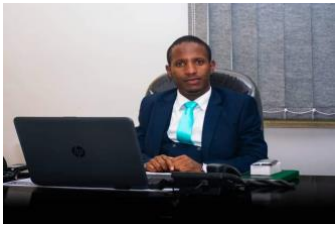


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RIGHTS OF EX-EMPLOYEES OVER PREVIOUS EMPLOYER'S PROPERTY POST TERMINATION OF CONTRACT OF EMPLOYMENT.



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The subject matter of this article presents one of the most reoccurring legal issues that our civil courts are constantly being asked to determine. The opening statement in the judgment by justice Mathonsi in the case of **Montclair Hotel & Casino v Farai Mukuhwa**¹ sums up the frustration that our courts have endured in constantly being called to adjudicate the above subject. The Honourable judge had this to say;

"Just from where do former employees think they derive the authority to hold on to property belonging to a former employer given to them for use during the subsistence of the contract of employment in the discharge of their duties as employees, after they have lost employment? This matter is one of several of

its nature which are now finding their way to the courts with alarming frequency of late where a dismissed employee would simply not surrender the employer's property but would cling to it as if life itself depends on it".

Just as in the signing of a contract of employment, the termination of same gives rise to duties and obligations on both parties to fulfil at law. For instance, section 13 of the **Labour Act (Chapter 28:01)** provides that upon termination of a an employment contract, it is the obligation of the employer to settle the employee's wages and benefits which may include outstanding vacation and notice period, medical aid, social security and any pension. The same section further criminalises the refusal by the employer to settle any of the above benefits or the unreasonable delay of payment of same without the Minister's permission.

The termination of a contract of employment also creates a duty on the

employee to surrender to the employer all the property that such an employee would have been given to use in the execution of his or her duties during the subsistence to the contract of employment². This duty on the employee exists regardless of whether or not the employee agrees with the termination or has proceeded to mount a legal challenge on such termination³. Thus whatever the legality of the termination of the employment contract, the obligation arises. It is a common phenomenon for ex-employees to feel morally justified to retain their ex-employer's property upon finding out that their termination is unlawful. It is worth mentioning at this point that such moral conviction has no legal backing in our law.

INSTANCES WHERE AN EX-EMPLOYEE CAN LAWFULLY RETAIN PREVIOUS EMPLOYER'S PROPERTY

The only instance where our law recognises the right of

an ex-employee to retain the property of his or her previous employer is when such an ex-employee has a legally recognisable right to do so. As stated above, the fact that the employee is challenging his or her dismissal does not translate into such a legal right. In the same vein, the fact that the employee is owed terminal benefits does not also translate into such a legal right. Such a right can arise from the contract of employment itself. An instance can be where an employee, as a benefit, is given the property or is allowed to use the property for a prescribed period on condition that upon the lapsing of such a period, the property would be deemed to be the employees'. The other instance is when the employer would have sold the property to the ex-employee. The last instance is where an employee can establish a right of lien over such property. Alien arises by operation of law from the principle that no-one should be unjustly enriched at the expense of another. There

¹ HC 6258/12

² *Zimbabwe Broadcasting Holdings v Gono* 2010(1) ZLR 8 (H) 9 G, 10 A-C

³ *Nyahora v CFI Holdings (PTY) LTD* SC 81-14

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are three types of liens the first one is the improvement lien which arises where a person in possession of another's property incurs expenditure on the property of another, movable or immovable. Such a person is entitled to retain possession of such property until paid sufficient compensation to prevent the owner being unjustly enriched at his expense. The second type of a lien is known as a salvage lien which can be claimed by a possessor who has incurred useful expenses, i.e. expenses which must be incurred to prevent the destruction or deterioration of the property, such a possessor accrues a right of retention of the property until he or she has been paid the amount of his expenditure. The third type of lien, a debtor and creditor lien, is available to anyone who has, by contract, performed work or incurred expenditure on the property of another. It confers a personal right, available only against the other party to the contract (or third parties with knowledge of

the lien) to retain the property until the contract price.⁴

It therefore follows that outside the existence of any legally recognisable right, an ex-employee who refuses to surrender his or her previous employer's property post the termination of the employment relationship does so unlawfully entitling the employer to approach either the Magistrates Court or the High Court, depending value of the property, seeking an order directing that the property be seized from such ex-employee.

⁴ Zimbabwe Commercial Farmers Union v Nyamakura HH 208-16