

Examining the Impact of Common Law on Job Security in Zimbabwe's Private Sector Legal Insights and Employee Perspectives

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Abstract

This research addresses the profound implications of applying common law in resolving labor disputes amidst Zimbabwe's stark unemployment rate exceeding 90%. Employing mixed research methods, including a structured questionnaire administered to 400 respondents and qualitative data from focus group discussions and interviews, the study explores the detrimental effects. In the study, the collected data underwent rigorous statistical analysis including Chi-Squared tests, Cramer's V Test, and Regression tests. These analytical methods were employed to examine the relationships and significance between variables related to the impact of common law on job security in Zimbabwe's private sector. The Chi-Squared test assessed the independence between categorical variables, providing insights into patterns and associations. Cramer's V Test measured the strength of these associations, highlighting the magnitude of relationships observed. It reveals that common law, particularly influenced by the Zuva Judgment precedent, has severely eroded job security for countless employees who face termination notices without adequate recourse. This insecurity breeds profound distrust among remaining employees, who live under constant threat of dismissal. The study highlights how the Zuva Judgment undermines permanent employee protections, enabling termination with minimal compensation, exacerbating uncertainty and fear in the workplace. Moreover, common law's broad discretionary powers empower employers to exploit loopholes, potentially leading to discriminatory practices under the guise of lawful termination. In essence, the application of common law in labor dispute resolution undermines the security of tenure across all employment grades. Recommendations include judicial reforms to advocate legislative safeguards for employee rights, consideration of public opinion in labor judgments, and the implementation of robust company policies and conflict resolution mechanisms by employers. Emphasizing a shift towards high-performance workplaces through training, employee involvement, teamwork, and information sharing emerges as pivotal for mitigating workplace conflicts in Zimbabwe's challenging economic environment.

Keywords: Common Law, Job Security, Perspectives, Private Sector

Introduction

The application of common law in Labour disputes in Zimbabwe has caused suffering among the workers. Many examples of common laws which shook the Labour market could be cited but it is *Nyamande. D and Donga K. v Zuva Petroleum (Pvt) Ltd of 17 July 2015* which lingers in the minds of most workers. The case was later to be commonly referred to as the Zuva Judgement. The brief circumstances of the case are that a company called Zuva Petroleum (Pvt) Ltd intended to exercise its right to transfer its two managers (Don Nyamande and Kingstone Donga) from the capital city Harare to a faraway work station. The two managers received the written order to transfer but refused citing harassment and unfair Labour practice. The company went on to dismiss the two managers by giving them three months' notice. The two managers appealed against the decision to dismiss them and the Labour Court ordered reinstatement. Aggrieved by the Labour Court judgement, the employer (Zuva Petroleum [Pvt] Ltd) appealed against the Labour Court judgement and the Supreme Court ruled in favour of the employer and held that both the employer and the employee had a common law right to terminate an employment relationship by giving three months' notice without giving reasons. This meant that it immediately became common law that an employer can give employees three months' notice for termination of employment notwithstanding that the employee would not have committed any act of misconduct. Most employers in Zimbabwe welcomed the judgement.

The next day (18 July 2015) after the coming into effect of this legal precedence, companies in Zimbabwe dismissed a total of 6,000 workers on notice i.e. they simply called employees to the office and gave them three months' salary in-lieu of notice and that was it. Some employees with years of experience, financial obligations such as loans deducted through salaries, family obligations such as children's fees and medical conditions supported by medical aid had to face the reality of being jobless just because of a Supreme Court judgement on two employees of a company somewhere, which was unrelated to their day to day work. Within a month, over 30,000 employees in Zimbabwe had lost their jobs because of the Zuva Judgement common law (Mucheche, 2015). It is estimated that by the end of four months nearly 100,000 workers had been dismissed using this common law principle of termination by notice. Zimbabwe is a small country, with a small economy with many problems. Loss of jobs at this rate shook the economy and caused misery across the country as employers enjoyed legally dismissing workers because of a common law judgement (Javed et al., 2020; Al Qalhati et al., 2020). This worsened the plight of workers given that Zimbabwe already had the highest unemployment rate in the world of 95%. Families plunged into poverty and the suffering was felt across the economy. Up to the time of this study, Zimbabwe is still licking the wounds of this common law case.

The then Secretary General of the Zimbabwe Congress of Trade Unions J. Moyo remarked 'the interpretation of the Zuva Supreme Court judgement was tantamount to turning all country's workers into temporary workers' (The Herald, 20 July 2015). The nation was stunned by the common law interpretation and application that totally ignored the implications on social justice and industrial harmony.

The overall effect of the judgement meant that permanent status of employees in Zimbabwe became theoretical because in practice, the employer now had power of tenure of the employees. The 'casualisation' of the permanent status of employees seriously affected the industrial relations at work place (Mucheche, 2015). Job security is at stake for the survivors of termination and the situation in companies remains volatile as management can simply give notice to workers when they exercise their right to demand fair wages for instance. This industrial disharmony was caused by the application of common law yet one of the purposes of law according to Madhuku (2010) is to deliver justice and preserve peace and order, one wonders; if a law does not meet the definition of delivering justice and preserving peace and order, is it worth calling it law? The whole nation seemed to be driven by the unitary industrial approach which considered Labour as a factor of production not a partner in production. The dismissal of employees on notice increased the unemployment rate which was above 95% at the time of this study. Poverty was bound to increase due to loss of employment by breadwinners and social ills such as theft, prostitution and drug abuse to mention but just a few were also bound to increase. In Zimbabwe, termination of employment contracts especially without reason was tantamount to 'death sentence' to most employees whose life depended on salaries. To make matters worse, Zimbabwe's turbulent economic environment is harsh to an individual who does not have an income. The chances of getting another job when unemployment rate is over 95% were extremely slim. Zimbabwe does not have laws for unemployment benefits. Government does not provide social safety nets to cushion the affected workers who lost jobs because of this application of common law. The situation becomes sad, gloomy and pathetic and warrants a study to find recommendations for solutions to the problem.

Problem Statement

Zimbabwe as a nation uses common law in industrial relations. The common law principles looks at the industrial relations of employees and employer as that of the master and servant relationship whereas the employer has to draft the contract of employment that favours his interest and the employee has very little bargaining power as a individual to influence the contract. Also the employee in most cases would be pushed by poverty to seek employment and would accept anything on offer. The common law does not consider such embedded duress and views the contract as legally binding because two consent parties had agreed to perform the contract.

The supreme court of Zimbabwe made a landmark judgement based on common law on 17th of July 2015 Nyamande Donga K vs Zuva Petroleum Pvt Ltd case, SC/43/15(Zuva Judgement) that resulted in private sector companies used that case as precedence to terminate employment contract of over 30000 employees without giving reasons or compensation.

The termination of employees on notice meant that all employees in Zimbabwe except those specified in the constitution like judges could have their employment contract terminated on notice disregarding the permanent status of employees.

The termination of employment without compensation and preparation caused social and psychological problems to the terminated employees and furthermore the unemployment rate at that time it was 95% that made it very difficult to quickly get alternative employment and the situation was dire and tantamount to death sentence.

Termination on notice of such large numbers through use of common law principle induced shock and upset public policy which created an industrial crisis in Zimbabwe. The industrial crisis warranted the serious debate in parliament (Hansard 28, August 2015/41-63). The

parliament could not immediately reverse the judgement for fear of interfering with the rule of law and respect for separation of powers doctrine.

This absurd situation called for an empirical study to analyse the efficacy of common law application in Zimbabwe.

Limitation

The study was carried out during the Covid-19 pandemic. This caused considerable limit to the researcher and assistant researchers' freedom to travel and collect data. Some of the targeted key informants could not be accessed.

Literature Review

Literature from Zimbabwe, Africa and other continents was reviewed to establish the global effects of common law.

Definition of Terms

- Law- means statutes, acts, rules, regulations, orders and judgements from the courts.
- common law/case law- These are Judge made laws based on precedents.
- Industrial Relations-It is the relationship that exists between management and workers in connection with how things are done or should be done at a work place.
- Private Sector refers to part of the economy that is run by entrepreneurs/ individuals, families and companies for profit and is not state controlled
- The Judiciary -The system of courts which presides over disputes or disagreements.
- Alternative Dispute Resolutions-a method of settling labour disputes through semi-formal means
- Job security-Surety of Tenure

Theories

Natural Law Theory (Moral /Fairness- Social justice i.e. Thou shalt not kill) -Underpins this study

The study utilised the natural law theory that emphasised social justice premised on fairness. It, therefore viewed industrial relations as a social contract that should respect humanity during performance of production.

Positivist Law Theory (Law is law as given)

The study also considered the passivist law theory that emphasised that a contract of employment is a product of consent of two legal parties and therefore it should be implemented be it fair or unfair.

Marxist Law Theory (Law is a tool of oppression)

The study also looked at the Marxist theory that viewed law as a tool of oppression used by the elite class to perpetuate class different of the have and they have not.

Realist Law Theory (Law is what the judge says is law)

The study explored the realist law theory that views law as what is given or interpreted by the judges. It notes that statutory law if not interpreted by judges it remained dead law and the interpretation of judges becomes law.

Research Questions

1. How effective has been the application of common law in resolving Labour disputes in Zimbabwe's private sector organizations?
2. What is the impact of common law on job security of employees in the private sector organizations in Zimbabwe?
3. What are the alternative Labour dispute management and resolution strategies for the private sector organizations in Zimbabwe?

Research Objectives

1. To analyse the effectiveness of common law in resolving Labour disputes in Zimbabwe.
2. To assess the implications of common law on job security in the private sector Zimbabwe.
3. To propose alternative Labour dispute management and resolution strategies model for the private sector organizations in Zimbabwe

Research Hypothesis

- ▶ **H1:** Common law is effective in resolving labour disputes in Zimbabwe.
- ▶ **H2:** The application of common law in resolving disputes is significantly associated with loss of job security.
- ▶ **H3:** The application of common law is significantly associated with loss of industrial harmony.
- ▶ **H4:** The application of common law is significantly associated with loss of employee livelihoods.

Research Methodology

The research study utilized the pragmatism research paradigm which believes in both positivism and interpretivism. It also used mixed research design that also utilize both quantitative and qualitative research methods to collect, present and analysis data. 400 respondents were used for quantitative data out of a population of 36,372. Face to face interviews and face to face group discussions were carried out to the saturation point for the qualitative component.

Targeted groups

The study used Quantitative method to administer questionnaire to employees in the private sector. It also used Qualitative (interviews determined by saturation) to reach out to lawyers, Trade Unionists, judges, Human Resource Managers, Labour Officers/Designated Agents and Employees. The study further used focus groups method on three groups comprising of 8, 8 and 12 members

Pre-test of the questionnaires to achieve content validity was administered to 65 human resources managers and 30 final year law students who did not eventually participated in the final survey.

Data Analyses

Reliability test was achieved by Cronbach's Alpha of >0.7 with confirmed good internal consistency. The Interviews used the interview guide to approach informed interviewees for consistence. Quantitative, SPSS, Chi-square, ANOVA and Ordinary least square regression

Findings and Conclusion

The Findings of The Efficacy of Common Law in Resolving Labour Disputes in Zimbabwe

Common law is ineffective:

Very expensive –financially draining and time consuming. Most employees abandon the process before its logical conclusion to seek for alternative employment. The common law is biased towards employers who draft the contract of employment, administer discipline at work place and have the financial muscle to sustain the case from shop floor to the supreme court a final court of appeal.

Common law is insensitive to employee feeling, employee dependents, mitigation of the employee. The common law just sticks the legal provision -Lacks morality (social justice). throws employees into poverty through dismissals driven by judgements passed elsewhere. The insensitivity of the common law creates disharmony at work place thereby threatening job security.

Dismissals increases national poverty and unhappiness by fuelling unemployment. The common law encourages judges to make and interpret own law in contrast of the Separation of Powers Doctrine .

Recommendations

- ▶ More use of Alternative Dispute Resolutions
- ▶ Creation of a Labour Division within the Supreme Court that caters for social justice.
- ▶ Establishment of Industrial Labour Centre to separate criminal cases from labour cases at supreme court.
- ▶ To create more statutes to replace negative common laws in labour market.
- ▶ Judges to seriously consider social justice on Labour matters.
- ▶ Use of ICT technologies on case management to expedite completion of cases.

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