

CRISHTON NYEREMHUKA
versus
MUNICIPALITY OF CHINHOYI

HIGH COURT OF ZIMBABWE
BHUNU J
HARARE, 29th July and 15 December 2004

Opposed Application

Mr *Fitches* , for the applicant
Mr *Muchada*, for the 1st respondent

BHUNU J: The applicant was employed as the Director of Housing by the 1st respondent the Municipality of Chinhoyi. In that capacity he was a senior employee.

He was dismissed from employment on allegations of incompetence and maladministration. He has now approached this court complaining of procedural irregularities in the process which led to his dismissal.

This court has jurisdiction because litigation commenced in this court in 1999 before the commencement of the Labour Relations Amendment Act 17 of 2002 which purported to confer exclusive jurisdiction on the labour court in respect of labour disputes.

The parties' contract of employment was governed by the Urban Councils Act [*Chapter 29:15*]. Section 140 of that Act provides for the conditions of service and termination of employment of senior employees.

The applicant has two main complaints, that he was not accorded a chance to be heard and that the disciplinary committee which recommended his dismissal to the second respondent was biased

In respect of the first complainant he alleges that the hearing proceeded without his presence through no fault of his and as a

result he was not given a fair opportunity to be heard and controvert the evidence of his accusers.

As regards the second issue his complainant is that after conducting what were admittedly irregular proceedings the 1st respondent nullified the initial proceedings and reconstituted the same members to institute fresh proceedings on the same facts and allegations. It is feared that the disciplinary committee members' minds were biased because of their previous involvement in the abortive irregular proceedings.

The 1st respondent has taken a point in *limine*. It alleges that the application is tainted with fatal procedural irregularities in so far as the applicant failed to comply with the mandatory provisions of Rule 257. That Rule provides as follows:-

“Save where any law otherwise provides, any proceedings to bring under review the decision of proceedings of any inferior court or of any Tribunal Board or officer performing judicial quasi-judicial or administrative functions shall be by way of a court application directed and delivered by the party seeking to review such decision or proceedings to the magistrate presiding officer or chairman of the court Tribunal or Board or to the officer as the case may be. And all the other parties affected.”

It is conceded that there was no compliance with Rule 257 but counsel for the applicant has pointed to Rule 87 which provides that:-

“No cause or matter shall be defeated by reason of the misjoinder or non joinder of any party and the court may in any cause or matter determine the issues or question in dispute so far as they affect the rights and interests of the persons who are parties to the cause or matter.”

Upon a proper reading of the above rule, I am satisfied that failure to join a party to proceedings does not amount to a fatal procedural irregularity. The rule requires that whatever has gone wrong must be put right and a determination made on the merits.

In this case it is clear that what is being put in issue is the conduct of the chairman and members of the disciplinary committee. It would in my view be grossly unfair and unjust to proceed to determine the matter without affording at least the chairman a chance to account for their alleged misconduct at the hearing.

It is accordingly ordered:-

1. That these proceedings be and are hereby stayed pending the joinder of the chairman of the disciplinary committee to these proceedings.
2. That the applicant shall take the necessary steps to join the chairman of the disciplinary committee which recommended the applicant's dismissals to these proceedings within one month of the commencement of the 1st High Court term for 2005 failing which these proceedings are permanently stayed.
3. Costs shall be costs in the cause.

Sawyer & Mkushi, the applicant's legal practitioners

Dube, Manikai and Hwacha, the respondent's legal practitioners