

**EDISON KANDA**

**Versus**

**NATIONAL RAILWAYS OF ZIMBABWE**

**And**

**CHAIRMAN OF THE DISCIPLINARY HEARING –  
MR T THEBE N O**

IN THE HIGH COURT OF ZIMBABWE  
CHEDA J  
BULAWAYO 9 SEPTEMBER 2004

*C P Moyo* for applicant  
*R Ndlovu* for respondents

Chamber Application

**CHEDA J:** Applicant filed an urgent chamber application seeking to interdict 1<sup>st</sup> and 2<sup>nd</sup> respondents from proceeding with a disciplinary hearing in the matter involving himself and 1<sup>st</sup> and 2<sup>nd</sup> respondent.

Applicant is an employee of 1<sup>st</sup> respondent, while 2<sup>nd</sup> respondent is the Chairperson of the Disciplinary Inquiry set to probe applicant. Applicant is employed by 1<sup>st</sup> respondent as a Senior Accounts Clerk grade D. On 18 February 2004 he received a letter from a Mr F Bhule, the Principal Accountant suspending him from 1<sup>st</sup> respondent's employment on the basis of allegations of theft of funds from Railstars Football Club where he is the Treasurer.

Applicant was served with a notice of a hearing and it is that hearing which he now seeks an interdict against. His contention is that, he, as the Treasurer of Railstars Football Club which is a separate entity from 1<sup>st</sup> respondent should not be suspended by 1<sup>st</sup> respondent for alleged acts committed against Railstars Football Club as the two organisations are entirely two different entities.

HB 85/04

Mr *Ndlovu* for 1<sup>st</sup> and 2<sup>nd</sup> respondents has argued that, applicant though, he is a Treasurer of Railstars Football Club, he is a full time employee of 1<sup>st</sup> respondent and is entitled to a full salary when performing his duties for Railstars Football Club.

After hearing applicant's argument I then asked for clarification about applicant's position *vis-à-vis* 1<sup>st</sup> respondent, Mr Canaan Maphosa, the Training Manager and vice President of Railstars Football Club deposed to an affidavit wherein he stated that he is responsible for signing and payment vouchers in respect of payments by the Railstars Football Club. He further stated that the funds which applicant is alleged to have stolen are from 1<sup>st</sup> respondent.

Therefore, first respondent is an interested party in this matter, in that it is its money which has been misappropriated. The misappropriation may not have occurred at 1<sup>st</sup> respondent's premises directly but at its subsidiary association. It, therefore, stands to reason that 1<sup>st</sup> respondent has a financial interest in this matter and therefore has a right to carry out an enquiry with regards to the activities of its finances for which applicant is alleged to have unlawfully and improperly interfered with.

In my view it will be unjust to prevent 1<sup>st</sup> respondent from expressing its desire to investigate an anomaly occurring in an organisation which it financially supports. Most importantly applicant is an employee of 1<sup>st</sup> respondent although it is clear that he receives some remuneration from Railstars Football Club. It is clear therefore that 1<sup>st</sup> respondent has pecuniary interest in this matter and therefore has *locus standi* therein.

A person who, when it suits him proudly associates with an organisation and only to disassociate himself from it when it is apparent that his association with it may

HB 85/04

be prejudicial to him cannot be allowed to perpetuate that behaviour. Applicant must be saddled with both the privileges and obligations which are present in 1<sup>st</sup> respondent's daily operations.

Above all, the smooth running of the wheels of justice require that an allegation of this nature be investigated without hindrance so as to exonerate applicant in view of such serious allegations. Applicant can not be allowed to prevent his employer from probing him.

I find that this application is ill advised, has no merit and is accordingly dismissed with costs.

*Majoko & Majoko*, applicant's legal practitioners  
*James, Moyo-Majwabu & Nyoni* respondents' legal practitioners