IN THE LABOUR COURT CASE NO: LC/URG/MS/28/12

HELD AT GWERU ON 05/11/12 JUDGMENT NO: LC/MS/17/12

In the matter between:

BIKITA RURAL DISTRICT COUNCIL APPLICANT

And

JAINOS ZVOKUSEKWA RESPONDENT

Before the Honourable E MAKAMURE PRESIDENT

For APPLICANT MR K C CHUMA – LEGAL PRACTITIONER

FOR RESPONDENT MR M MURERI – LEGAL PRACTITIONER

## **MAKAMURE E**

This is an application for confirmation of provisional order granted by this Court (my brother Honourable M M Takuva) on 10<sup>th</sup> October 2012. The terms of the order sought are;-

"That the execution of the arbitral award in favour of the respondent be and is hereby stayed pending the finalisation of the appeal noted in case number LC/MS /LC/URG/MS/28/12

Before addressing the merits of this main application, Mr Mureri who appeared on behalf of the respondent raised a point **in limine**. Mr Mureri raised the issue that the person who deposed the affidavit one Johnson Biggie Mpamhadzi has no authority to act on behalf of the applicant. It was argued that Mpamhadzi had no authority because there was no council resolution empowering him to represent the Applicant. Mr Mureri referred the Court to authority in support of his submission. In the circumstances Mr Mureri submitted that the application should be dismissed on that basis of lack of jurisdiction.

Mr Chuma who appeared on behalf of the applicant (respondent in the point <u>in limine</u>) argued that the applicant has been through many fora but none of them questioned the authority of Mpamhadzi to represent the applicant. As such therefore, Mr Chuma submitted, there is no merit in the point raised <u>in limine</u> and that it should be dismissed.

It is a settled position that labour issues should not be resolved on technicalities (see <u>Dalny Mine v Banda</u> 1999 (1 ZLR 220 (S) )

In the circumstances I am of the view that the question of authority should be determined in conjuction with all other issues in this matter.

## **Judgement LC/MS/17/12**

On the application for confirmation of stay of execution, I have had occasion to consider the papers. On the basis of these same papers my brother granted a provisional order. I have also listened to argument It appears that the applicant/appellant has an arguable case. In the circumstances the Court will make the following order:-

- (i) The point **in limine** will be determined at the appeal hearing.
- (ii) The provisional order granted by this Court on 10<sup>th</sup> October 2012, be and is hereby confirmed.

Chuma, Gurajena and Partners, Legal Practitioner for the Applicant.

Matutu, Kwirira and Associates, Legal Practitioner for the Respondent.