

Judgment No. SC 17/04

Civil Appeal No. 290/02

CATHERINE MUKOME v
STANDARD CHARTERED BANK OF ZIMBABWE LIMITED

SUPREME COURT OF ZIMBABWE
SANDURA JA, MALABA JA & GWAUNZA JA
HARARE, MARCH 11, 2004

T Bhatasara, for the appellant

L Uriri, for the respondent

SANDURA JA: After striking this matter off the roll with costs the Court indicated that its reasons for doing so would be given in due course. I now set them out.

The essential facts are these. The appellant (“Mukome”) was employed by the respondent (“the Bank”) as a purchasing manager. In March 2000 she was charged with an act of misconduct in terms of the Bank’s Code of Conduct (“the Code”). She appeared before a hearing officer and was found guilty and subsequently dismissed.

She appealed to the grievance and disciplinary committee but the appeal was dismissed. She then appealed to the appeals board and was successful. The appeals board was of the view that she should have been found guilty of committing a less serious act of misconduct than the one in respect of which she was found guilty. Accordingly, it set aside the dismissal and substituted a first written warning.

The Bank then appealed to the Labour Relations Tribunal (now the Labour Court) (“the Tribunal”) and the appeal was allowed with costs. The decision

of the appeals board was set aside and Mukome's dismissal was approved. The Tribunal's judgment was handed down on 9 December 2002.

Aggrieved by the Tribunal's decision, Mukome filed a notice of appeal in this Court on 7 March 2003, i.e. about three months after the judgment had been handed down.

Subsequently, on 4 February 2004 the legal practitioner acting for Mukome, who is not the one who appeared before us, filed heads of argument on Mukome's behalf. In the heads of argument she indicated that at the hearing of the appeal: "Counsel will apply for condonation for the late filing of the appellant's notice of appeal".

Thereafter, on 10 March 2004, i.e. the day before the "appeal" was due to be heard, the legal practitioner who had filed the heads of argument filed a court application in this Court seeking an order condoning the late filing of the notice of appeal. The obvious intention was that on the day of the hearing of the "appeal" the Court application would be argued first, and that, if it succeeded, the appeal would then be argued.

There can be no doubt that the procedure adopted by the legal practitioner then acting for Mukome was not in accordance with the Rules of this Court.

The noting of an appeal against a decision of the Tribunal is governed by rules 4, 5 and 6 of the Supreme Court (Miscellaneous Appeals and References) Rules, 1975 which read as follows:

“4 Notice of appeal

(1) An appeal shall be instituted by means of a notice directed and delivered by the appellant to the presiding officer of the tribunal or the officer whose decision is appealed against, and to all other parties affected.

(2) A notice shall also be filed with the registrar.

5 Time within which notice to be given

Subject to the provisions of rule 6, a notice shall be delivered and filed in accordance with the provisions of rule 4 within fifteen days of the decision appealed against being given.

6 Condonation of late noting of appeal

Save where it is expressly or by necessary implication prohibited by the enactment concerned, a judge may, if special circumstances are shown, extend the time laid down, whether by rule 5 or by the enactment concerned, for instituting an appeal.”

It is clear from the provisions of rule 6 that the application for an extension of the time within which to appeal must be made to a judge in Chambers. It is a Chamber application as opposed to a Court application. The application must obviously be served on the respondent, who must be given adequate time within which to file a notice of opposition and an opposing affidavit or affidavits, if he intends opposing the application.

As no Chamber application for the extension of the time within which to note the appeal had been made and granted in this case, there was no appeal before us and the matter had to be struck off the roll with costs.

MALABA JA: I agree.

GWAUNZA JA: I agree.

Kantor & Immerman, appellant's legal practitioners

Honey & Blanckenberg, respondent's legal practitioners