

DISTRIBUTABLE (57)

Judgment No. SC 24/07
Civil Appeal No. 252/06

ZIMBABWE BROADCASTING HOLDINGS (PVT) LTD
v
FRANCIS MAMVURA

SUPREME COURT OF ZIMBABWE
HARARE, JUNE 22, SEPTEMBER 19, 2007
& MAY 30, 2008

M V Chizoda-Chineunye, for the applicant

G V Mamvura, for the respondent

Application for leave to appeal to the Supreme Court

Before GARWE JA: In Chambers, in terms of s 92F(3) of the Labour Act
[*Cap. 28:01*].

The background to this application is largely common cause. The respondent was employed as head of Finance and Administration by the applicant. Following a disciplinary hearing he was dismissed from employment for acts of misconduct in terms of the provisions of the Labour Relations (General Conditions of Employment)(Termination of Employment) Regulations SI 130/03. The matter was thereafter referred to an arbitrator who found in favour of the respondent and consequently ordered his re-instatement without loss of pay or other benefits or

alternatively the payment by the applicant of damages in *lieu* of reinstatement. The applicant, aggrieved at the decision, appealed to the Labour Court. At the hearing before the Labour Court the only issue for determination was whether one Chikondo, who was a member of the board of directors had the mandate to suspend the respondent. After due consideration of the matter, the Labour Court found that although Chikondo was a member of the board, it was not clear what role he or the other board members played in the day to day running of the applicant. The memorandum which specifically authorized the chairman of the disciplinary committee to suspend the respondent did not specify who the chairman of that committee was. The memorandum in particular did not state that Chikondo was the chairman of the authority. The Labour Court, in its judgment, accepted that the applicant can delegate powers to any of its employees to conduct disciplinary proceedings but found that, on the evidence before it, there was nothing to suggest that Chikondo had the authority to suspend the respondent. Accordingly the Labour Court found the suspension of the respondent to be invalid and confirmed the arbitrator's award.

The applicant filed an appeal against this ruling on 12 September 2001. In the light of the provisions of s 92F(2) of the Labour Court [*Cap. 28:01*] which require that leave to appeal first be obtained, the applicant applied for such leave before the President of the Labour Court who however refused such leave on the basis that what the applicant sought to appeal against was essentially a question of fact – not law – which is not permissible in terms of the Labour Act. The applicant now applies to a Judge of this Court for such leave.

In its submissions, the applicant argues that delegating a member of the board, whether permissible or not, is itself a point of law. The applicant further submits that a wrong appreciation of facts can lead to a wrong application of the law. In the instant case since it was the applicant's position that it had delegated the necessary authority to Chikondo, the President misdirected herself in her application of the law.

The respondent, on the other hand, opposes the relief sought on the basis that what the applicant seeks to challenge is a finding of fact which cannot, in terms of s 92F of the Labour Act, form the basis of an appeal from a decision of the Labour Court, as such an appeal must be confined to issues of law only.

The provisions of s 92F of the Labour Act are clear. A party that is aggrieved at a decision or order of the Labour Court may appeal to the Supreme Court only on a question of law. The issue that arises in the present application therefore is whether the decision sought to be appealed against is on a question of law.

That the applicant's board of directors can delegate powers was not in issue before the Labour Court. The question now raised by the applicant as to the powers of the board and the chairman to delegate certain functions never arose. It was accepted such powers existed. In this regard, the Labour Court remarked as follows at p 9 of its judgment:

“While it is trite that the respondent can delegate powers, such powers ought to be properly spelt out.”

It is the applicant's contention that Chikondo was empowered by the board to suspend the respondent. That may have been so. However, the record does not say so. In dealing with this aspect, the Labour Court remarked:

“The duties of the members of the Board of Directors were not spelt out. It is therefore difficult to say that Chikondo as a member of the board of directors was clothed with the required authority to enable him to suspend the respondent.”

Further, the Labour Court found that Chikondo's functions as a member of the board of directors were never clarified. The letter written by the chairman to the chairperson of the disciplinary authority did not specify who the chairman of the disciplinary committee was or who constituted the disciplinary authority. The Labour Court noted a further difficulty. The letter suspending the respondent was signed by Chikondo whilst the letter advising of the termination of employment was co-signed by a Mr Mapuranga and one Jarnie.

In the result, the Labour Court did not accept that as a question of fact Chikondo had been given the requisite authority or that the chairman of the board had given the necessary authority to Chikondo to suspend the respondent as the applicant now argues. On the facts before it, the Labour Court cannot be faulted for coming to the conclusion it did and specifically for its decision that the issue that forms the basis of the appeal that the applicant wishes to pursue involves a question of fact – not law.

In the circumstances, this application must fail.

It is accordingly dismissed with costs.

Chizodza-Chinouye, applicant's legal practitioners

Scanlen & Holderness, respondent's legal practitioners