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Judgment No. SC 79/04

Civil Appeal No. 271/03

SALTRAMA (PRIVATE) LIMITED v ABRAHAM MAJINDWI

SUPREME COURT OF ZIMBABWE
SANDURA JA, MALABA JA & GWAUNZA JA
HARARE, JULY 8 & SEPTEMBER 27, 2004

D Moyo, for the appellant

The respondent in person

GWAUNZA JA: The appellant appeals against a judgment of the Labour Relations Tribunal ("the Tribunal") (now the Labour Court), in terms of which it was ordered to either reinstate the respondent to his former employment with no loss of benefits or pay him damages.

The background to the dispute is as follows.

The respondent was employed by the appellant in its bag-making department. On 7 February 2001 he was instructed by the human resources manager, a Mr Muzvidziwa ("Muzvidziwa"), to go and work in the printing department, which was experiencing manpower shortages. The order was conveyed to the respondent initially through the printing department foreman, a Mr Chinwadzimba ("Chinwadzimba"). When the respondent queried the source of the order, he and Chinwadzimba proceeded to Muzvidziwa's office, where the order was repeated.

Also present in the office was the administration manager, Mr Mutati. The respondent refused to obey the order, and indicated he would only do so if it came from the managing director.

The respondent was thereafter formally charged with refusing to carry out a lawful instruction in terms of the appellant's Code of Conduct. He appeared before a disciplinary committee on 8 February 2001, which found him guilty of the offence. He was then dismissed.

On 13 February 2001 the respondent addressed a letter of appeal to the appellant's managing director. On 14 March 2001 he appeared before an appeals committee presided over by the production manager, a Mr A Danger. The committee upheld the decision to dismiss the respondent.

It is averred by the appellant, and not disputed by the respondent, that the next stage in the proceedings should have been the hearing of the respondent's appeal by the managing director.

However, before such appeal was heard, the respondent took his grievance to the National Employment Council for the Printing, Packaging and Newspaper Industry ("the NEC"). The NEC, on the respondent's behalf, initiated negotiations with the appellant and reached an agreement to the effect that the appellant would pay the respondent "a token of appreciation" in recognition of his long service with the appellant.

On 11 April 2001 a representative of the NEC, Mr Sibanda ("Sibanda"), in the company of the respondent, visited the appellant's premises and held a meeting with Muzvidziwa. The respondent wrote a letter in Shona, which, when translated, reads

as follows:

"Dear Sir,

I am asking for permission to resign because of my back, which is in constant pain. I was injured in 1999 at MP 39, I was with Mr P Dora. I thank you for the time you kept me, for quite a long time.

Yours faithfully,

ABRAHAM MAJINDWI."

The respondent does not dispute that his letter was taken to the managing director, who indicated that the appellant accepted his resignation. The respondent went on to accept $34 655.47 from the appellant and signed the first part of a document entitled "Termination of Employment: A Majindwi". The part reads as follows:

> "I, Abraham Majindwi, acknowledge receipt of money from Saltrama amounting to $34 655.47, being a token of appreciation in recognition of service on termination of employment. I am satisfied that my services were legally and fairly terminated.
>
> I … confirm that I will not make any other claims whatsoever from the company."

Muzvidziwa, representing the appellant, signed underneath the respondent's signature. The second part of the document was signed by Sibanda of the NEC and reads as follows:

> "We are satisfied that Majindwi's employment contract has been legally and fairly terminated. We further confirm that this payment represents the final entitlement to Mr Majindwi and that no future claims whatsoever will be made."

The respondent went back on his word and, on 11 May 2001, filed a notice of appeal to the Tribunal, giving as a ground thereof that he had been unfairly dismissed "after I did not accept the voluntary retrenchment". The Tribunal upheld

the appeal and made the order now being appealed against.

In its notice of appeal the appellant cited two grounds, as follows:

> "1. The Labour Court misdirected itself in law by disregarding the documentary evidence that was adduced to show that (the) termination of the respondent's employment was by resignation, which resignation was accepted by the appellant.

2. The factual finding by the Labour Court that the respondent's conduct did not reveal a deliberate and serious refusal to obey and that he was merely seeking clarification, was a serious misdirection which amounts to a misdirection on a point of law."

The circumstances leading to and following the tender by the respondent of his letter of resignation have been outlined above.

The appellant, in its first ground of appeal, takes issue with the fact that the Tribunal totally ignored this evidence. In *National Foods Ltd v Stewart Magadza* SC-105-95, this Court restated the principle that the disregard by the Tribunal of evidence placed before it, and therefore the failure by it to weigh the significance of such evidence before reaching its decision, amounts to gross misdirection. It is trite that a serious misdirection on the facts amounts to a misdirection in law. See *Muzuva v United Bottlers (Pvt) Ltd* 1994 (1) ZLR 217 (S); *Mpumela v Berger Paints (Pvt) Ltd* 1999 (2) ZLR 146 (S). The first ground of appeal therefore properly raises a point of law.

The Tribunal, in its judgment, dealt only with the issue of whether or not the appellant had proved that the respondent was guilty of refusing to obey a lawful order. Having found that there was no deliberate or serious refusal to obey the order in question by the respondent, the court *a quo* upheld his appeal and set aside the decision to terminate his contract of employment.

It was, in my view, a misdirection on the part of the court *a quo* to disregard the issue of the respondent's letter of resignation, its acceptance by the appellant and, more importantly, the significance of this resignation *vis-à-vis* the appeal process, then pending, that the respondent had initiated in terms of the appellant's Code of Conduct. I am, in this respect, persuaded by the contention made for the appellant, that the court *a quo* should have first determined the manner in which the respondent's employment was terminated before considering the issue of whether or not such termination was lawful.

After his dismissal, the respondent resorted to domestic remedies in an endeavour to have the dismissal reversed. Before exhausting these remedies, he decided to seek the intervention of the NEC which, on his behalf and with his participation, negotiated a settlement of the dispute. As part of the settlement, the respondent voluntarily resigned, accepted a token of gratitude, expressed satisfaction that his services were "legally and fairly" terminated and undertook not to make any other claims "whatsoever" against the appellant.

The respondent has not averred that he drafted and signed his letter of

resignation under duress. Nor has he averred that he was in any way coerced into accepting the "token of appreciation" and signing the document in which he and his representative of choice, Sibanda, indicated their acceptance of the fact that the respondent's employment had been "legally and fairly" terminated.

My view is that, after negotiating and participating in the process of settling the dispute between the parties, it was no longer open to the respondent to file an appeal with the Tribunal alleging unlawful dismissal. Of his own volition the respondent had abandoned one process (domestic remedies) for the other (the resignation and settlement). The latter, in my view, effectively superseded the former.

The appellant is, therefore, correct in its argument that the respondent's employment was lawfully terminated through his resignation, and its due acceptance by the appellant.

Had the Tribunal addressed its mind to this matter, there is no doubt it would have reached a different conclusion to the one it did. It would, in other words, have properly reached the decision to dismiss the respondent's appeal. The court *a quo* would subsequently not have had to consider the lawfulness or otherwise of the respondent's allegation of unlawful dismissal.

In the light of this finding, I do not consider it necessary to consider the merits of the appellant's second ground of appeal.

The appeal therefore succeeds. It is accordingly ordered as follows –

1. The appeal is allowed with costs.

2. The order of the Labour Relations Tribunal is set aside and substituted with the following –

> "The appeal is dismissed with costs".

SANDURA JA: I agree.

MALABA JA: I agree.

Mhiribidi, Ngarava and Moyo, appellant's legal practitioners