

China and Botswana: legal and cultural differences in labour laws

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Abstract

Labour related conflicts are increasingly becoming a thorny issue in China-Africa economic relations and have greatly undermined the strong China-African relationship of recent times. The Chinese investments in Africa have come under criticisms on their labour practices. Though the case of Botswana has not been the most pronounced case of China -Africa labour conflict, it provides the tip of the iceberg for a more profound understanding of these problems. The case study underscores such a need by highlighting the legal cultural gap in Labour law as regards to probation and termination of employment in Botswana and China. We will discuss how understanding these differences can be helpful in ensuring that Chinese Investment in Africa at large and Botswana in particular is fostered in an environment of peace, security and social justice. The paper aspires to provide an understanding of the labour law as regards the termination of employment during probation as a springboard for more profound research in this area.

Background

China-Africa economic, trade and investment relations have been on a dramatic

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upsurge since 2000 and with the increasing effects of globalization, both China and Africa are confronted with the tremendous amount of foreign laws, which in most cases conflict with domestic legislation. It is beyond doubt that Chinese presence in Africa will continue to grow despite a backdrop of not only increase conflict in foreign law but also cultural challenges Sasha Westropp (2012). Between 2005 and 2010, Chinese FDI to Africa totaled UD\$ 11.8 billion (excluding non-financial flows) and by 2010, the stock of China's FDI to Africa was US\$13 billion (Statistical Bulletin 2010). At the end of 2011, more than 2,000 Chinese companies currently invested in Africa. Chinese investments have been bringing more job and development opportunities to the continent but labour standards in some Chinese companies have become a concern. The increased number of Chinese managers and new forms of management culture with which the Chinese companies now operate have been sources of conflict. The increased Chinese investment and subsequent conflicts may have caught African governments unprepared for a wave of problems that are arising. As the former Botswana Minister of Labour and Home Affairs Peter Siele pointed out in October 2010, at the China Business Forum: several factors including language barrier and other cultural differences are key elements in the incompatibility of a handful of Chinese enterprises' labour standards, wages and working hours with Botswana labour laws. These conflicts were greatly and negatively affecting China's corporate image and normal business activities in the country. Cultural challenges may not only be limited to language but can also include misunderstanding in values, principles, structure, decision-making, and preference for leadership.

The case in focus (*Roosevelt Kgosi v. China Civil Engineering*) and others like the *Factory Workers Union V. Tzicc Clothing Manufacturing (Pty) Ltd* in The Labour Court Of Lesotho and *Sun Textiles (Pty) Ltd V. Directorate Of Dispute Prevention And Resolution And Mookho Moleko* still in the Labour Court of Lesotho are some of the very few and early on labour disputes involving Chinese Companies in Africa that can be found to have gone before a tribunal. Taking the *Sun Textiles (Pty) Ltd V. Directorate of Dispute Prevention and Resolution and Mookho Moleko* as

an example of where differences in management approach has led to conflict between Chinese managers and their local employees. According to evidence from the case, when African workers proceeded for lunch they were body searched as stipulated by terms of their procedure. As the search was being conducted behind a curtain enclosure, one of the Chinese Supervisor Ms Zhang after searching the 2nd respondent in the case asked her to clear the space and to finish dressing in the toilet as the line was long. The search on that particular day (16 May 2005) was different as they were asked to undress and that the respondent refused to go outside before she finished dressing. She allege that the place where she was asked to go and complete her dressing had male colleagues there who were going through the same routine. Another Chinese supervisor, Miss Yao, then came and pulled her by the clothes to go out, which resulted in a quarrel. Miss Yao subsequently reported the incident and went to the hospital to get a medical report for the bruise she sustained. Although such types of cases are rare, it nevertheless portrays some very negative image of Chinese management style.

China-Botswana Labour Law Framework

Some Chinese scholars are of the opinion that history, tradition, custom, consciousness, psychology and many more factors are related to law, as all form part of a Legal *Culture*. Labour law in Mainland China is much influenced by Rome-Code Law, while in Botswana, which was long under British colonial domination and is member of the British Commonwealth, inherited the British Common tradition. This is also having an influence in its labour laws. With the increasing presence of Chinese enterprises investing in Botswana and hiring local labour, the propensity of legal cultural conflict in labour management is inevitable. As an old Chinese saying is: “rù xiāng suí sú” (“When in Rome do as the Romans do”, or literally “Wherever you are, follow the local customs”), which can be translated as meaning that Chinese enterprises investing in Botswana should not only be aware of the Chinese labour culture, but must abreast themselves with the history, traditions, habits, consciousness of the Batswana people to say the least. This, in a nut-

shell, is the difference in legal culture and it requires respect for different legal cultures of their host country by coming to terms with it.

China

For nearly three decades, industrial relations in China (PRC) were characterized by an economy dominated by state-owned enterprises, where employee depended on the enterprise, state-controlled Union organizations, and relative peace in labour relations. Reforms in the 1980s let many state-owned enterprises to be transformed into private businesses, but the organizational style – absolute power concentrated at the top of the enterprise – had not changed significantly. The dramatic transformation in Chinese economy also saw a relative transformation in the labour market in which employees can be hired freely without state organs demanding so (or providing special protection). The Chinese labour law prior to its revision in 2009 was a vague and ambiguous set of statutes, of which most workers hardly knew, thus giving employers significant latitude to interpret the law and explain regulations in ways that served their self-interest (Haiyan Wang et al., 2010).

The primary pieces of Labour legislations in China today, are the Labour Law of 1994 and the Labour Contract Law of June 29, 2007. Articles 10-14 and article 19-21 of Labour Law and articles 21, 25 and 32 of the Labour Contract Law set out the minimum statutory entitlements for the employees contracts probationary periods. China adheres to several International Labour conventions and has been a member of the International Labour Organization (ILO) since 1919.

Botswana

1969 saw the first pieces of legislation ever passed by the new government of Botswana after independence in 1966 to improve the Trade Unions and Trade Dispute Proclamation and Employment Law No. 15 of 1963. These were the Trade Unions Act No.24 of 1969, the Trade Dispute Act No. 28 of 1969 and the Regulation of Wages and Conditions of Employment Act of 1969. The Regulation of

Wages and Conditions of Employment Act of 1968, which came into force on 1 August 1969, provided for the establishment of Wages Councils and regulation of remuneration as well as conditions of employment (Kalusopa et al., 2013). These acts were overtaken by events and as a result amendments were introduced in 1982/83 and later in 2004. These included an overhauled Employment Act, a comprehensive Trade Dispute Act and Trade Union and Employers Organizations' Act. Currently the major pieces of legislation governing labour relations and the rights and activities of trade unions include the following:

Employment Act (Cap 47:01): Sets out the basic minimum terms/conditions of employment for private sector, parastatal corporations and public employees

Trade Disputes Act, 2003 (Cap 48:02): Outlines the trade disputes settlement mechanism at both individual and collective level.

Botswana is a member of the ILO since 1978 and has ratified several conventions fundamental to the rights of human beings at work.

The Summary Of The Roosevelt Kgosi (Applicant) v. China Civil Engineering (Respondent) Case In The Industrial Court Of (Gaborone) Botswana (Case No. IC. 500/2004 of 5th April 2005)

Facts of the Case

China Civil Engineering Construction Corporation (CCECC) was contracted to build a psychiatric hospital in Lobatse, Botswana. Known as the Sbrana Psychiatric Hospital, the total project price was \$65 million USD.

The applicant was verbally contracted to serve three months probation and commenced work for the Lobatse Project as Human Resources person on 20 September 2004, For a salary of Pula 4,500 per month only to be dismissed on 29 September 2004. The applicant had been retrenched from another project belonging to the company; the Shoshong Village Water and Sanitation Project a month earlier (The Botswana Department of Water Affairs in collaboration with CGC/CCEC JV

(China Geological Company/China Civil Engineering Company Joint Venture. The latter is the overseas subsidiary of CCECC) initiated the Shoshong water supply and sewerage project. It started in January 2002 in Shoshong, a village approximately 40 km from Mahalapye -Central District, Eastern Botswana). As such he was contesting his dismissal on the grounds of lack of notice, arbitrary dismissal and repatriation. The applicant claimed that during the 10 days, he was not provided with any rules for being tested.

The project manager declared the applicant dismissed by paying him ten days wages without payment of entitlement to notice pay, the reason being that he was unsuitable. The applicant protested against the dismissal at the Industrial Court on the grounds that his conduct had been fair, stating that the respondent was unable to specify the standards of performance, which were used to determine his suitability and adding that the retrenchment was a trick to prevent him from deriving high benefits and compensation. The applicant further stated to the Court that his probation was illegal for the reason he was employed by the respondent (China Civil Engineering) for two years previously, in addition the probation was not made out in writing as Section 20 (3) of the Botswana Employment Act requires.

In his pleadings the applicant asked for three months compensation, which addresses notice pay, settlement and repatriation, however, he also begs the court to make the following considerations: (a) The applicant is about fifty years of age, which limits the chances of employment. (b) The actual losses suffered by the applicant as a result of the wrongful dismissal. (c) The value of the project is high. (d) The purported circumstances of the dismissal revolve around office war for which there is no immediate remedy.

The judge pointed that there appeared to be a difference between the respondent CCEC (China Civil Engineering Company), and the applicant's previous employer CGC/CCEC Joint Venture (China Geological Company/China Civil Engineering Company Joint Venture); and that the argument on continuity of employment may not be sustainable therefore. The counsel for the defendant advised the court

that her client had upped its offer or tender of 14 days wages in settlement hereof to one month's notice pay, even though the applicant only worked for 10 days. The counsel for the applicant rejected this offer and countered two months compensation in settlement, on the grounds that his client had been in the continuous employ of the respondent CCEC since May 2002 as his certificate of service showed. The applicant agreed to serve three months probation, at the Lobatse project on 20 September 2004 with the immediate task of preparing employment contracts for all the employees. On 29 September 2004, before he could complete any of the contracts, the project manager paid him his wages for the 10 days and dismissed him on the grounds of unsuitability following a verbal warning and without compensation or notice.

The main contention in the case

- (a) The probation was illegal as he worked for CCEC for two years previously;
- (b) The probation period was invalid as it was non-compliant with Section 20 (3) of the Employment Act; and
- (c) His alleged retrenchment from Shoshong was a ruse to simply sever his continuous employment with CCEC, thereby depriving him of higher compensation.

According to the ILO Termination of Employment Convention C 158 of 1982 the termination of a contract of employment must be substantively and procedurally fair. Both parties in support of their claim brought the provision of Botswana Employment Act on probation forth.

2.3 The court judgements:

- (a) In its finding the court found out that the employer did not notify the applicant of the length of the purported probationary period in writing before entering into the contract of employment contrary to the provisions of the Employment Act, thus the applicant was therefore employed for the Lobatse project with no valid probation.

(b) Also, no disciplinary enquiry was convened before his dismissal even though the applicant's explanations regarding his admitted refusal to comply with lawful and reasonable instructions were unconvincing which led the court to conclude that the respondent had reason to summarily terminate his contract of employment without notice. His dismissal was therefore substantively fair, although procedurally unfair.

(c) The court concluded that the circumstances of the dismissal are that it was only procedurally unfair; that the applicant was employed for an extremely short period of 10 days and that he rejected an offer of one month's compensation and the court's time was unduly taken up on unfounded issues. The court declared that compensation of half a month i.e. P 2.250,00 is appropriate.

China-Botswana termination of employment contract during probation period

In the process of the judgment, the applicant argued that the project manager "... unduly terminated my services citing unsuitability as the reason (and) contested the dismissal on the grounds of lack of notice..."

With respect to China's Law on termination of employment during probationary period, article 25 of the Chinese Labour of 1994 states:

"The employing unit may revoke the labour contract with a labourer in any of the following circumstances:

-to be proven not up to the requirements for recruitment during the probation period;

-to seriously violate labour disciplines or the rules and regulations of the employing units;

-to cause great losses to the employing unit due to serious dereliction of duty or engagement in malpractice for selfish ends; and

-to be investigated for criminal responsibilities in accordance with the law. "

Article 21 of Chinese Labour Contract law regarding the termination of labour during probationary

“During the probation period, except when the employee is under any of the circumstances:

-the employee does not meet the recruitment conditions during the probation period;

-seriously violates the rules and procedures set up by the employer;

-causes any severe damage to the employer because he seriously neglects his duties or seeks private benefits;

-simultaneously enters an employment relationship with other employers and thus seriously affects his completion of the tasks of the employer;

-or the employee refuses to make the ratification after his employer points out the problem.

The labour contracts are invalid or are partially invalid if:

-a party employs the means of deception or coercion or takes advantage of the other party’s difficulties to force the other party to conclude a labour contract or to make an amendment to a labour contract, which is contrary to his will;

-an employer disclaims its legal liability or denies the employee’s rights.

Under any of the following circumstances also the employer may dissolve the labour contract if it notifies the employee in writing 30 days in advance or after it pays the employee an extra month’s wages:

- The employee is sick or is injured for a non-work-related reason and cannot resume his original position after the expiration of the proscribed time period for medical treatment, nor can he assume any other position arranged by the employer;

-The employee is incompetent to his position or is still so after training or changing his position.

The employer shall not dissolve the labour contract. If an employer dissolves a labour contract during the probation period, he shall make an explanation.

Thus the termination of employment in the 1994 labour law was divided into two categories "Unilateral dismissal" and "dismissal with notice". Article 25 of the Chinese labour law reiterates that during the probation period, should the employee not meet the employer standards, the later can unilaterally terminate the labour contract. If a dispute arises between both parties as a result of the termination of the employment contract during the probation period, the employer has the responsibility to proof the "employee does not meet the condition employment". Article 26 of China's labour law states,

In any of the following circumstances, the employing unit may cancel the labour contract; however, a written notice shall be given to the labourer concerned 30 days in advance:

- (1) Where a labourer is unable to take up his original work or any work specially arranged by the employing unit after completion of the period of his medical treatment for illness or not work-related injury;*
- (2) Where a labourer is unqualified for his work and remains unqualified even after receiving a training or after readjusting the work post; and*
- (3) Where the objective conditions taken as the basis for the conclusion of the contract have changed so greatly that the original labour contract cannot be carried out and no agreement on modification of the labour contract can be reached through consultation by the parties.*

According to the 1994 China's labour law, the employer may dissolve the labour contract if he notifies the employee in writing 30 days in advance not including the probation period. Recruitment conditions at the time often featured on recruit-

ment brochures and some unscrupulous domestic employers exploited the loophole in view of the domestic labour market especially after the 1990s where there was a serious oversupply of labour in the market. Many Chinese companies did not conform to the recruitment requirements and referred to subjective factors like “the leaders are not satisfied” as the reason for termination of employment. Such subjective factors could not be quantified, even if brought before the Chinese courts, would not get the legal outcome. The main reason for many victims having had to give up the litigation at that time may have been because of the cost involved in litigation.

In 2008, China promulgated the new Labour Contract Law which let in a positive effect in the protection of workers’ right during the probation period. The newly promulgated law improved China's labour contract system and also offered a better protection of labour rights and interest for employees. Article 21 of the labour contract law of China provides that: “during the probation period, except when the employee does not meet the employment criteria, the employer shall not dissolve the labour contract. If an employer dissolves a labour contract during the probation period, it shall make an explanation.” The second requirement is clearly stated and as a new addition to article 25 of the 1995 Labour Law. The writers believes that the inclusion of the second request help to solve the aforementioned point of leaders satisfaction, as the rating of employees by leaders does not meet any objective criteria and any employment condition. Further because of factors as the leaders are not satisfied with the employee or the leaders rating is subjective which the employee is usually unable to provide justification.

The enactment of the 2008 Labour Contract Law has also encouraged Chinese entrepreneurs to be more serious with the issue of terminating employment contracts during the probation periods. Usually when workers are hired, the conditions of employment will be included in as clause of labour contract; it also can be separate with the employment confirmation, or confirmation in the form of “job description”. The conditions for recruitment is generally quantifiable, for instance

if the employee is late three times within probation period, it is considered not to meet the recruitment requirements, and henceforth. But even if China's labour contract law on the basis of labour law has positive effect to guarantee in a labourer rights and interests during the probation period, in Botswana as well as some other Southern African states, there are major differences in the provisions of the Employment Act and these difference emanates more from the differences in legal cultures between People's Republic of China and the Southern African States.

For Chinese businesses currently working in Africa, and for those that are intending to establish themselves there, understanding both their own culture and the culture of the employees they are hiring in Africa, can result in a more harmonious and successful organisation.

Botswana Employment Law

Provisions of Botswana Employment Act (Cap 47:01) section 18, 19 as well as the provision of section 20 (2) stipulate

18. (1) A contract of employment for an unspecified period of time (other than a contract of employment for a specified piece of work, without reference to time) may be terminated by either party —

(a) where the wages are payable in respect of any period not exceeding a day, at the close of any day's work without notice having been given to the other party of the intention to do so unless the contract of employment provides for the giving of such notice in these circumstances, in which the last case the termination of the contract shall be subject to such notice having been given in accordance therewith; or

(b) Where the wages are payable in respect of any period exceeding a day, at any time, notwithstanding anything to the contrary contained in the contract of employment, subject to notice having been given to the other party of the intention to do so.

(2) *Notwithstanding anything to the contrary, contained in the contract of employment, the minimum length of any notice referred to in subsection (1)(b) shall: (a) where the wages are payable in respect of any period exceeding a day but less than a week, be one day; or*

(b) Where the wages are payable in respect of any period not less than a week, be equal in length to the period

(i) Where an employee whose wages are payable in respect of any period not less than a week but less than two weeks have been in continuous employment for two or more but less than five years, the minimum length of notice shall be two weeks;

(ii) Where an employee whose wages are payable in respect of any period not less than a week but less than a month has been in continuous employment for five or more but less than 10 years, the minimum length of notice shall be one month; or

(iii) Where an employee whose wages are payable in respect of any period exceeding a day has been in continuous employment for 10 or more years, the minimum length of notice shall be six weeks.

(3) *Notwithstanding subsection (2), where the contract of employment provides for a minimum length of any notice such as is referred to in subsection (1)(b) which is longer than the appropriate minimum length prescribed by subsection (2), the minimum length of any such notice shall be that for which the contract of employment provides.*

(4) *Nothing in this section shall prohibit either party to a contract of employment from waiving his entitlement to notice in any particular case.*

(5) *Notwithstanding anything to the contrary contained in a contract of employment, notice of intention to terminate the contract shall be in writing and shall be given on a working day at any time and, except where the wages are pay-*

able in respect of any period not exceeding a week, that day shall be included in the period of notice:

Provided that, notwithstanding anything to the contrary contained in the contract of employment, notice of intention to terminate the contract may be given orally by either party if he is illiterate.

19. notwithstanding section 18, either party to a contract of employment for an unspecified period of time (other than a contract of employment for a specified piece of work, without reference to time),

which contract may be terminated by either party subject to notice having been given to the other party of the intention to do so, may —

(a) terminate the contract without giving such notice by paying to the other party a sum equal to the amount of basic pay which would otherwise have accrued to the employee during the minimum lawful period of such notice; and

(b) where such notice has already been given, whether the period thereof is the appropriate minimum lawful period or a longer period, terminate the contract, without waiting for the expiry of the period of notice, by paying to the other party a sum equal to the amount of basic pay which would otherwise have accrued to the employee during the balance of the period of notice.

20. (a)[...]

(b) Where a contract of employment is terminated during a probationary period by either the employer or employee under section 18 or 19 by not less than 14 days' notice, the contract shall be deemed, for the purposes of this Part, to have been terminated with just cause and neither the employer nor the employee shall be required to give any reasons therefor.

In terms of the above it is clear that the law allows for a parting of ways between the employer and employee during the probationary period without any reasons being given by the party at whose instance the termination was effected. But be-

fore entering into a contract of employment, which is to provide for a probationary period, the prospective employer shall inform the prospective employee in writing of the length of the probationary period and any person who contravenes this law will be liable to the penalties prescribed the law.

Justification for termination of the labour contract during the probation period

Employers in Botswana are not legally obliged to prove that the applicant has been justifiably fired during the probation period as there is no requirement in Botswana law that reasons for the termination needed to be disclose if the termination of the contract was done during the probationary period. On the contrary, in China as earlier stated article 21 of the Labour Contract Law states that an employer shall give an explanation should he dissolves a labour contract during the probation period.

In accordance with the requirements of section 18-19 of the Botswana Employment Act (Cap 47:01), during the probation period, be it the employers or employees both have to issue a 14 days' notice to the other party in order to terminate the contract during the probation period. If such notice is issued, the contract shall be deemed to have been terminated with just cause and neither the employer nor the employee shall be required to give any reasons for such termination. The writers are of the opinion that, section 20(2) of Botswana employment law reflects the English common law tradition and law culture, namely: an employment contracts has personal attributes, such that when the employer considered that the trust relationship with the employee has ceased to exist, the employment contract thus loses the basis of its existence. Continuing with restitution of the original contract of employment will not be possible and secondly, there is no need to. So as long as there is "just cause" disputes can be resolved rather than demanding compliance with the employment condition.

If we may take a look at the Hong Kong (though part of China, Hong Kong has a different legal system) employment ordinance Chapter 8, "Termination of Em-

ployment Contract by Notice or Payment in lieu of Notice” states that a contract of employment may be terminated by the employer or employee through giving the other party due notice or wages in lieu of notice. The amount is equal to what the employee can earn as prescribed in its article 6 during the notice period, the employer may at any time terminate the contract without notice, but this does not unconditionally apply to the employees in Hong Kong. Article 10 of the Hong Kong employment ordinance stipulates that,

“An employee may terminate his employment contract without notice or payment in lieu of notice if he reasonably fears physical danger by violence or disease; if he is subjected to ill-treatment by the employer”.

Under the Employment Ordinance, the employment contract may be terminated during the probationary period in the first month without notice; after the first month by not less than seven days notice, or the longer period as provided in the employment contract, or by payment in lieu of notice. Employment contracts have no explicit provisions for payment of wages for less than seven days. From a historical point of view, British legal culture influence on Hong Kong and Botswana is extremely profound. From 1842 to 1997 Hong Kong was a British colony (before returning to China) and British laws and legal traditions have great influence in Hong Kong ever since. In the promulgated and implemented 1968 Hong Kong Employment Ordinance compared with the current employment laws of Botswana, it can be clearly observed that the conditions of termination of employment contracts during the probation period under the existing law of Hong Kong is identical to that of Botswana despite the slight difference in details.

The legal nature and practice of employment contract

The 1994 China’s labour law stipulates in its article 19 (4): “The probation period shall be included in the term of a labour contract. If a labour contract only provides the term of probation, the probation shall be null and void and the term of the probation shall be treated as the term of the labour contract.” China’s 2008 “Labour contract law” in order to prevent abuse of the probation period by some

employers, as the basis of the Labour law also stated that: If the term of a labour contract is not less than three months but less than one year, the probation period shall not exceed one month. If the term of a labour contract is not less than one year but less than three years, the probation period shall not exceed two months. For a labour contract with a fixed term of three years or more or without a fixed term, the probation term shall not exceed six months. An employer can only impose one probation time period on an employee. It can be gathered from the Chinese labour contract law that the probationary period is not legally part of the labour contract and the employer and employee may agree to probation or not. The probation period in Labour contracts is of a voluntary and non-independent nature. Probationary period should be included and be a dependent component of the labour contract to give a fair and equal contract to all employees.

According to Botswana's employment law, article 20 (3); before entering into a contract of employment, which is to provide for a probationary period, the prospective employer shall inform the prospective employee in writing of the length of the probationary period. In *the Roosevelt Kgosi V. China Civil Engineering* case in point, the personnel manager of the Chinese enterprise only verbally agreed to a three months probation period, not by advanced written notice to the labourer. Without any advanced written notice on the applicable probation period on the employment contract shows that the management of some Chinese enterprises do not adhere to the adage that "When in Rome, do as the Romans do".

China's Labour contract law in its article 39 (1) states that, "Where an employee ... does not meet the recruitment conditions during the probation period his employer may dissolve the labour contract".

The Labour Contract Law in its article 21, as outlined above, also states that the employer shall not dissolve the labour contract except under the conditions where the employee does not meet the recruitment conditions during the probation period under seriously violation, neglect of duty, incompetence or non-work-related issues that prevent the employee from effective performing his duties. If an employ-

er dissolves a labour contract during the probation period, it is required to be accompanied by the relevant explanation. The provisions of the labour contract law in China although compared to the provision of 1994 Labour Law regarding protecting labourers rights and interests during the probation period, is already a significant milestone in labour protection in China. The procedural safeguards in the Labour contract law regarding the probation period for employees' interest still need some further improvement.

The *ROOSEVELT KGOSI v. CHINA CIVIL ENGINEERING* case Judgment has repeatedly stressed that the plaintiff's dismissal had all to do with unfair procedure. Before the procedurally unjust termination of Mr ROOSEVELT KGOSI's contract of employment, he had not appeared before a disciplinary enquiry commission for any violation of company rules. In other words, if during his probationary period ROOSEVELT T KGOSI was at fault, prior to the dismissal it should be in a relatively formal occasion to point out his faults, and be given the opportunity to defend himself rather than just be informed of his dismissal. Botswana employment law requirements for dismissal during probation period require the opening up of a "disciplinary commission of inquiry meeting for violating company policy." Although it is a procedural requirement, this sort of procedure is important as it gives employees the right to appeal dismissal and ensure some impartiality in the termination of employees. From a traditional point of view, Chinese managers mainly focus on substantive rights, without much attention to the procedural requirements on how to safeguard and defend the fairness of substantive laws of procedural justice. This case should be a lesson for Chinese enterprises investing in Africa.

Conclusion

China-African Labour conflict shows a situation where clash in labour cultures have brought about by globalisation and a search for resources. African governments besides taking measures aimed at limiting child labour and equal pay for both women and men, states only legislate to reduce working time in civil service,

where there is no risk of international competition. All in all, China has been and always will be Africa's good partner for development. China and Africa need to work together towards the same goal to bring more benefits to both sides.

The Chinese government encourages Chinese companies to use local equipment and labour and abide to local laws. Chinese investment in Africa brings enormous contribution in terms of jobs opportunities and economic prosperous to Africa and much importance is attached to Sino-African friendship and cooperation. However, some Chinese investors with own management culture and values weaken the whole foundation of this cooperation. The former Botswana Minister of Labour and Home Affairs Peter Siele statement stressing that language barrier, cultural differences and other factors has let a handful of Chinese enterprises' labour standards, wages and working hours incompatible with Botswana laws, which goes a long way to affect China's corporate image and normal business activities need put in perspective.

In Botswana, the government has begun to address this situation and has established various collaboration mechanisms between various stakeholders: the Ministry of Labour and Home Affairs, the Chinese Embassy in Gaborone Botswana, and the Confucius institute at the University of Botswana. The essence of the collaboration for the Ministry of Labour and Social Security Bureau and Immigration Department officials is to open Chinese classes on a regular basis, so as to achieve more effective communication with Chinese enterprises, more clearly illustrate relevant laws and regulations and at the same time coordinate labour disputes more effectively. The Minister also hoped that Chinese enterprises could actively communicate with management, abide by the laws of Botswana, and integrate into the local society making effective the adage that "when in Rome, do as the Romans do".

There's the need to encourage Chinese and African scholars to undertake comparative studies in China Africa Labour laws. In March 2013, Chinese president Xi Jinping visited Botswana's neighbour South Africa and in China-South Africa

joint communiqué he called both sides to continue to expand cooperation in the areas of basic and higher education, enhance mutual exchanges and share of research results. China supports the Confucius institute in Africa in strengthening Chinese language training, promotes and strengthens the news media, academic institutions think tanks, and other exchanges and cooperation in both countries. China-African scholars were urged to compare both differences in labour law and to issue joint communiqués of the specific measures both sides to promote cultural exchanges in the area of legal culture, which has a more realistic significance to deepening China-Africa economic cooperation.

To encourage Chinese and African scholars to translate and compile a set of China-African labour law jurisprudence. As Botswana and other African countries were under British colonial rule, the British common law (also known as case law) had a relatively great impact; as such some of the statute or even particular words must be interpreted according to the judgement in the particular case. Furthermore, efforts should be made to encourage Chinese and African scholars with the ability to conduct collaborative research in this area.

We suggest Chinese investors in Africa should focus their attention on:

- (1) The methods of management that include African peculiarities;
- (2) Pay more respect to employees' social and cultural values;
- (3) Provided training for their managers to have and understanding and respect to African special cultures including legal cultures;
- (4) Chinese investors should incorporate more technologically advanced management techniques in their companies.

On 26 November 2009, the government of the People's Republic of China and the government of the Republic of Botswana signed 2010-2013 cultural cooperation Implementation plan agreement in Gaborone. According to the new implementation plan, in the following three-year, both sides were to exchange cultural delega-

tions and performing arts troupe, art Exchange exhibition, and exchange of plastic artist and writers to further strengthen cultural exchanges; strengthen the protection and management of cultural heritage, strengthen cooperation in the field of radio, film and television; Exchange visits of educational delegations to each other's countries. China-Botswana Cultural Cooperation Agreement (2010-2013) will end this year with Suggestions in signing a new China-Botswana cultural cooperation agreement to increase importance be given to "legal cultural exchange cooperation" contents. The two countries can jointly organise a Legal Culture Forum, comparing the cultural differences between the two countries and taking cultural exchanges and cooperation between the two countries to a higher level.

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