

Recent Supreme Court labour judgement: a threat to sound labour relations and sustainable development in Zimbabwe

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Abstract: *The Supreme Court ruling of 17th of July 2015 has culminated in over 30 000 new cases of unemployment in Zimbabwe as at the end of September 2015. This has since created poor and irreconcilable labour relations in the country particularly among employers and employees. Loss of employment has affected the livelihoods of those dismissed and their families. This has created uncertainty for the future of those currently employed including even the usually reserved and 'stable' public sector. Since then, the industrial and labour relations in Zimbabwe have been at their lowest ebb, with a lot of court battles being the order of the day but with no solution in sight at the moment. The ruling was based on common law which empowered employers to terminate one's contract of employment by giving three months notice without need to justify. The study suggests that a holistic approach to such sensitive labour issues is critical. There should be input of all key stakeholders first through the Tripartite Negotiating Forum (TNF) before deliberations by parliament to avoid non ownership of the output. Decisions could be customized at enterprise level, through the works council or at the more effective industrial level, through the Employment councils.*

Definition of key terms

- **Labour judgement** - a ruling made by a labour court or Supreme court in this case ,to resolve a dispute regarding the employment contract
 - **Sound labour relations** - cordial relationship which promotes good working relations among state, employers and workers
 - **Sustainable development** – growth that should be aimed at reducing poverty and build shared prosperity of today's generation and to continue meeting future generations needs and expectations
 - **Supreme Court** - the highest court in Zimbabwe which is also the court of last appeal whose rulings are final and can not be contested.
 - **Threat** - a likely constraint that affects a harmonious working relationship among workers, employers and the state
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I. Introduction

This paper begins by giving an overview of the research problem, how it manifested and showing “battle-lines” between employers and employees. Methods and techniques used to facilitate data collection and analysis have been presented. A lot of literature reviewed has been included as well as the major findings and subsequent recommendations. The presentation has been made in such a manner in order to make this paper so exciting to anyone who reads it.

II. Background to the study

One of the topical issues in Zimbabwe at the the moment, has been the wave of job losses triggered by a Supreme Court ruling made on 17th of July 2015 which validated termination of contracts via three months notices (www.newsdezeimbabwe.com, 17/07/15). This has thrown Zimbabwe’s labour relations into turmoil.

This came after the Supreme Court Chief Justice Godfrey Chidyausiku on July 17, 2015 passed a judgement that companies could terminate workers’ contracts at any time, without offering them packages by giving them three months’ notice.

The decision was in a case in which two former Zuva Petroleum managers, Don Nyamande and Kingstone Donga were challenging termination of their contracts.

That Supreme Court judgment recorded as the case of Don Nyamande and Another v Zuva Petroleum (Private) Limited SC 43/15 has caused alarm and consternation amongst trade unions and certain sections of the public.

Within 24 hours of this ruling being handed down, termination notices were flying left, right and centre. What started off as restructuring by privately owned corporations quickly extended into the public sector as well. Parastatals have also been letting some of their employees go at willy-nilly, e.g. Zimbabwe

Broadcasting Corporation (ZBC) , Zimbabwe Postal Services (ZIMPOST), National Railways Of Zimbabwe (NRZ), Air Zimbabwe etc.

Employers seemed to have heaved a collective sigh of relief. They had been complaining quite vocally through various media that the rigidity of labour laws in Zimbabwe, was robbing them of the flexibility to adjust to the prevailing economic climate . That was adversely affecting them of a competitive edge both in regional and wider international markets.

The legal precedent that followed this decision was that most companies acted on this judgement and downsized, with close to 6 000 people having since lost their jobs within one week of the ruling (www.myzimbabwe.co.zw , 23 July 2015).

In the decisions cited above, the Supreme Court had been concerned with defining the employer's right to terminate on notice in light of the existing legislative provisions. Those provisions have constantly been changing. The only provision in the Labour Act [Chapter 28:01] presently dealing with the issue of termination on notice is Section 12 (4) which provides that:

“(4) Except where a longer period of notice has been provided for under a contract of employment or in any relevant enactment, and subject to subsections (5), (6) and (7), notice of termination of the contract of employment to be given by either party shall be –

*three months in the case of a contract without limit of time or a contract for a period of two years or more;

*two months in the case of a contract for a period of one year or more but less than two years;

*one month in the case of a contract for a period of six months or more but less than one year;

*two weeks in the case of a contract for a period of three months or more but less than six months and

8one day in the case of a contract for a period of less than three months or in the case of casual work or seasonal work”

There is no other current legislative provision governing the termination of employment on notice. Section 12 (4) does not define the instances in which employment may be terminated on notice.

After the waves of employees dismissals at a “lightning pace”, politicians quickly moved to avoid more catastrophic and debilitating consequences by fast tracking the Labour Amendment Bill in Parliament which had been the subject of debate for five years, but finally accented to law by the State president, Cde R.G. Mugabe on 26 August 2015, more than five weeks after the ruling.

A lot of changes were made including the need to apply the law in retrospect.

Clause 18 of the amendments to the Labour Act Chapter 28:01, now provides for the retrospective application of the amendments. A retrospective law is one that operates on matters taking place before the law was enacted. A Constitutional expert, Professor Madhuku said that there was nothing illegal in retrospective implementation of some of the clauses when the Bill had been passed into law. “There was no general law that says laws can or cannot be made in retrospect. The principle that an act must not be made in retrospect was a presumption and rule of law, he said.

He added that such laws could be enacted as long as they do not violate provisions of the Constitution.

Violation of the constitution by the Labour Amendment Act 28:01

The Parliamentary Legal Committee on the Labour Amendment Bill published an adverse report on the proposed amendments, pointing out that Clause 18 violated a section of the Constitution. The adverse report read in part:

“Clause 18 provides for the retrospective application of section 12 of the Act to every employees whose services were terminated on three months' notice on or after 17th July. “The committee unanimously agreed that the clause violates Section 3(2)(e) of the Constitution regarding the separation of powers in that the judgement made by the Judiciary was correct at law and in seeking to nullify that by an insertion of the respective clause, Parliament will have violated the principle of separation of power.”

According to legislative watchdog, **Veritas**, President Mugabe signed the Labour Amendment Bill into law less than a week after it was stamped through Parliament. The Labour Amendment Act No. 5 of 2015 became law on 26 August 2015.

The legal experts said the major changes on the Labour Law were made to Section 12 of the original Act, and in the process, removed the common law position that allowed the termination of contracts on three months' notice.

The hasty changes to the country's labour law were triggered by a July 17 Supreme Court judgment giving employers the same rights as workers in the cancellation of contracts.

Approximately 25 000 people lost their jobs within 40 days after the 17 July Supreme court ruling as employers took advantage of the ruling to streamline their workforce in the midst of a debilitating economic crisis (www.herald.co.zw -26 August 2015).

This study therefore sought to find out in detail, the implications of that Supreme Court ruling and the subsequent Labour Amendment bill which has since become law, whether it could be a panacea or remedy to the confusion characterising the country's labour relations.

1.2 Statement of The Problem

The Supreme Court ruling of 17th of July 2015 has culminated in over 30 000 new cases of unemployment as at the end of September 2015. This has since created poor and irreconcilable labour relations in the country and affecting the livelihoods of those dismissed and their families, as well as creating uncertainty for the future of those currently employed including even the usually reserved and 'stable' public sector.

As a result, the industrial and labour relations in Zimbabwe have been at their lowest ebb with a lot of court battles having followed suit but largely to no avail. Furthermore the ruling effectively rendered ineffective the government's effort to create at least 1 million jobs by 2018 as one of the supposed key success factor of the Zimbabwe Agenda for Sustainable and Social Economic Transformation (ZIMASSET), the government economic blueprint (2013-2018).

III. Research Questions

The study which was qualitative, intended to address the following sub-problems at the end;

- (i) What was the rationale for coming up with that Supreme Court ruling?
- (ii) What are the effects of Supreme Court ruling on labour relations?
- (iii) To what extent was the Labour Amendment Act enacted into law able to address the challenges arising from the Supreme Court ruling?
- (iv) What should be done to improve labour relations in Zimbabwe in order to improve the socio-economic development?

3.5 Literature Review

The following are a synopsis of newspapers headlines in relation to what has become known as the controversy of the Supreme Court ruling.

1.4.1 An article in the Zimbabwe independent

Unnecessary controversy on Supreme Court ruling July 22, 2015

The article cited reports that stated that there had been wholesale dismissals of employees on the basis of the above stated judgment. The controversy generated largely arose from a misreading of the judgment that employers now had the right to terminate employment in all circumstances on simply giving three months' notice.

The article said that it was not what the Supreme Court had said. In that judgment the Supreme Court simply affirmed what it had pronounced in previous judgments, that the right to terminate on notice is available to employers in certain circumstances. There was therefore nothing new that had been introduced by the judgment.

The issue that was decided in that case, was whether or not the employer's **common law right** (Roman Dutch law) to terminate an employment relationship on notice, was still part of our law. It was argued on behalf of the employees that Section 12B of the Labour Act (Chapter 28:01) had abolished the right. The Supreme Court disagreed.

In the case of permanent employment the principle at common law was that the parties' right to terminate on notice is unfettered.

Employers are not required to show good cause for terminating the employment or to inform the employee of the reasons for the termination or to follow any special procedure before termination. All the employer has to do is give notice.

The employers' unfettered power to terminate contracts of employment on notice is underpinned by the doctrine of freedom contract, in terms of which the contracting parties are deemed to have entered into the agreement as equals and with open eyes. What this position obviously ignored was the discrepancy in the bargaining power between employers and employees and the fact that the employment relationship provided income to the family unit for the one party and provided a cost of production or service for the other.

As far as fixed-term contracts of employment are concerned, the common law principle; is that notice may not be given before the expiration of the term unless the contrary is agreed. Notice of expiry of the contract need not be given, unless the employee has grounds for believing that it will be renewed.

The issue of an employer's right to terminate an employee's contract of employment on notice has been problematic in Zimbabwe since Independence in 1980. In the case of *S v Jovner* 1982 (2) ZLR 252 (SC), the Supreme Court held that the now repealed Employment Act No. 13 of 1980 and the Employment (Conditions of

Service) Regulations, SI 894/1981 (also now repealed) had not affected the common law right of an employer to terminate on notice.

The judgment in the *S v Jovner* was handed down on the 18th November 1982. That prompted the Government to immediately promulgate the Emergency Powers (Termination of Employment) Regulations, SI 714B/1982, just four days later. SI 714B/1982 introduced the requirement into our law that termination on notice required ministerial approval.

It was important to note that by then, the Government of the day's declared philosophy was socialism and the need to protect workers from the excesses of capitalism was paramount.

In the months following Independence a raft of legislation was introduced to curtail the common law powers of employers, who were at that time by and large white. Since SI 714B/1982, the labour laws of the country have been amended at regular intervals. In 1985 the Employment Act, No. 13 of 1980, and all the regulations made there under were repealed. The Labour Relations Act, No. 16 of 1985, was enacted.

New termination of employment regulations were introduced in the form of the Labour Relations (General Conditions of Employment) (Termination of Employment) Regulations, SI 371/1985, which provided among other things that an employer could not terminate a contract of employment on notice without the approval of the Minister of Labour, Manpower Planning and Social Welfare.

That provision reproduced word for word Section 5 of SI 714B/1982. In 1990 further subsidiary legislation was introduced in the form of the Labour Relations (General Conditions of Employment) (Termination of Employment) (Amendment) Regulations, SI 377/1990, which provided that the provision requiring ministerial approval would not apply to employees and employers governed by a registered code of conduct.

IV. Previous cases of termination of employment contract

In the case of *Chivinge v Mushayakarara & Anor* 1998 (2) ZLR 495 (S), the issue that came up for determination was whether or not the employer's right to terminate employment on notice which had severely been prescribed by the SI 714B/1982 and SI 371/1985 had been restored in full in respect of employees and employers governed by a code of conduct.

Following SIs 741B and 371 the Supreme Court had ruled in the cases of *Art Corporation Ltd v Moyana* 1989 (1) ZLR 304 and *Commercial Careers College (1980) (Pvt) Ltd v Jarvis* 1989 (1) ZLR 344, that employers could not terminate contracts of employment on giving due notice without first obtaining ministerial approval.

Following the *Chivinge* case the matter of the employer's right to terminate on notice came up again in the cases of *Samuriwo v Zupco* 1999 (1) ZLR 385 (H); *Samuriwo v ZUPCO* 2000 (1) ZLR 647 (S); *Luke Chirasasa & 2 Others v Roseline Nhamo N. O & Anor* SC 135/2002; *PG Industries (Private) Limited v Nkululeko Mabhena* SC 44/2003; and *Colcom Foods Limited v Christopher Kabasa* SC 12/2004.

In all the above cases, the issue has always been the extent to which, if any, the right has been limited or restricted by legislation, including legislation relating to retrenchment.

The position that crystallised from the decisions of the Supreme Court as far as the termination of an employee's contract of employment by the employer concerned, was that:

- If the basis of termination are operational or re-organizational requirements of the employer's business, the employer is obliged to follow and comply with the statutorily prescribed retrenchment procedure.
- If the basis of the termination was an alleged act of misconduct on the part of the employee, the relevant disciplinary procedure applicable to the employee and the employer should be followed. The procedure could be contained in a code of conduct.
- If there was no code of conduct, the procedure prescribed by the termination of employment regulations should be followed.
- If the basis of the termination of employment is that the employee has become incapacitated by reason of ill health the employer is obliged to follow the termination procedure provided in Section 14 of the Labour Act [Chapter 28:01] as read with any relevant CBA/Code of Conduct provisions.
- If the basis of the termination is that the employee has reached retirement age, the employer is obliged to follow the relevant retirement procedures.
- If the basis of the termination is not (a) to (d) above, where the contract of employment provides for termination on notice, the employer may lawfully terminate the employee's contact upon giving the requisite notice.

Employers and employees may also agree in writing to a mutual termination of employment. The terms of such termination are up to the parties but may not contravene the provisions of the Labour Act.

What emerged from the Supreme Court decisions was that an employee's contract of employment cannot be terminated on notice if the reason for termination is an act of misconduct or if the reason for termination falls within the definition of retrenchment.

For instance in the case of PG Industries (Private) Limited v Nkululeko Mabhena, cited above, the contract of employment provided that it was terminable by either party on a month's notice. The employee's employment was terminated on notice on the grounds that the employer was reorganizing its structures and that it was not happy with the employee's performance.

The Supreme Court said that this termination was unlawful as terminating a contract of employment on the grounds of the reorganization of the business constituted a retrenchment and therefore that the employer was obliged to follow retrenchment procedures. The court also said that as far as the allegation of incompetence was concerned, the employer was obliged to follow the relevant disciplinary procedures.

In the Don Nyamande and Another v Zuva Petroleum (Private) Limited matter it was not argued that the facts of the case were such that the employer did not enjoy the right to terminate on notice.

In other words, it was not argued on behalf of the employees that instead of resorting to termination on notice the employer should have followed the retrenchment provisions. The employees limited their case to the argument that the common law right to terminate on notice had been abolished by the provisions of the Section 12B of the Labour Act.

If the argument had been made that given the facts of the matter; the re-organisation of the employer's operations, the employer was obliged to comply with the legislative provisions governing retrenchments, the court could well have arrived at a different conclusion.

Whilst the employer's common law right to terminate a contract of employment on notice still exists same has severely been restricted by legislation. It is available in limited circumstances.

A termination on notice is only regular and proper if the reason for termination is not misconduct, re-organization of the undertaking, retirement or incapacity of the employee due to ill-health.

1.4.2 An article in Chronicle edition

Supreme court ruling horror-23 July 2015

In the article, CABINET on that day was to be seized with the plight of workers who were being dismissed willy-nilly by companies following a ruling by the Supreme Court the previous week, that firms could terminate contracts of employment upon issuing a three months notice.

The Public Service, Labour and Social Welfare Minister, Prisca Mupfumira had said in an interview the previous day (22/07/15) that by tomorrow (23/07/15), the hundreds of workers who had by then, been sacked under the same ruling were to be told of a solution to their plight.

"We've realised that companies are continuing to fire workers," she said. "The issue will now be discussed in Cabinet tomorrow (23/07/15).

"We'll continue with the meetings and by the end of this week we'll have reached a position in terms of the affected workers. We hope we'll have a win-win situation for the employees and the employers."

She spoke as more companies continued to sack workers using the that ruling which cleared firms to terminate contracts of employment after giving three months' notice without any explanation. Zimbabwe Stock Exchange heavyweight and one of Zimbabwe's finest blue chip companies, Econet Wireless handed over letters of dismissal to several workers between Monday, 20 July and 22 July 2015, informing them to immediately stop coming to work since their contracts had been cancelled.

Econet said in the letter titled: "**Termination of employment contract on notice**" that the affected workers would be paid their dues on or before July 31.

"This letter serves to inform you that the business has decided to terminate your employment contract on notice and this is not a dismissal, but rather the exercise of our right under common law which allows either party to terminate the employment contract on notice.

"Notwithstanding the effective date of the termination, you're hereby directed not to report for work with immediate effect (that is on receipt of this termination letter). Further, in terms of both your contract and the Labour Act, the company has opted to pay you cash in lieu of notice."

According to the same Chronicle article, in Bulawayo, Zimbabwe Pharmaceuticals had shed 10 workers. The 10 were served with termination of employment letters on Tuesday, 21 July 2015. Among the casualties, the longest serving employee had been with the company for 27 years and the least 13 years.

AGS (Aviation Ground Services), which operates at the Harare International Airport, also handed letters to several workers that were signed by managing director dismissing them using the same Supreme Court ruling as the basis.

The situation was the same at Mercedes Benz dealer Zimoco which handed letters informing some workers that their contracts had been terminated on three months'notice.

Among the companies that pulled the trigger soon after the Supreme Court ruling were Econet, Pelhams, Steward Bank, and TN Harlequin.

In the same article, New Ziana had reported on 22 July 2015, that at least 400 workers lost their jobs after cotton processing company, Sino Zimbabwe terminated their contracts using the ruling. To worsen the situation, security guards at the firm barred the workers from entering the company's premises in Waterfalls, Harare, following the termination of the contracts.

"Our employment contract with you as read with section 12(4) of the Labour Act requires us to give you three months of notice which we hereby do," read the termination of contract letter prepared by Sino Zimbabwe.

Minister of Public Service, Labour and Social welfare, Mrs Mupfumira according to the newspaper article, promised that remedial action would be taken in the interest of the dismissed workers. Minister Mupfumira said that the Supreme Court ruling gave a master-servant relationship between employers and their employees.

Unions had since the ruling, called on President Mugabe to urgently invoke the Presidential Powers to stop employers from summarily dismissing workers basing on the ruling but to no avail.

1.4.3 Article from The Zimbabwe Independent ZNCC upholds Supreme Court rulings -29 July 2015

In that article it was surprising that the Zimbabwe National Chamber of Commerce (ZNCC) said that the recent Supreme Court labour rulings would help revive struggling companies operating under the current harsh economic environment.

"There is absolutely nothing special about this ruling except that it was long overdue. Before (this ruling) companies could not dismiss excess workers, a situation which was bleeding and affecting performance," ZNCC chief executive said.

"We have always talked about how inflexible the country's labour laws are, and now, the Supreme Court acted on one of the resolutions from our recently ended congress, which is that of aligning labour laws to accommodate streamlining measures," he said.

In addition on 27 July 10 days after the first ruling, the same Supreme court made another **landmark labour ruling giving employers the right to withdraw employees' allowances and benefits saying these were not a right or entitlement.**

In a judgment delivered at the Supreme Court, in a matter involving the National Railways of Zimbabwe (NRZ) against all its employees' associations who were demanding payment of outstanding housing and educational allowances, it was ruled that the NRZ had no obligation to pay such allowances since issues of allowances were based on collective bargaining agreements.

1.4.4 Article in herZimbabwe.co.zw Is Job safeguarded 13 August 2015

According to the article, the Supreme Court had in the last few weeks by then, handed down two Labour Law decisions that had left many feeling justifiably rather nervous.

The first decision that sent shock waves amongst the relatively few employed Zimbabwean workforce, was the ruling that employers had a **common law right** to terminate employment on notice, and this right was not hampered in any way by S12B in the Labour Act dealing with unfair dismissal.

Essentially, because the Act does not explicitly do away with the right to terminate on notice, the right still exists and can be used by employers and employees alike.

The second decision made by the Supreme court on 26 July 2015, stated that the court could not and would not read benefits and allowances into employment contracts, where these are not provided for (source ; Daily news July 27, 2015) This judgment has also been seen as giving employers further powers to take ever what employees felt was theirs.

1.4.5 An article in the Independent newspaper Employers challenge labour law amendments, October 2, 2015

The article stated that battlelines were drawn between government and employers after the Employers' Confederation of Zimbabwe (EMCOZ) filed an appeal in the High Court on 1 October 2015 against clauses in the amended Labour Act, which could have far-reaching implications on labour relations in Zimbabwe.

EMCOZ was complaining about a new **Section 12 C(2)** which sets a minimum mandatory/compulsory retrenchment cost for every employer who retrenches one or more employees. Employers were fighting the minimum mandatory retrenchment cost of every employer pegged at three months' notice and two weeks salary for every year served, without considering the ability of employers to pay, among

other factors. The use of a pro-rata basis was according to them unrealistic since firms were in different industries and trades and were therefore not homogenous.

In the court application filed by Lunga Gonese Attorneys in which Labour minister Mrs Prisca Mupfumira was the respondent, Emcoz executive director John Mufukare said the amendments were unconstitutional.

“This is an application for a declaration of the constitutional invalidity of certain provisions of the Labour Amendment Act No. 5 of 2015,” Mufukare said in his founding affidavit.

“I am prepared to go further to aver that this limitation came about through an arbitrary process of legislating, a knee-jerk reaction by the state to what it perceived as a social ill. That the process of legislating, the amendment Act, was reactionary is evidenced in the lack of thinking, consultation and research required to guide government action and law-making.”

Furthermore the blanket forcing of a minimum retrenchment cost was being perceived by EMCOZ as contrary to the rule of law principle as enshrined in the constitution which prohibits arbitrary laws and arbitrary law making. For that clause, Section 12(C)(2) declared unconstitutional and invalid.

V. Methodology

- 1.5.1 A Survey design was used as it was the best to establish social implications of the problem or issue at hand (Njaya & Choga, 2011)
- 1.5.2 Judgemental sampling technique was used to choose participants based on this researcher’s discretion..
- 1.5.3 Library analysis (desk research) was also used .Unstructured interviews were held with selected labour experts (2), Apex Council (2), ZCTU (3), ZFTU(3),Ministry of Labour and Social welfare(3), Companies that have applied the ruling (4) and 10 affected employees.
- 1.5.4 Results were analysed using the content analysis method, involving categorization of data, classification, summarization, coding (Cresswell, 2003).

VI. Major findings

The study which was qualitative came up with the following major findings

- (i) The Supreme court ruling came as a surprise to workers and their families.
- (ii) Companies had been longing for long for amendment of labour laws as they felt they were biased in favour of labour/workers, as they were forced to keep a large workforce even under stringent economic environment as other alternative processes such as applying for Retrenchment were rather tedious, bureaucratic and costly.
- (iii) Immediately after the ruling, a number of companies including very much established ones like Econet, had by the end of that day, dismissed a lot of their workers. Other notable ones were Pelhams, Steward Bank, and TN Harlequin.
- (iv) Most stakeholders felt that the President Cde R.G. Mugabe could enforce his presidential powers to stop the application of the court ruling, but surprisingly against all odds, that was not the case. That even gave other initially reserved firms to apply the ruling “willy-nilly”.
- (v) Parastatals also took advantage of the ruling eg. NRZ, ZIMPOST, TELONE, ZBC, AIR ZIMBABWE just to mention a few.
- (vi) The Public sector and state aided institutions (receiving grants like universities) were moving slowly under what they termed rationalisation of operations to cut their wage bill as government was threatening to wean them. The issue of the 3 months notice was still not year clear at the time of finalising this paper, as government appeared to also be in the pipeline to apply the ruling
- (vii) The Labour Amendment Act though makes it possible to pay for ‘meagre’ benefits in retrospect to those affected by the ruling, has not done much to address the plight of the those affected as payments have been so erratic. It has not been received well by employees as workers who would have worked for very long periods would end up getting meagre package which would even make them poorer. There are concerns on the side of workers that payment of one month’s salary for every two years served as a retrenchment package was too little by way of compensation.
- (viii) The study further established that the termination spree, was a further proof that the economy was in serious jeopardy.
- (ix) Changes in employer-employee relations were likely to be hostile and there was no longer any talk of workplace democracy (language of labour relations)
- (x) There was unequal bargaining power in entering into contracts or negotiation/bargaining table as the scale was heavily tilted in favour of the employer.

VII. Conclusions

This researcher aligned the research questions of this study with the findings to arrive at following conclusions

1.6.1 What was the rationale for coming up with that Supreme Court ruling?

The study failed to establish the real reasons behind the Supreme court ruling which came as a real surprise since it had been 'silent' all along. Others felt that it was as a result of economic hardships facing the country in general. This was also affecting state enterprises (parastatals) who were facing financial distress and were unable to sustain their wage bills which had run into huge arrears. Some felt it was a political move to make government unpopular but they could not substantiate their reasons. The study has it on record that the ruling was based on Common Law.

1.6.2 What are the effects of Supreme Court ruling on labour relations?

- (i) Employers have been empowered to dismiss employees 'willy- nilly' without justifiable reasons.
- (ii) Thousands of employees lost their jobs. Unconfirmed reports estimate the number to exceed 30 000
- (iii) A number of those affected have since been struggling to get the three months dismissal salary package and to apply the Labour Amendment Act in retrospect is easier said than done.
- (iv) Employers abusing the ruling by firing those who they see as threat or those paid highly. This is also seen as an opportunity to victimise those deemed to be against management etc.
- (v) Some employers strategically fired 'everyone' and then recalled those interested to rejoin but under less attractive/favourable working conditions and benefits.

1.6.3 To what extent is the new Labour Amendment Act able to address the challenges arising from the Supreme Court ruling?

On paper or at 'face value', the Act passed by Parliament in August and assented by the President in the same month, appears to be addressing some of the problems e.g. Issue of severance package would not benefit the worker as the computation of such benefits is heavily skewed in favour of the employer.

However few cases have been recorded based on the Supreme court ruling as a bit of normalcy has returned to industry and commerce but still fear and mistrust hovering upon workers as evidenced by the recent move by EMCOZ to take government to court over certain clauses/sections of the Amended Labour Act which it says is unconstitutional.

IV. Recommendations

The following are suggestions aimed at improving labour relations in Zimbabwe after the Supreme Court ruling on 'dismissals'

- (i) To avoid the Common Law effects, there is need for an employer to apply and justify any intended dismissals to the Minister of Labour, similar to the conditions that governed the application for Retrenchment. This would bring a sense of transparency
- (ii) Issues of dismissals to be discussed first in the works council and if challenges, then employment councils (or NEC) and then Ministry of Labour if no solution arrived at.
- (iii) If dismissal is not based upon case(s) involving summary dismissal criteria, then use of arbitration, conciliation and mediation could be extended.
- (iv) Reviving the Tripartite Negotiating Forum (TNF) saw that such issues which affect all the three parties can be discussed first and ironed out before the responsible minister takes the issue to Parliament for further debate. In Zimbabwe this has not been the case as matters seem to be done arbitrary.
- (v) The country should consult other neighbouring countries doing successfully well on their labour issues like South Africa and Botswana in order to maintain best practices or workable tried and tested approaches
- (vi) Zimbabwe is a member of the United Nations –ILO (International Labour Organisation) and should ratify a number of conventions especially those on the Strategic objectives on Social Justice declaration on issues of employment contracts. If such provisions are followed despite the prevailing economic hardships, Zimbabwe's industrial and labour relations would be a force to reckon with.

References

- [1] Cresswell, J.W. (2003) Research design, qualitative, quantitative and mixed methods approaches Second edition, Sage publications.
- [2] Kennedy, P.(2009) How to combine multiple research methods, practical triangulation, Johnny Holland
- [3] Kothari, C.R. (2004) **Research methodology**, New Age International ltd publishers, New Dehli
- [4] Leedy, P.D. and Omrod, J.E. (2015) **Practical research, Planning and Design**, 11th edition, Pearson publications
- [5] Njaya, T. and Choga, F. (2011) **Business Research Methods**, 1st edition, ZOU, Harare
- [6] www.newsdezeimbabwe (17 July 2015) Supreme Court in Shocking Labour ruling.

- [7] www.theindependent.co.zw (24 July 2015) Unnecessary controversy on Supreme court ruling
- [8] Daily News (20 August 2015) Supreme Court Ruling Costs over 20 000 jobs.
- [9] www.myzimbabwe.co.zw (23 July 2015) Supreme Court Ruling Horror.
- [10] www.jsc.org.zw Latest Supreme Court Judgement
- [11] www.dailynews.co.zw (30 July 2015) ZNCC upholds Supreme Court rulings
- [12] Sunday Mail (23 August 2015) Applying the law in retrospect
- [13] www.herald.co.zw (26 August 2015) Supreme Court in another Labour Judgement.
- [14] www.newsday.co.zw (27 August 2015) Mugabe signs Labour Amendment Bill
- [15] www.zimlil.org Labour Amendment Bill 2015
- [16] Labour Amendment Act No. 5 of 2015 (26 August 2015), Government printers.