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Dynamics of Labour Court in Dispute Settlement in Zimbabwe: An Analysis of the Effectiveness of Various Methods of Dispute Settlement in Labour Relations

By

[1]Dr Kajongwe, Collen,[2]Chinyena, Earlmeth, [3]Chitanga Primrose & [4]Mataba Augustine T
[1&4,] Midlands State University, Bag 9055, Gweru, Zimbabwe
Email: codzakajongwe@gmail.com
Phone number: +263 77 4198 231
[2]University of Pretoria, Private Bag X20, Harfield, 0028, Republic of South Africa
[3]Great Zimbabwe University

Abstract
Disputes are characteristics of human society. As labour relations systems were evolving procedures were needed to assist the parties to settle their disputes. In legislation a labour dispute is distinguished on the basis of differences in the nature of issues involved. Most systems of labour relations in which employers and employees seek to regulate their dealings with each other and particularly to negotiate terms and conditions of employment envisage the possibility of disagreement and dispute. This study seeks to analyse the effectiveness of arbitration and conciliation in labour dispute settlement in the context of Zimbabwe. The study adopted a cross sectional survey research design. A sample of 200 labour officers was used basing on purposive sampling. Questionnaires were used to collect data and data collected was presented in the form of tables, numbers, percentages and graphs. The data was analysed using descriptive statistics and correlations. The findings indicate that the Labour Court is not bound by its decisions in circumstances where such decisions were made in default. The study results also show that the decision of the Labour Court is not bound by the strict rules of evidence and the Court may ascertain any relevant fact by any means which the presiding officer thinks fit. The study found out that conciliation and arbitration practice in Zimbabwe is ineffective as it lacks enforceable mechanisms for its determinations and awards and as a result disputes take a longer period to be finalized as they spill into local courts for registration and enforcement. The regulatory environment on labour relations is shallow in the sense that it lacks clear indications on the resolution of industrial conflicts in the provision of the time frame labour disputes are to be administered and finalized.

Key words: Labour Court, Statute, Dispute Settlement, Zimbabwe

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Introduction and Background to the study

The history and development of alternative dispute resolution (ADR) in Zimbabwe is understood through analysing the legal statutes that regulate labour relations in both pre- and post-independence Zimbabwe (Gwisai, 2007). Matsikidze (2013) asserted that the Zimbabwean legal structure is critical and of paramount importance as it provides the provisions within which the Conciliation and Arbitration derives its legal standing. The influence of the state on the industrial sphere shaped the character of labour relations in the conduct of dispute resolution. Duve (2011) asserted that Arbitration law was first introduced through the 1934 Industrial Conciliation Act. However, as Matsikidze (2012) notes, it remained a secondary method hardly used throughout the colonial period.

As the industrial sphere enlarged further reforms culminated in the enactment of the Industrial Conciliation Act of 1945 in an attempt to exert more control over employment matters. According to Gwisai (2012) the state had the ultimate responsibility over the stability of the industrial environment and it ensured that the negotiations and outcomes were between parties to the disputes. Conflict and disputes have been prevalent since time immemorial and Arbitration and Conciliation has been employed as dispute resolution mechanisms to bring disputing parties together and solve the dispute in Zimbabwe (Machingambi, 2007).

Arbitration can be conceptualised as the resolution of disputes outside the litigation court system when neutral and unconnected third parties come in to resolve disputes by making determinations which bind third parties. Arbitration recognises the fact that court proceedings are too technically complex for resolving industrial disputes. Saharay (2012) posits that unless the decision of the arbitrator is reversed by the High Court on grounds of fraud or being contrary to public policy or any other legally recognised grounds the parties must live with the arbitrator's decision.

According to Matsikidze (2012) conciliation is a term broadly used to refer to proceedings in which a person or panel of persons assist parties in their attempt to reach an amicable settlement for their dispute. Conciliation differs from arbitration. In arbitration the parties entrust the dispute resolution process and outcome of the dispute to the arbitral tribunals that impose a binding decision on the parties while conciliation involves third party assistance in an independent and impartial manner (Bendeman, 2015). However, there have been some changes in terms of the form and process in contemporary conciliation and arbitration process which this study seeks to establish whether the current dispute resolution mechanism is effective in solving disputes.

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Madhuku (2012) asserted that no matter how unavoidable employment disputes may be, they do not always need to end in costly and protracted litigation, the exchange of heated and sometimes defamatory briefs, or the definitive alienation of the aggrieved staff member from of the employing institution. Management, senior administrative staff as well as regular staff members are becoming increasingly aware that recourse to judicial proceedings in administrative tribunals is not inevitable and that there are other methods speedy, economical and less adversarial that offers a good chance of satisfactory settlement (Saharay, 2011).Employees are primarily concerned with the security of their jobs and what they earn, and the employer with what can be produced to obtain maximum profit. When these conflicting interests have taken a definite form and shape, the State has often stepped in to protect some of these interests through legal control (Madhuku, 2012).

In the employment relationship and through promotion of specialised courts to deal with labour conflicts, the State seeks to dispense equity and labour justice. In Zimbabwe it is also the principal influence behind the Labour Act (Chapter 28:01), Section 2A subsection 1(f) that states that its purpose is to "advance social justice and democracy in the workplace by.... securing the just, effective and expeditious resolution of disputes and unfair labour practices." This study defines dispute as an officially out spoken workplace conflict. The Zimbabwean Labour Court has been profound of delays in attending to cases due to the long queues of cases waiting to be heard. It is against this background that arbitration and conciliation has been the most preferred mechanisms for dispute resolution. This research focused on the employment disputes and investigated if the disputes are being managed expeditiously and judiciously. To this end there is death of literature on the effectiveness of conciliation and arbitration in solving labour dispute to enable a productive environment at the work place which this study seeks to establish in the context of Zimbabwe.

Statement of the Problem

The relationship between the employer and employee has been described as conflictual. Conflict arises as a result of divergent interests between the owners of the means of production and providers of labour. In Zimbabwe the state's influence on the industrial sphere shaped the character of labour relations, particularly the conduct of dispute resolution. Arbitration and conciliation came in as a necessary substitute that gives disputing parties an opportunity to settle their differences in an informal, flexible and non-adversarial manner. However, although arbitration and conciliation serve a very good purpose in resolving labour disputes, there is death of literature on their effectiveness in the context of Zimbabwe. It is within this context that this paper is presented in examining labour dispute resolution system in Zimbabwe.

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Objectives

This study seeks to fulfil the following objectives:

1. To analyse the effectiveness of arbitration in labour dispute settlement in Zimbabwe.

2. To assess the effectiveness of conciliation in labour dispute settlement in Zimbabwe.

Hypotheses

H_1Arbitration positively improves performance of labour officers in delivering justice in Zimbabwe.
H_2 Arbitration positively improves service delivery of the labour court in Zimbabwe.
H_3Conciliation positively improves job security of labour officers in delivery of justice in Zimbabwe.
H_4 Conciliation positively improves decision making in the delivery of justice in labour dispute in Zimbabwe.

Methodology

The quantitative research method was used in this study. The cross-sectional survey research design was adopted. Convenient sampling techniques were used to select 200 Labour Officers. Questionnaires were used to collect data. Data was analysed using descriptive statistics and correlations.

Theoretical Framework

Various theoretical lenses were used to analyse dispute settlement and Trudeau (2002) framework was used to underpin this study. When Trudeau developed the yardsticks to determine effectiveness, he was looking at arbitration system. The speed with which a system operates in dispensing justice is a paramount feature of justice delivery and a key feature of effectiveness. According to Trudeau (2002), the system of dispute resolution should not be cumbersome. It should allow for expeditious handling of disputes by not lengthening the dispute resolution. The dichotomy of interests triggers administrative distinctiveness conflict, which consequently impulses the disgruntled party to procure the services of a third party to resolve such industrial conflicts serving a good purpose especially in maintaining confidentiality and also that justice have been served.

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Literature Review

The effectiveness of arbitration in labour dispute settlement in Zimbabwe

In Zimbabwe, arbitration judgements are protected by both the labour Act Chapter 28.01 and Modern law under the Arbitration Act (Gwisai, 2007). Gwisai (2007) argue that recourse to appeal or review of an arbitration award is very restrictive in the Zimbabwean statutes. Machingambi (2007) avers that the grounds upon which a disgruntled party can appeal for a review at the Labour and High Courts respectively are very restrictive and thus onus rests on a party to justify such action. Machingambi (2007) argue that in the Zimbabwean context, arbitrators are expected to be conversant with provisions with Modern Law as enunciated in the preceding paragraphs. Madhuku (2012) claims that the Zimbabwean labour law does not impose a maximum time limit for the Labour Court to deliver judgments, he argued that this gap in the law accounts for some of the delays in resolving labour disputes.

Madhuku (2012) argued that the registration process is laborious and confusing. Many workers are unaware of this requirement and the lapse of time between obtaining the judgment and seeking registration for enforcement may make it impracticable to get an effective remedy. The courts refuse to register the judgments that are not quantified, as an order for reinstatement only that means the employees have to go back to the Labour Court again and make an application for quantification, further again waiting for that application to be determined.

The Labour Relations Board`s and Tribunal`s lack of adequate resources created a huge backlog of cases (Kanyeze, 2011). Duve (2011) asserted that arbitration option involves costs which may be unbearable to both parties. The costs of arbitration according to the Labour Act Section (98) are such that the Labour Officer or Designated agent for the employment council which is registered to represent the enterprise will determine the share of Arbitration costs. For example, in Nyanzara v Mbada Diamonds (Pvt) Ltd. (HC 4084/15, HH63-16) ZWHHC63 the respondent dismissed the applicant on notice and sent him a letter setting out what it acknowledges that it owed the applicant. The applicant claimed that the respondent had by the letter acknowledged its debt to the applicant and that this removed the claim from being a labour dispute. There have been the High Court rulings that the jurisdiction of the court has not been ousted in matters involving an admitted indebtedness by the employer to an employee, even if such indebtedness arises from labour relationship. The trend is that many parties choose Arbitrators by Labour Officers withstanding the case backlog that is building up in this regard.

Machingambi (2013) argue that the challenge of arbitration as a dispute resolution mechanism is on the issue of finality of enforcement of arbitral awards. Section 92 B of the Labour Act Chapter 28:01 is explicit in terms of its enforceability. However regarding arbitration awards, the position is governed by Section 98(14) which says that any part to whom an arbitral award related may submit for registration the copy of it furnished to him in terms of Sub section (13) to the court of any magistrate which would have jurisdiction to make an order corresponding to the award had the matter been determined by it, or if the arbitral award exceeds the jurisdiction of any magistrates court, the high court (Labour Act Chapter 28:01).According to Kanyeze (2011) the cumbersome dispute procedures were amended to allow quick decision-

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making; the numbers of stages to be followed in dispute resolution were substantially reduced. Time limits were also set for handling cases at all stages, which was expected to quicken their resolution. According to Matsikidze (2013), the principle of finality to litigation is realised if justice isperceived by parties to have been administered fairly. The judiciousness of the decision determines whether parties accept it. The decision to appeal against a judgment by parties is directly related to their perception of its judiciousness. A decision which is perceived to be unjust and unfair is likely to be appealed against.

The effectiveness of conciliation in labour dispute resolution in Zimbabwe

According to Mucheche (2014) Conciliation as the first stage of dispute resolution, parties are allowed to bring their representatives and present evidence in support of their viva voice facts. Section 93 (1) and Section 63 (3a) of the Labour Act Chapter 28.01 in Zimbabwe empowers the labour officers and Designated Agents in attempting to settle labour disputes referred to them through conciliation within a period of 30 days. The Act also allows them to issue certificates of settlement of the agreement by both parties to settle the matter in good faith. According to Mucheche (2014) under conciliation parties to a dispute talk to each other in the presence of a neutral observer.

Accordingly, Mucheche (2014) observed that the principle of escalation assist conciliation to achieve expected results of agreement between disputing parties. Madhuku (2012) argue that the absence of guidelines on conciliation is a major structural weakness. Principally, the competence and scope of powers of conciliators are not clear in terms of the law in Zimbabwe. International Labour Organisation (2015) noted that countries such as Botswana have clear cut standards on the competences (skills, knowledge, attitude and experience of conciliators.

Kanyeze (2011) avers that there is no system of allocating cases to conciliators and there is need for guidelines for case management. The nature of conciliation process in handling disputes upon the disputants can be deemed as not much effective as according to the Labour Act in section 93 indicates that, when the labour officer fails to settle a labour dispute within a period of 30 days, he / she issues a no settlement certificated to both parties. The dispute is being referred for compulsory arbitration or parties could come to an understanding of extending the conciliation period through requesting a rehearing thereby delaying the process of resolving a dispute. Another issue to note is that Section 93 (1) also provides for voluntary arbitration as it stipulates that and if parties agree on arbitral costs, they can skip conciliation proceedings and instead go for arbitration whereby they just submit written heads of arguments.

There is lack of specific guides in the Labour Acts on how conciliation procedures are supposed to be handled and as a result, all the labour officers administer conciliation procedures in different ways that they consider appropriate as the law did not provide for specific training or stages on how the process should be conducted (Matsikidze, 2013). It is a major challenge to the effectiveness of conciliation proceedings as the law is not clear on who will serve the letters of notification of a hearing to parties and as a result, the complaint is assigned to serve the other party. Parties may default hearings arguing with technicalities that they were not served with

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notice as there are no messengers that serve parties with summons and sign upon receipt so that they will acknowledge the notice. The powers of conciliators are not highly specified and stipulated in the Labour Acts and the silence of the law hinders the conciliation process to be effective. Figure 1 show the process of conciliation and arbitration in Zimbabwe intra organisational process.

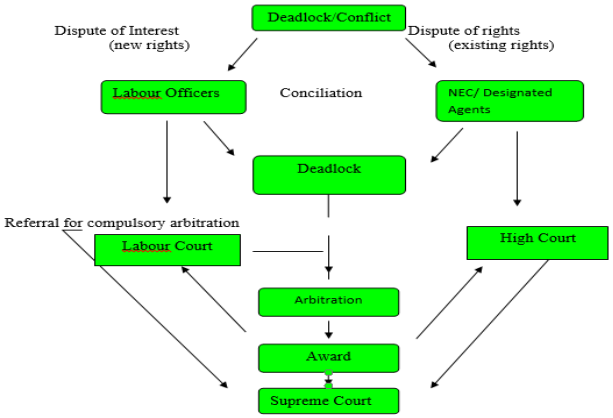

Figure 1: The Process of Conciliation and Arbitration in Zimbabwe, Intra Organisational Process
Source: Duve (2011)

Findings

Table 1 Chi-Square test of independence and hypothesis testing the relationship between arbitration and conciliation in dispute resolution processes in Zimbabwe.

Variable 1	Variable 2	Chi-square (x^2) Value	DF	P-Value
Arbitration	Performance	3.162	3	0.011**
Arbitration	Service delivery	2.223	3	0.118**
Conciliation	Job security	4.325	3	0.214**
Conciliation	Decision making	3.174	3	0.023**

*Significant at 0.05 level
**Highly significant at 0.01 level
DF=Degrees of Freedom
Source: Field Survey 2020

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Using Chi-Square statistic arbitration positively improves performance of labour officers in delivery of justice system was found significant (X^2 = 3.162, DF=3; p= 0.011) at 95% confidence level (refer to Table 1). This is in tandem with Matsikidze (2013) who asserted that the speed or reasonable time frame in which conciliation and arbitration process are conducted with matters being resolved and finalised was an important factor in examining the alternative dispute resolution mechanisms in Zimbabwe. Chi-square tests revealed that arbitration positively improves service delivery inthe administering of justice in labour disputes settlement Zimbabwe andwas found significant (X^2 =2.223, DF=3; p= 0.118) at 95% confidence level (refer to Table 1). This does not confirm the argument by Mucheche (2014) who asserted that that conciliation hearing is not always effective as there are some limitations pertaining settlements of labour disputes.

The challenges encountered can be the issue that conciliation process is heavily relied upon the agreement of parties therefore if one disagrees and refuses to settle the dispute, the whole conciliation process fails. It can also be noted that if either party is in default or fails to appear for a conciliation hearing, the matter can be postponed to a certain date whereby the hearing is conducted whilst both parties are present. Study results also show that there is a positive co relationship between conciliation and job security of labour officers in the administration of justice in labour dispute settlement in Zimbabwe (X^2 =4.324, DF=3; p= 0.214) at 95% confidence level (refer to Table 1).

The study results also show that the decision of the Labour Court is not bound by the strict rules of evidence and the Court may ascertain any relevant fact by any means which the presiding officer thinks fit. The study found out that conciliation and arbitration practice in Zimbabwe is ineffective as it lacks enforceable mechanisms for its determinations and awards and as a result disputes take a longer period to be finalized as they spill into local courts for registration and enforcement. The regulatory environment on labour relations is shallow in the sense that it lacks clear indications on the resolution of industrial conflicts in the provision of the time frame labour disputes are to be administered and finalized.

Conclusion and Recommendations

Arbitration process in Zimbabwe is taking too long to resolve labour disputes as the labour Acts do not specify the reasonable time frame of a dispute to be resolved whereas the enforcement of the arbitral awards takes a litigation route as it is bound to be registered with the Magistrates court or High court. Arbitration in government service is highly recommended as the services are for free and offices are accessible in all provinces. Voluntary arbitration is effective in a way as parties agree in choosing an arbitrator and share the costs. Section 98 (9) of the Labour Act stipulates the power of an arbitral award as it states that the arbitrator after hearing and determining a dispute, he shall have the same powers as the labour court. This entails that the award becomes binding and is to be registered with the magistrate court or High court for enforcement. However, it is argued that arbitration is not much effective in Zimbabwe, as it requires a long process, which involves registering the award with the Magistrate and High courts for enforcement. The law does not provide for the arbitrators and labour court to enforce

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their own awards, determinations and judgment. There are a number of challenges encountered in regards to conciliation and arbitration processes which affect the effective speedy resolution of disputes in Zimbabwe so as to promote sound employment relations and fair labour practice. These include informality procedures, poor enforcement mechanisms, legislation which is not clear, competency of the authorities, legislative structure.

However, it is important to note that, in as much as ADR may seem to be delivering speedy resolution of disputes it can be argued that the dispute resolution mechanism in Zimbabwe are not effective. Efficiency and effectiveness in dispute resolution can only be achieved by human beings. In any system of dispute resolution as noted by Brand et al (1997) the people staffing the various institutions will play a decisive role in determining how efficiently and effectively that system works. For it is those very dispute resolvers that must strike the balance between countervailing considerations of practical and informal dispute resolution on the one hand and the maintenance of fairness, justice, impartiality and order on the other hand. Expertise means the competency of the principal actors in the dispute management process. It is critical that these are manned by specialised personnel who appreciate labour law jurisprudence and industrial relations.

According to Bishop and Reed (1998), they should be disinterested and neutral parties. This was supported by Brand et al (1997) who notes that a dispute resolver should be fair, unbiased and independent. Not only will the personnel of the dispute resolution system determine, to a large extent, the efficiency and effectiveness of the system, but they will also determine the view and the attitude that the employers, employees, employers` organisations, trade unions and lawyers take of the dispute resolution system.

Madhuku (2012) observed that Zimbabwe`s Labour Act does not prescribe expertise in labour law as a pre-requisite for appointment as a judge of the Labour Court. Zimbabwe takes the view that any reasonably qualified lawyer is suitable for appointment. This is a fundamental misconception and is a major area of weakness as there is need at the issue of specialisation. Labour law has become a very specialised, complex and challenging area of the law.

Recommendations

Arbitration in government service is highly recommended as the services are for free and offices are accessible in all provinces. Voluntary arbitration is effective in a way as parties agree in choosing an arbitrator and share the costs.There is need to reform the labour relations sector in regards to conciliation and arbitration so that it can be formalized like any other courts to promote sound employment relations.

The legislation should abolish the involvement of legal practitioners at conciliation hearings and only allowed in arbitration processes and appeals only as they hinder speedy resolution of disputes through ADR with the use of technicalities. The government of Zimbabwe should provide an Independent for institution conciliation and arbitration practice responsible for administration of disputes through ADR which registers arbitrators and recruit conciliators. It should have jurisdictional power to enforce its determinations or judgments. It should be responsible for offering training programs for conciliators and arbitrators through issuing

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certificates of practice. It should remain as a neutral body and be able to discipline conciliators or arbitrators if they abuse office and seize their practicing certificates.

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