IN THE LABOUR COURT OF ZIMBABWE **JUDGMENT NO LC/H/29/14**

HELD AT HARARE 12TH SEPTEMBER 2013 **CASE NO LC/H/289/13**

In the matter between:-

LIFESTYLE HOLDINGS **Appellant**

And

IKABODI CHINYATI **Respondent**

Before The Honourable L.F. Kudya, Judge

For Appellant **B Diza (Legal Practitioner)**

For Respondent **T.G. Mboko (Legal Practitioner)**

KUDYA, J:

This is an appeal against the decision of the Arbitrator where he ordered the reinstatement of the Respondent by the Appellant company following allegations of a breach of the Respondent's Code of Conduct. Facts of the case are that Respondent who was in Appellant's employ as a Finance Manager was sent on paid leave on 5th October 2012 and suspended on 19th November 201 on allegations that he had breached the Respondent's Code of Conduct. After the initial suspension the Respondent was subjected to some acts of re-suspension and reinstatement by the Appellant company on the basis that the actions were meant to regularize the anomalies attendant to the initial suspension process. During that process the Respondent referred the matter to a Labour Officer in terms of Section 101 (6) on the basis that his case had not been concluded timeously as obliged by the law. The Appellant company invited the Appellant to disciplinary procedures where it found the Appellant

guilty and dismissed him. Respondent pursued his case with the Labour Officer where the matter eventually landed before the Arbitrator. At Arbitrator the main contention was whether it was regular for an employer to seek to arrest proceedings referred to a Labour Officer by convening a disciplinary hearing in a matter already so referred to a Labour Officer. The Arbitrator ruled that such conduct/actions were improper. To that extent he nullified the purported proceedings by the employer which were conducted after the matter had been referred to a Labour Officer. In the result the Arbitrator ordered the reinstatement of the Respondent and indicated in his order that if the Appellant was still intent on disciplining the Respondent it could do so but only do so following due process. Aggrieved by this order the Appellant company has now appealed to this Court to set aside the arbitral award. In its place it prays that the Labour Court confirms its disciplinary hearing process which was done after the matter had been referred to a Labour Officer and that the Respondent's dismissal be confirmed with costs.

The grounds of appeal are the following:-

1) Arbitrator acted out of his terms of reference by deciding on issue which were not before him.
2) Arbitrator misinterpreted Section 101 (6) of the Act on what amounts to a referral of the matter in terms of the Act.
3) Arbitrator erred grossly by finding that the employee's disciplinary hearing started5th October 2012 yet the regular suspension was only effected on 2nd January 2013.

In response to the appeal the Respondent maintained that;

1) Findings on the disciplinary hearing were only consequential to the man finding that the purported disciplinary hearing by the Appellant post referral of the matter to a Labour Officer was a nullity since the matter had already been referred.
2) Arbitrator did not misinterpret Section 101 (6) of the Act and award does not support the suggestion of such a misdirection
3) Arbitrator did not misdirect self on the period over which he ruled that the disciplinary process commenced. In any event such a decision was a factual finding what is not appealable.

The Respondent also opposed the Appellant's proposal to head evidence on appeal arguing that since such new evidence would not have been before the Arbitrator hence it could not form the subject of the appeal in the instant case.

The law relating to appeals against arbitral awards is settled. See Section 98 (10) Labour Act and the cases of **Sable Chemicals** (Insert) plus **(Muzuva)** case as to what is a point of law or fact.

It is also worth noting that the Act sets out clearly the procedures to be follows when one is challenging the process used to arrive at a decision and also the substantive content of the decision. In particular the Labour Court rules set out clearly the separate procedures of review and appeal and it would be inexcusable particularly for lawyers to mix the 2 processes where it is apparent as to which process should be adopted or particular facts.

Stemming from the above legal constructors the major issue to be decided on this matter is whether it can be said that the Appellant has ordered made out a good case for its appeal. In that respect each of the grounds of appeal will be addressed in turn.

Ground 1

A reading of this ground clearly states that what the Appellant is taking issue with a review issue that is the argument of exceeding one's mandate. That clearly is not an appeal issue but a review …….. ….. to that extent it having been improperly brought it as an appeal suffice for the court to mention that it therefore has no merit and should be dismissed as such. In any event even if it were for once to be accepted as a part of law furry or the interpretation of fact 101 (6) the court does not find fault with the reasoning given in the arbitral award that once a matter has been referred to a Labour it is now out of the hands of the employee. To that extent this ground lacking of merit should accordingly fail.

Ground 2

This ground is intricately …….. to grant one above and as has already been stated above reading of Section 101 (6) is clear that once the matter has been referred to a Labour Officer following the failure to …….. to the time limits permitted by law for the conclusion of the matter, it thus follows that the matter thus cannot be brought back into the hands of the employer by an attempt to deal with the matter when it had failed to do earlier on within the stipulated periods before its referral to a Labour Officer. In the result it is also clear that this ground lack of merit should also fail.

Ground 3

The findings on the periods of commencement of the disciplinary process as correctly stated by the Respondent are factual findings which are not appealable. Even if the court were to apply the 3rd …….. Test of unreasonableness, the facts of the case at hand do not resonate with the argument that the factual finding was to the extent grossly unreasonable. It was based on the facts presented before the arbitrator and the court finds no fault with the arbitral reasoning or the dates. As in the 1st two grounds, this ground also lacking in merit should also fail.

Very little turn on the case of new evidence as non was led at the hearing as had been prepared and opposed by the Appellant and Respondent respectively.

In the final analysis it is clear that all the grounds of appeal are not merit. It should thus fail.

IT IS ORDERED THAT

Appeal being ……. of merit in all respect it be and is hereby dismissed with costs.

The arbitral ward is consequently confirmed.

……

L KUDYA

JUDGE

…… I agree

L.M. MURASI

JUDGE