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Navigating Legal Responses to Workplace Sexual Harassment in Zimbabwe

From Common Law Milestones
to Legislative Prospects

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Sexual harassment as an unfair labour practice in Zimbabwean law

- The legislature introduced a prohibition of sexual harassment in terms of s 7 of the Labour Relations Amendment Act 17 of 2002.
- The Act provides that an employer commits an unfair labour practice where the employer or any other person by act or by omission—
“demands from any employee or prospective employee any sexual favour as a condition of—
 - (i) the recruitment for employment; or
 - (ii) the creation, classification or abolition of jobs or posts; or
 - (iii) the improvement of the remuneration or other conditions of employment of the employee; or
 - (iv) the choice of persons for jobs or posts, training, advancement, apprenticeships, transfer, promotion or retrenchment; or
 - (v) the provision of facilities related to or connected with employment; or
 - (vi) any other matter related to employment”



- The Act also provides that any person who engages in unwanted sexually motivated conduct toward any employee, whether verbal or nonverbal, such as unwanted physical contact or advances, “sexually coloured remarks”, or the display of pornographic materials in the workplace, commits an unfair labour practice.
- Classification as an unfair labour practice impacts the remedies available.
- The procedure to resolve any dispute in respect of an unfair labour practice is set out in s 93 of the Labour Act.
- *Mbhata v Zizhou* (Mbhata II) **“The jurisdiction of arbitrators when dealing with unfair labour practices is limited to stopping the conduct complained against. The role of the Labour Court and arbitrators when dealing with claims involving sexual harassment is to make a finding on allegations of unfair labour practice and only seek to stop the practice. The Labour Court or tribunal does not have jurisdiction to assess damages arising from a complaint of an unfair labour practice. Similarly, a Labour Court or tribunal faced with a complaint of sexual harassment cannot proceed and make an award for damages arising out of the sexual harassment.”**



Damages awarded by Labour Officer

- The current s 93(5)(c) was inserted by the Labour Amendment Act of 2015.
- In terms of this section the labour officer may after consultation with a more senior labour officer make a ruling that an employer or any other person is guilty of an unfair labour practice.
- The labour officer may also resolve the dispute by an order “for damages for any loss or prospective loss caused either directly or indirectly, as a result of the infringement or threatened infringement, as the case may be”.
- Amendment did not alter the power of arbitrators or expand the jurisdiction of the LC.
- Nevertheless, LO’s order must be confirmed by LC after LO launched an application in LC.



Common Law Damages

- The *Mbatha IV* case is ground-breaking as the first case in which a Zimbabwean court has awarded damages for sexual harassment.
- The court noted that sexual harassment is an “actionable wrong” in terms of the *lex Aquila* as a form of non-patrimonial loss.
- The court did not determine the extent to which the employer is liable.
- The role of the Constitution in developing the common law on vicarious liability?



The Labour Amendment Act 11 of 2023

- Introduces the concept of violence and harassment as a form of prohibited conduct.
- “violence and harassment” in the context of section 6(3) and section 8 refers to a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment;”
- “gender-based violence and harassment” means violence and harassment directed at persons because of their sex or gender, or affecting persons of a particular sex or gender disproportionately, and includes sexual harassment
- Section 93 of the Act is amended and LO’s powers altered