

DISTRIBUTABLE (91)

Judgment No. SC 112/04

Civil Appeal No. 36/03

CENTRAL AFRICAN BUILDING AND CONSTRUCTION (PRIVATE)
LIMITED

v TAPERA RANGISO AND NINETEEN OTHERS

SUPREME COURT OF ZIMBABWE
CHIDYAUSIKU CJ, SANDURA JA & ZIYAMBI JA
HARARE, NOVEMBER 16, 2004

R M Fitches, for the appellant

The respondents in person

SANDURA JA: In this matter, which was an appeal against a judgment of the Labour Relations Tribunal (“the Tribunal”) (now the Labour Court), we struck the appeal off the roll with costs, after hearing counsel for the appellant company (“the company”) and one of the respondents who spoke for all the respondents. We indicated that the reasons for that decision would be given in due course. I now set them out.

The factual background was as follows. On 3 October 2000 the respondents, who were employees of the company, were given a month’s notice of termination of their contracts of employment. Because they believed that the termination of their employment should have complied with the Labour Relations (Retrenchment) Regulations, 1990, published in Statutory Instrument 404 of 1990 (“the Regulations”), as amended, they took their grievance to a labour relations officer.

In her determination, the labour relations officer ruled that the company should have complied with the provisions of the Regulations. Consequently, she set aside the notices of termination of employment and ordered that all the respondents be reinstated.

Thereafter, the labour relations officer, acting upon the company's request, referred the matter to a senior labour relations officer. The issue between the parties was whether the respondents' contracts of employment were open-ended as opposed to being of fixed duration. The senior labour relations officer answered that question in the affirmative, and concluded that before terminating the contracts of employment the company should have complied with the Regulations. Accordingly, the decision of the labour relations officer was confirmed.

The company then appealed to the Tribunal, but the appeal was dismissed with costs. Aggrieved by that decision, the company appealed to this Court.

The company's argument on appeal was that the contracts of employment in question were not open-ended but were of fixed duration. Whilst it was common cause that if the contracts were of fixed duration the Regulations were irrelevant, the respondents maintained that the contracts were open-ended.

The question which arose for determination by this Court was whether the appeal raised any question of law. If it did not, then in terms of s 92(2) of the Labour Relations Act [*Chapter 28:01*] (now s 92D of the Labour Act [*Chapter 28:01*]) this Court had no jurisdiction to entertain the appeal.

The term "question of law" was considered by this Court in *Muzuva v United Bottlers (Pvt) Ltd* 1994 (1) ZLR 217 (S). At 220 D-F GUBBAY CJ had this to say:

"The twin concepts, questions of law and questions of fact, were considered in depth by E.M. GROSSKOPF JA in *Media Workers' Association of South Africa and Ors v Press Corporation of South Africa Ltd* ("*Perskor*") 1992 (4) SA 791 (A). Approving the discussion of the topic in *Salmond on Jurisprudence* 12 ed at 65-75, the learned JUDGE OF APPEAL pointed out at 795 D-G that the term 'question of law' is used in three distinct though related senses. First, it means 'a question which the law itself has authoritatively answered to the exclusion of the right of the court to answer the question as it thinks fit in accordance with what is considered to be the truth and justice of the matter'. Second, it means 'a question as to what the law is. Thus, an appeal on a question of law means an appeal in which the question for argument and determination is what the true rule of law is on a certain matter'. And third, any question which is within the province of the judge instead of the jury is called a question of law. This division of judicial function arises in this country in a

criminal trial presided over by a judge and assessors.

I respectfully adopt this classification, although the third sense is of no relevance to a matter such as this.”

In that case, the learned CHIEF JUSTICE was dealing with a submission made by counsel that the appeal from the Tribunal, which was before him, did not raise any question of law.

In the present case, bearing in mind the meanings of the term “question of law” set out in the *Muzuva* case *supra*, we were satisfied that the issue raised on appeal, i.e. whether the contracts of employment were open-ended or of fixed duration, was not a question of law but one of fact.

In the circumstances, this Court had no jurisdiction to hear the appeal and the matter was, accordingly, struck off the roll with costs.

CHIDYAUSIKU CJ: I agree.

ZIYAMBI JA: I agree.

Scanlen & Holderness, appellant's legal practitioners