

Civil Appeal No. 263/01

ZACHARIAH CHISEPO v CHIBUKU BREWERIES

SUPREME COURT OF ZIMBABWE
SANDURA JA, ZIYAMBI JA & MALABA JA
HARARE, JANUARY 12, 2004

The appellant in person

R Y Phillips, for the respondent

ZIYAMBI JA: After hearing the parties on the preliminary issue as to whether or not this appeal was properly before us, the matter was struck off the roll with costs. The reasons for our decision are set out hereunder.

This matter was the subject of a judgment of this Court issued on 22 March 2001. In the earlier matter the appellant appealed against the judgment of the then Labour Relations Tribunal (“the Tribunal”) which authorised his dismissal from the employ of the respondent.

The facts of the matter as related in the judgment (SC 37/2001) are that the appellant was dismissed from his employment with the respondent after a disciplinary

hearing held in terms of the respondent's Code of Conduct. The appellant stated that he appealed against that decision by handing his letter of appeal to the personnel manager. Thereafter he made several enquiries about the progress of the appeal but it was never heard. He then approached the labour relations office in terms of s 101(6) of the Labour Relations Act [*Chapter 28*] ("the Act").

The matter was heard by the labour relations officer who ordered reinstatement on the basis that the respondent, by not hearing the appeal, had committed an unfair labour practice.

After successive appeals, the matter was heard by the Tribunal which set aside the determination of the senior labour relations officer, thus authorising the dismissal of the appellant from the respondent's employ. The appellant appealed to this Court. The judgment of this Court in SC 37/2001 refers. The matter was remitted to the Tribunal for the determination of two factual issues, namely -

- a) Did the appellant lodge an appeal in terms of the Code of Conduct; and
- b) Did the appellant approach the labour relations office timeously for its intervention.

In the event that both issues were resolved in favour of the appellant, an order was to issue that the appellant's appeal be heard in terms of the Code of Conduct.

The Tribunal found, on remittal, that the respondent was duly served with

the notice but that the respondent had been remiss in failing to hear the appeal. On the second issue, it was found that the appellant had not approached the labour relations office timeously but that he had done so after the expiry of one hundred and eighty days prescribed as the time limit under s 94 of the Act.

Since the appellant did not succeed on both issues, the appeal was allowed and once again the determination of the senior labour relations officer was set aside and the appellant's dismissal from employment was authorised.

The appellant appealed to this Court on grounds, mostly unintelligible, but all attacking the findings of fact made by the Tribunal.

In terms of s 92(2) of the Act, an appeal from the Labour Relations Tribunal only lies to this Court on a point of law. The meaning of the section was considered in *Muzuva v United Bottlers* 1994 (1) ZLR 217 (S) at 220 D-G where GUBBAY CJ said:

“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.”

See also *Reserve Bank of Zimbabwe v Corrine Granger and Anor* SC 34/2001 where

MUCHECHETERE JA remarked as follows:

“An appeal to this Court is based on the record. If it is to be related to the facts there must be an allegation that there has been a misdirection on the facts which is so unreasonable that no sensible person who applied his mind to the facts would have arrived at such a decision. And a misdirection of fact is either a failure to appreciate a fact at all or a finding of fact that is contrary to the evidence actually presented. See *Hama’s case supra* and *S v Pillay* 1997 (4) SA 531 (AD) at 535 C-E.”

No question of law, in any of the senses set out above, was raised by the appellant either in his notice of appeal or at the hearing before the Court. In the circumstances this Court had no jurisdiction to entertain the appeal and it was, therefore, struck off the roll with costs.

SANDURA JA: I agree.

MALABA JA: I agree.

Gill, Godlonton & Gerrans, respondent's legal practitioners