING AJ and in finding that in a case such as this the view, wishes and personal circumstances of the appellant were relevant and ought to have been taken into consideration by the first respondent before the decision to transfer him was made”

See also *Guruva v Traffic Safety Council of Zimbabwe* 2009(1) ZLR 58(S) 61C.

To my mind, there is a strong case for the applicants to seek a review of the decision to transfer them in the manner undertaken by the first, second and third respondents based on the grounds that not only did they have legitimate expectations to be heard before being transferred, they also had a right to make representations on the proposed transfers. This is particularly so in a matter such as the present where the transfers are immediate and do not accord the applicants even an opportunity to organise themselves and prepare for the new life at other schools diametrically different from Prince Edward School.

Accordingly the provisional order is hereby granted as amended, the interim relief of which is as follows.

Pending the determination of this matter, the applicants are granted the following relief:-

- (a) The decision to transfer the 4 applicants from Prince Edward School to other schools is hereby suspended.
- (b) The 4 applicants are hereby allowed to continue teaching at Prince Edward School as before until the finalisation of the review application to be made by them which application should be lodged within 7 days of the date of this order.

*Gutu & Chikowero*, applicant’s legal practitioners  
*The Civil Division Attorney-General’s Office*, 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondent’s legal practitioners