

ZEDIAS JANYURE

And

IFONDUKAYIFELI MANGENA

And

EDWARD CHIMBADWA

And

WILSON BULALA

And

SIMON TAKUVINGA TIZAYI

Versus

NRZ

**IN THE HIGH COURT OF ZIMBABWE
MAKONESE & MOYO JJ
BULAWAYO 11 NOVEMBER 2020 & 25 MARCH 2021**

Civil Appeal

Applicants in person
L. Ncube for the respondent

MOYO J: The appellants in this matter are former employees of the respondent. Respondent sued the appellants for eviction in the Magistrates' Court and the court found in respondent's favour. Dissatisfied with that appellants approached this court. The appeal was dealt with and dismissed *ex tempore*. They have now requested for written reasons and here are they.

The facts of the matter are that the employment of the appellants was terminated with the respondent for various reasons up to 2013. In other words the employee whose employment terminated last in the group left employment in 2013. The facts of this matter are very simple and straight forward. The former

employees and the employer were governed by a Collective Bargaining Agreement namely SI 61/99. They had been housed in respondent's properties prior to cessation of employment. Upon cessation of employment (even if they refute this, they simply had no right of retention over the accommodation they had been provided as employees). There was just 1 issue for determination by the court *a quo* that is whether the appellants had the right to remain in occupation of respondent's properties after the cessation of their employment.

The appellants did not dispute that their employment was terminated as alleged. What they claim is that they could not be evicted because the respondent owed them \$25 000 Zimbabwe dollars at the material time. The respondent disputes that they are owed \$25 000 and avers that they were entitled to \$10 000,00 which they were paid in full.

The only guiding instrument in this regard is SI 61/99 (the Collective Bargaining Agreement). Appellants are clearly former employees but they argue that clause 4 of the Collective bargaining Agreement applies to them. However clause 4 of the Collective Bargaining Agreement is couched in no uncertain terms. It reads as follows:

“The aspect of funding is yet to be concluded. However, in the meantime no employee is to be evicted until funding has been put in place. Meanwhile those with cash can proceed to purchase the houses as agreed above.”

Clearly the clause as interpreted by the learned magistrate refers to “employees” not former employees”. Again, in terms of clause 11 (a) of the Collective Bargaining Agreement, termination of employment ends tenancy. So clearly, the tenancy phase of the appellants in respondent's accommodation ended when they left employment. The case is very clear. It means that and cannot mean anything else.

I then turn to the grounds of appeal.

The grounds of appeal attack the learned magistrate's interpretation of the Collective Bargaining Agreement and that the learned magistrate did not regard the Collective Bargaining Agreement and weekly notice 2313 of 14 January 1999. The learned magistrate did interpret the provisions relevant to the appellant's case and found that the Collective Bargaining Agreement did not support their cause and that is the position. Weekly notice 2313 of 14th January

1999, whilst its provisions are not clear, cannot supercede a statutory instrument which is the law.

The same applies to the letter the appellant says was written by the human resources manager, it also cannot supercede a statutory instrument whatever its provisions were. The appellants also seem to take issue with the magistrate for not following a fellow magistrate's decision but a magistrate is not bound by a fellow magistrate's decision, a magistrate is only bound by the decision of a higher court.

Again, even if for argument's sake, the appellants would be entitled to the \$25 000,00 they claim is due to them, it does not in itself create a right of retention for them. They could have approached the court to enforce that payment if they felt they were entitled to it as it clearly does not follow that if you are owed certain monies by your former employer, you then create a right of retention of accommodation for yourself. They should have pursued their claim for the sums owed by the respondent if any.

It is for these reasons that we found that the appeal lacks merit and accordingly dismiss it.

Makonese J I agree

James, Moyo-Majwabu & Nyoni, respondent's legal practitioners