

**HH 116-03  
HC 8179/01**

SOLOMON CHITAURO  
versus  
STANDARD CHARTERED BANK ZIMBABWE LIMITED

HIGH COURT OF ZIMBABWE  
PARADZA J,  
**HARARE, 10 July, 2002 and 3 September, 2003**

Opposed Matter

**Mr Kuhuni for the applicant  
Mr P Nherere for the respondent**

PARADZA J: This matter came before me on 24 September, 2002 on the opposed roll. At the conclusion of the hearing I dismissed the application with costs and assured the parties that I would give my full judgment on request. I have been so requested and these are my reasons for arriving at that decision.

The applicant sought an order made in the following terms -  
"It is ordered that -

1. The disciplinary proceedings conducted by the respondent on 12 September, 2000 be and is hereby declared null and void;
2. That the respondent shall pay costs of suit".

**From the way that order was drafted that applicant seeks to nullify certain disciplinary proceedings that were conducted by the respondent on a date stated on the draft order. It is also clear to me that applicant is seeking a review of the decision of the respondent which he wants set aside on the grounds contained in his founding affidavit. One of the grounds he relies on is that respondent did not have jurisdiction to determine his case. He argues that by virtue of his position, as a managerial employee, the disciplinary body that heard his case did not have jurisdiction to hear the matter. What the applicant has effectively done is to ask the High Court to bring under scrutiny the proceedings of the disciplinary body of the**

**HH 116-03**

**respondent and declare that such proceedings be declared null and void. I am concerned about the absence of certain things that would enable me to arrive at a well informed decision on whether or not to grant the order sought.**

Firstly the disciplinary proceedings which should have been recorded and which applicant wants me to declare null and void are not before me. I have no record of those proceedings. I ask myself how then am I to grant the order which is sought when I am not able to look at those proceedings, analyze them and decide whether or not to declare them null and void.

**Rule 256 of the High Court Rules provides that any proceedings to bring under review the decision or proceedings of an inferior court or of any tribunal, board or officer who has judicial, *quasi* judicial or administrative functions shall be by way of a court application. Rule 260 provides further that the clerk of the inferior court whose proceedings are being brought on review, or the tribunal, board or officer whose proceedings are being brought on review, shall within 12 days lodge with the Registrar the original record plus two copies. Order 33 therefore clearly was aimed at ensuring that where a litigant seeks an order that places under scrutiny a decision or proceedings of an inferior judicial or *quasi* judicial body or board or person, the record of the proceedings has to be made available and be placed before the reviewing judge. (See the judgment of SMITH J in the matter of *Weston Kwete v Africa Community Publishing and Development Trust and 4 Ors* HH 216/98. Also cited in the same judgment are the matters of *Musara v Zinata* 1992(1) ZLR 9, per ROBINSON J; *Matsambire v Gweru City Council* SC 183/95; *Mutare City Council v Mudzime and Ors* 1999(2) ZLR 140 (S).**

**HH 116-03**

**It is therefore clear that this application should have complied with Order 33 of the High Court Rules that deals with applications for review. It was therefore wrong, or improper for the applicant to purport to seek an order for a declarator when in fact in real he is seeking a review.**

**Section 27(1) A of the High Court of Zimbabwe Act Chapter 7:06 lays down as one of the grounds upon which a matter may be brought on review as absence of jurisdiction on the part of the court, tribunal or authority concerned.**

**Applicant has brought this matter before me to challenge the jurisdiction of the body that subjected him to disciplinary proceedings. In terms of the High Court Act it should be done by way of a review.**

Order 33 Rule 259 lays down the time within which certain proceedings must be brought to court. It reads as follows -

**"Any proceedings by way of a review shall be instituted within eight weeks of the termination of the suit, action, or proceedings in which the irregularity or illegality complained of is alleged to have occurred; provided that the court may for good cause shown extend the time".**

**The disciplinary proceedings that the applicant wants me to review ended on 12 September, 2000. The papers filed in support of this application, confirm that as the date when the final order was made. This application was brought before this court and stamped by the Registrar on 28th August, 2001. That to me is a period well in excess of the period stipulated in the Rules. That makes this application hopelessly out of time. Applicant has not sought condonation for failing to file his application within the period stipulated in the Rules. There is provision in Rule 259 for the Court on good cause being shown to extend that time. Applicant has not sought to take advantage of that provision in the Rules. I can see no justification for failing to comply with the provisions as laid down in the Rules.**

**I shall not concern myself with the merits relating to the various points raised by the applicant in his application. In any case the applicant did not file his Heads of Argument and strictly speaking I consider the applicant barred. The matter was set down for hearing by the respondent and the indexing of the record was done by the respondent. I have noted that in the letters written by the respondent's legal practitioners, they wish to take this matter up on appeal. They are perfectly entitled to do so. Without the record of proceedings of the**

**HH 116-03**

**disciplinary inquiry they obviously have a problem which they will have to overcome before the matter can be heard. I make the following order -**

The application is hereby dismissed with costs.

*Atherstone & Cook* , applicant's legal practitioners

*Coghlan Welsh & Guest* , respondent's legal practitioners