

SHAKESPEARE KESARI CHIGWEREWE

Versus

**THE CHAIRMAN OF THE INVESTIGATING PANEL OF
THE FORESTRY COMMISSION**

and

THE FORESTRY COMMISSION

IN THE HIGH COURT OF ZIMBABWE

NDOU J

BULAWAYO 16 FEBRUARY AND 9 DECEMBER 2004

C P Moyo for the applicant

Advocate R M Fitches for the respondents

Judgment

NDOU J: The applicant seeks an order in the following terms:

“It is ordered that:-

1. The Code of Conduct of the Forestry Commission does not apply to disciplinary proceedings against a Divisional Head such as applicant.
2. The disciplinary proceedings preferred as against the applicant under the Code of Conduct of Forestry Commission are hereby declared to be a nullity and are set aside in their entirety.
3. Applicant be and is hereby reinstated in his employ with 2nd respondent, with immediate effect with all benefits attendant to his office.
4. The respondents jointly and severally pay the costs of this application.”

The background facts of the case are the following. The applicant was employed by the Forestry Commission, 2nd respondent, as acting General Manager for

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Ngamo Safaris, a division of the Forestry Commission. By letter of 15 May 2003, the applicant was suspended from employment with full benefits, on suspicion that he may have contravened certain provisions of the 2nd respondent's Code of Conduct. Other than this there were no other substantive contravention that he was advised of. By letter of 4 June 2003, the applicant challenged his suspension pointing out that he needed to know what case he had to meet. When the 2nd respondent did not reply to the letter of 4 June 2003 the applicant instituted proceedings by way of court application under case number HC 1139/03. The applicant was in essence, challenging the validity of his suspension. By charge sheet dated 27 June 2003, the 2nd respondent preferred five(5) charges against the applicant. The applicant responded to the charges denying all of them.

On 10 July 2003 a disciplinary hearing was convened, presided over by the 1st respondent. At the conclusion of the proceedings the same day, the applicant was found guilty of all charges with the exception of one. He was consequently dismissed on account of findings of guilty of the four(4) charges. Wishing to appeal against his dismissal the applicant instructed his legal practitioners to assist him formulate an appeal. His legal practitioners advised him that the Code of Conduct under which he was charged did not seem to apply to a divisional head in his position. Consequent to his advise the applicant instituted review proceedings under order 33 of the High Court Rules. The ground for review relied on is that the panel that presided over his case had no jurisdiction to do so. Two issues have to be determined in this case. First, does the High Court have the requisite jurisdiction to deal with the matter in light of the provisions of section 89(1) and (6) of the Labour Relations Act {Chapter

28:01] as amended by section 29 of the Labour Relations Amendment Act No. 17 of 2002.

Even before the promulgation of this provision the position has been that in such labour matters a litigant should exhaust domestic remedies before approaching this court unless there are goods reasons for doing so. In *casu*, there are no special reasons for not approaching the Labour Court. The reasons advanced that the Labour Court has no review powers is based on ignorance of the law because section 89(2)(a)(iii) gives review powers.

It provides-

“2. In the exercise of its functions, the Labour Court may-

(a) in the case of an appeal-

(i) ...

(ii) ...

(iii) exercise the same powers of review as would be exercisable by the High Court in relation to the decision, order or action that is appealed against or any proceedings connected therewith.”

In the circumstances, it was wrong for the applicant to approach this court on the basis that the Labour Court has no review powers.

Coming back to section 89(6) it provides-

“(6) No court, other than the Labour Court, shall have jurisdiction in the first instance to hear and determine any application, appeal or matter referred to in subsection (1).”

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From the facts of this matter it is a matter referred to in subsection (1) of section 89. It follows, therefore, that the applicant should have approached the Labour Court – see also *Musandu v The Chairperson of Cresta Lodge Disciplinary and Grievance Hearing Committee* HH-115-94, *Chikanye & Anor v Peterhouse* 1999 ZLR 329; *Nhidza v Unifreight Ltd* SC-27-99; *Sibanda v The Chairperson – National Social Security Authority & Anor* HB-90-04 and *Odson and Another v NRZ and Anor* HB-88-04.

Section 89(6) provides a statutory ouster of the jurisdiction of this court in matters referred to in subsection (1). On this ground alone the application must fail. It is therefore, unnecessary to deal with the second issue of whether the Code of Conduct of the second respondent is applicable to the managerial employees such as the applicant.

Accordingly, I dismiss the application with costs on a legal practitioner and client scale.

Majoko & Majoko applicant's legal practitioners
Dube, Manikai & Hwacha c/o Calderwood, Bryce Hendrie & Partners, respondent's legal practitioners