

HC 13440/2000

KONNECK SAGOMBA & 38 ORS

versus

PUBLIC SERVICE COMMISSION

and

MINISTER OF TRANSPORT AND COMMUNICATIONS

and

DIRECTOR, CENTRAL MECHANICAL ENGINEERING DEPARTMENT

HIGH COURT OF ZIMBABWE

HLATSHWAYO J

HARARE 15 May and 27 March 2002

Opposed Application

T Biti, for the applicants

No appearance, for the respondent

HLATSHWAYO J: The applicants prayed upon the court to grant the following order:

“IT IS ORDERED THAT:

1. The late noting of review be and is hereby condoned.
2. The termination of the Applicants’ employment on 29 September 2000 be and is hereby set aside.
3. Applicants be paid for all leave days and overtime which was not paid, calculated in terms of the Public Service Commission Circular No. 3 of 1992.
4. Respondent avails to Applicants all the necessary details relating to tax deductions effected during the period of their engagement.
5. The First Respondent and 2nd Respondent pay the costs of this application.”

The respondents did not submit any heads of argument and were in default of appearance. However, Mr *Biti*, for the applicants did not apply for

default judgment, but requested that the court should hear the applicants' full arguments and decide the matter on the merits. At the time it was filed, the application for review was out of time by four weeks, but the applicants' explanation that the delay was occasioned by an attempt to find an amicable out-of-court settlement was accepted.

The critical facts of this case appear in the founding affidavit of Konneck Sagomba, the principal applicant, and are similar to the other applicants:

"I joined the Central Mechanical Equipment Department (CMED) on 3rd January 1999 as a qualified motor mechanic. The other applicants joined CMED during (various) periods...No contract was signed but I was earning a net salary of \$9 600 which, however, was always fluctuating such that by May 1999 it had gone down to about \$7 600. No explanation was given. At this time I was based at Chikurubi. On 21st December 1999 I was told to go on unpaid leave until 10 January 2000. I then changed from Chikurubi to CMED Workington shop on Coventry Road and in February 2000 was called in to sign contract forms for 3 months although I did not know what was in the contract. I continued to serve until July 2000 when I was sent back to Chikurubi.

My employment, as is the case with the other Applicants, was terminated on 29 September 2000 with the explanation that there was no more work."

The applicants contended that the termination of their employment was irregular and void because of non-compliance with the common law principles of natural justice and the first respondent's own internal regulations namely, the Government Employees (Ungraded) Rules (Terms of Appointment and Conditions of Service) Public Service Circular No. 3 of 1992. More specifically, the applicants submitted that they were not given a month's notice which monthly paid employees they claim are entitled to.

The first and second respondents, in their opposing affidavit, maintained that the applicants were daily paid employees who were

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entitled only to 24 hours notice or a day's pay in lieu of notice, and were thus lawfully discharged from their employment.

However, it would appear that although there existed a daily attendance register, it was not for the purpose of computing the applicants' daily wages, but rather for keeping a record of attendance. In terms of s. 4(1) of the Circular, on appointment an ungraded employee shall be placed on an hourly, daily, weekly, fortnightly or monthly rate of pay. The applicants were paid monthly without any indication as to how their wages were calculated. On termination of their services they were paid lumpsums - \$7 500 in the case of the principal applicant - far in excess of a day's wages and more akin to monthly wages. Accordingly, it is the court's finding that all the applicants were monthly paid employees and were thus entitled to a month's notice or a month's pay in lieu of notice.

The main submission of the applicants was that the decision to terminate their employment was reached without regard to the principles of natural justice and section 19(8) of the Constitution of Zimbabwe. Mr. Biti submitted that even if the applicants are found not to have had the right to be heard as envisaged by the *audi alteram partem* rule, the circumstances of the case were such that the applicants nonetheless had a legitimate expectation to be heard.

The respondents submitted that the applicants were ungraded employees engaged for specific projects and only for the duration of such projects. I am satisfied that the applicants' entitlements were to continue in employment for the duration of the projects or to be given the requisite notice upon any termination of their contracts. If, for example, the respondents wanted to terminate the employment of any of the applicants for any reason unconnected with the completion of the project, the *audi alteram partem* would require that such an employee should be informed of the allegations against him and be given an opportunity to respond in his defense. However, where the project has genuinely come to an end, it is difficult to conceptualize what the purpose of consulting the affected employees in this regard would be in aid of. Their legitimate expectation, if one were to use that term, is, in this case, to be given the requisite notice or payment in lieu of notice and nothing more. Mr. *Bitiwaxed* lyrical about the development of the *audirule* and the legitimate expectation principle and their applicability in our jurisdiction. However, for the purpose of this matter I need not delve into this debate, especially given that I did not have the benefit of

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submissions on behalf of the respondents. My finding is that, save for the issue of the appropriate notice periods, there was nothing untoward or improper in the termination of the employment of the applicants at the end of the projects in connection with which they had been engaged.

All in all, though, I believe the applicants have been successful and are entitled to their costs.

Accordingly, my order in this matter is as follows:

1. That the late noting of review be and is hereby condoned.
2. That the applicants be paid one calendar month's wages each in lieu of one month's notice they were entitled to upon termination of their employment on 29 September 2000 together with interest thereon at the legal rate.
3. That the applicants be paid for all leave days and overtime which was not paid or otherwise compensated, calculated in terms of the Public Service Circular No. 3 of 1992.
4. That the third respondent shall avail to the applicants all the necessary details relating to tax deductions effected during the period of their engagement.

5. That the first and second respondents shall pay the cost of this application.

Applicants' legal practitioners: *Honey & Blanckenberg*

Respondents' legal practitioners: *Attorney General's Office, Civil Division.*