

Judgment No. HB 7/2002

Case No. HC 163/2001

PORTION MAKHWELO AND 115 OTHERS

versus

N.I.M.R. AND CHAPMAN (PVT) LTD

IN THE HIGH COURT OF ZIMBABWE

KAMOCHA J

BULAWAYO 21 SEPTEMBER 2001& 14 FEBRUARY 2002

S Ndlovu for the applicants

T Cherry for the respondent

Opposed Application

KAMOCHA J: At the hearing of this application Mr Ndlovu

representing the applicants conceded that all other 115 applicants were not properly

before the court and their matter should be disregarded. The concession was proper in

my view, and the court proceeded to hear arguments in respect of Portion Makhwelo

"Makhwelo" only.

The applicant sought a provisional order which he was not granted. A judge of

this court instead directed that the matter be set down for argument as opposed on any

Friday. The final order that was being sought was in the following terms:

- (1) That the disciplinary proceedings instituted or held by respondent relating to the 116 applicants in terms of SI 301 of 1996 be and are hereby declared null and void.
- (2) That respondent bears the costs of this application."

To my mind this case is essentially a review of the proceedings of a disciplinary committee instituted by the respondent relating to the applicant and other

employees. The papers filed of record do not comply with the rules of court. The

applicant's founding affidavit does not give the date when the decision which was

being brought under review was made. It is, however, clear from the papers that the

7/02

-2-

decision was made on 5 October 2000. The applicant lodged his application on 18

January 2001 well after the 8 weeks period stipulated by the rules of court. The

applicant made no application for condonation.

This is a labour dispute. Since the applicant was aggrieved by the decision of

the Disciplinary Committee he should have sought to exhaust the domestic remedies

before launching this application in this court. His explanation was that the time

limits had expired domestically. He however conceded that some of his former

colleagues lodged their appeals out of time which were entertained domestically.

There seems, in my view, to be no acceptable explanation why the applicant did not

exhaust his domestic remedies first before coming to this court. It seems to me that

domestic remedies would have afforded the relief the applicant was seeking if it was

deemed appropriate.

In conclusion I make a finding that the applicant has failed to proffer an acceptable reason for his failure to exhaust his domestic remedies before coming to

this court. In addition the application is out of time and there is no application for

condonation.

In the result the order I issue is that the application be and is hereby dismissed

with costs.

Sibusiso Ndlovu & Partners applicant's legal practitioners

Calderwood, Bryce Hendrie & Partners respondent's legal practitioners