

HH 42-03
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PHILIP KUFAKWEJEYE
versus
DIMON ZIMBABWE
and
MINISTER OF LABOUR, PUBLIC SERVICE
AND SOCIAL WELFARE

HIGH COURT OF ZIMBABWE
SMITH J,
HARARE, 25 February, 13 and 19 March, 2003

Mr *J R Tsivama* for applicant
Mrs *N B Nagar* for 1st respondent

SMITH J: This is a review application and an application for condonation of the late filing of the review application.

The applicant (hereinafter referred to as "Kufakwejeje") was employed by the first respondent (hereinafter referred to as "Dimon") as a tobacco buyer from April 1995 to 29 May 2000. He claims that he was sent on forced sick leave on 29 May. However, Dimon alleges that he was suspended on that date pending the outcome of inquiries into allegations of insubordination, irrational behaviour and the use of insulting or abusive language. The Human Resources Consultant of Dimon, who had been responsible for the letter of suspension, considered that Kufakwejeje was mentally disturbed. He therefore arranged for Kufakwejeje to have an interview with a consultant psychiatrist. Subsequently Dimon decided to apply to the second respondent (hereinafter referred to as "the Minister") for permission to terminate the employment of Kufakwejeje on grounds of ill-health. Dimon offered him the sum of \$549 976, which was the equivalent of two months salary for every year's work. That offer was rejected. The Minister, by letter dated 12 December, 2001, granted Dimon's application for leave to terminate Kufakwejeje's contract of employment and ordered that he be paid his terminal benefits. Dimon offered to pay Kufakwejeje \$650 864,69 as terminal benefits. That offer was made on 9 January 2002. An official in the Minister's office expressed appreciation of the offer by Dimon and said that Kufawejeja accepted the package offered. However Kufawejeje wanted increments which he alleged were due because the employees had been given cost-of-living adjustments. Dimon subsequently withdrew the offer in April. Kufawejeje filed notice of his appeal to the Labour Relations Tribunal in December 2001.

This application was filed on 24 May 2002, more than five months after Kufakwejeje was aware of the Minister's determination that Dimon could dismiss him. In his founding affidavit Kufawejeje, in dealing with the late filing of his application, merely says "I submit that my failure to approach this Honourable Court earlier is understandable and should be condoned given the background of my matter".

Rule 259 of the High Court Rules provides that a review must be instituted within eight weeks of the irregularity or illegality complained of, but the Court may, for good cause shown, extend the time. The onus is on the applicant to show good cause. Mr *Tsivama* that the decision to institute the review application was made only after Dimon had withdrawn its offer. It was understandable that Kufawejeje would not file a review application whilst the parties were negotiating over his terminal benefits and that justified the late application for review. Miss *Nagar* argued that no good explanation had been proffered for the delay in the filing of the application.

I consider that Kufakwejeje has not shown good cause for condonation of the late filing to be granted. It is obvious that he was prepared to terminate his services with Dimon as long as he was given terminal benefits that he considered to be reasonable. In the circumstances, I think it would be wrong to condone the late filing. It is not really reinstatement that Kufawejeje is seeking but damages for what he regards to be the improper termination of his contract of employment. That avenue is still open to Kufakwejeje. Moreover, his appeal to the Labour Relations Tribunal is still pending although Mr *Tsivama* submitted that the Labour Relations Tribunal has no authority to hear that appeal because s 89 (b) of the Labour Relations Act [[Chapter 28:01](#)] does not provide for such an appeal.

In a letter dated 12 December 2001 Dimon was advised that the Minister had granted its application to terminate the contract of employment with Kufakwejeje "in terms of section 2(a) section

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14(b) of the Labour Relations Act, Chapter 28:01" (*sic*). No reasons were given for that decision. Kufakwejeye, in his founding affidavit, submitted that that decision was grossly unreasonable. The Minister has not filed any papers in this application. There is nothing in the papers to show the basis on which the Minister made his decision. Kufakwejeye should have obtained from the Minister the reasons for his decision. It is not possible for this court to speculate on whether or not the Minister's decision was grossly unreasonable without knowing or having some idea of the information that was supplied to the Minister.

If Kufakwejeye feels that his dismissal has not been effected lawfully in terms of the Labour Relations Act [Chapter 28:01], then he should institute legal proceedings to claim damages. On the other hand, now that this application is out of the way, Dimon might feel disposed to renew the offer that it withdrew. In my view it should give serious consideration to making some payment to Kufakwejeye.

The application for condonation of late filing of the application is refused. The review application is dismissed with costs.

Sawyer & Mkushi, legal practitioners for applicant
Coghlan, Welsh & Guest, legal practitioners for 1st respondent