

DISTRIBUTABLE (64)

Judgment No. SC 81/04

Civil Appeal No. 239/01

JOB MATENDA v

BRAVETTE MANUFACTURING COMPANY (PRIVATE) LIMITED

SUPREME COURT OF ZIMBABWE
CHIDYAUSIKU CJ, MALABA JA & GWAUNZA JA
HARARE, SEPTEMBER 6 & 30, 2004

The appellant in person

P Chikutu, for the respondent

GWAUNZA JA: The appellant was charged with and found guilty of “fighting, attacking, assaulting, threatening or attempting to do serious bodily harm to any other person”, in contravention of the respondent’s Code of Conduct. He was as a result dismissed from his employment with the respondent. The respondent’s grievance and disciplinary committee and the appeals committee in turn dismissed the appellant’s appeal against his dismissal. The appellant appealed to the National Employment Council for the Clothing Industry and after that to the then Labour Relations Tribunal, with the same result. He has now appealed to this Court.

The court *a quo* found there was overwhelming evidence to prove –

- (i) that the appellant had, during an altercation with a fellow employee, a Mr Tsiga (“Tsiga”), grabbed the latter firstly by the hand and then by

the collar of his shirt, while at the same time uttering threatening words;

- (ii) that Tsiga's attempt to remove the appellant's hand from his collar resulted in the shirt getting torn;
- (iii) that the confrontation was stopped following the intervention of another employee; and
- (iv) that the confrontation was witnessed by a group of other workers.

The evidence before the court *a quo* shows that three of the workers who witnessed the confrontation gave evidence corroborating that of Tsiga. The appellant's one witness disclaimed any knowledge of the actual confrontation, saying he was too far to see what was happening.

In his grounds of appeal, the appellant challenges these findings of fact by the Tribunal. He also, in the same grounds, denies that the confrontation between himself and Tsiga amounted to an assault on Tsiga, that he ever used the word "grab" in relation to his contact with Tsiga's hand, that he held him by the neck or that he tore Tsiga's shirt.

The appellant does not allege that the Tribunal misdirected itself on a point of law, in its analysis of these facts or the decision that it reached.

By virtue of s 92(c) of the Labour Relations Act [*Chapter 28:04*], an appeal from a decision of the Tribunal (now the Labour Court) lies to this Court only on points of law. This Court has therefore no jurisdiction to entertain an appeal on factual grounds. There is an abundance of case authority (among others *Muzuva v United Bottlers (Pvt) Ltd* 1994 (1) ZLR 217 (S); *National Foods Ltd v Magadza*

SC-105-95; and *Mpumela v Berger Paints (Pvt) Ltd* 1999 (2) ZLR 146 (S)) defining what is meant by “point of law”.

The appellant’s grounds of appeal do not meet the definition. They thus raise no points of law. As already stated, this Court has no jurisdiction to hear an appeal premised on factual grounds.

In the result, the appeal is not properly before this Court, and it is struck off the roll with costs.

CHIDYAUSIKU CJ: I agree.

MALABA JA: I agree.

Gula-Ndebele & Partners, respondent's legal practitioners