

IN THE LABOUR COURT OF ZIMBABWE
HARARE ON 23 JANUARY, 2014
And 14TH FEBRUARY, 2014

JUDGMENT NO. LC/H/49/14
CASE NO. LC/314/2013

In the matter between

FBC BANK LIMITED – **Appellant**

And

PHILIMON CHIDAMBA – **Respondent**

Before The Honourable Manyangadze, J.

For the Appellant : Mr. A. Maguchu (Legal Practitioner)

For the Respondent : Mr T. Marimo (Legal Practitioner)

MANYANGADZE J.

This is an appeal against the decision of the Appeals Board for the National Employment Council for the Banking Undertaking (NEC Appeals Board), which reversed Appellant's Disciplinary Committee's decision to dismiss Respondent from employment after it found him guilty of misconduct in terms of the applicable NEC Code of Conduct.

The hearing did not go into the merits of the matter, as the Respondent raised a point *in limine*. The point raised by the Respondent was that Appellant should not be heard as it was approaching the Court with dirty hands. Respondent argued that Appellant was in contempt of the NEC Appeals Board

order against which it was appealing. It had to comply with that order before it could be heard.

In response to the point *in limine*, the major point raised by the Appellant was that the issue of dirty hands was being wrongly applied by the Respondent. It was argued on behalf of the Appellant that the dirty hand principle does not contemptuous of a Court order and one who is fugitive from justice.

Appellant also made reference to the new Constitution, Section 85 thereof, and contended that the fact that a party is not compliant with any law shall not be a bar from that party being heard by a Court of law.

It is not in dispute the NEC Appeals Board's order of the 10th of April 2013 has not been complied with. The provisions of the Labour Act, [Cap 28:01], are the ones that guide the operations of the Labour Court. Section 92E (2) is very clear that an appeal to the Labour Court shall not suspend the decision of tribunals or quasi-judicial bodies subordinate to the Labour Court, such as the NEC Appeals Board. It is clearly intended that their decisions or determinations be complied with, as they are part of the court system, otherwise Section 92E(2) would not have been included in the Labour Court.

The requirement that a party who is in contempt of a Court order should purge such contempt before approaching the Court for relief is a fundamental aspect of our procedural law. The Supreme Court has pronounced itself quite strongly on this point.

In the case of *Associated Newspapers of Zimbabwe (Pvt) Ltd v Minister of State for Information 2004* (1) ZLR, CHIDYAUSIKU C.J. stated:

“In my view there is no difference in principle between a litigant who is defiant of a court order and a litigant who is in defiance of law. The court will not grant relief to a litigant with dirty hands in the absence of good cause being shown or until such defiance or contempt has been purged.”

As indicated, Appellant also relied on Section 85 of the Constitution. The relevant portion, in Section 85 (2), reads;

“The fact that a person has contravened a law does not debar them from approaching a court for relief under subsection (1).”

It seems to me this provision is to be applied within the context of subsection (1) of Section 85. It is with reference to the enforcement of fundamental human rights and freedoms enshrined in the Constitution. This applies where a person has filed a specific petition or application alleging a violation of fundamental rights or freedoms. That is not the situation *in casu*. This is simply an appeal against a determination or order the Appellant has been aggrieved with. It does not fit within the context of Section 85 of the Constitution.

It being common cause that the Appellant is in contempt of the NEC Appeals Board determination, it must purge such contempt before seeking relief from this Court. If, for any reason, Appellant feels it will be prejudiced by such compliance, a mechanism for interim relief is provided for in Section 92E(3) of the Labour Act.

In the result, it is ordered that;

1. The point *in limine* be and is hereby upheld.
2. The Appellant is directed to purge its contempt of the NEC Appeals Board decision before it can approach the Court.
3. There shall be no order as to costs.

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Manyangadze J.

Dube, Manikai & Hwacha - Appellant's Legal Practitioners

ZIBAWU - Respondent's Legal Practitioners