

IN THE LABOUR COURT OF ZIMBABWE

JUDGMENT NO LC/H/01/2014

**HARARE, 1 NOVEMBER 2013 &
31 JANUARY 2014**

CASE NO LC/H/26/10 REV

In the matter between:-

SILVER ANNE MUNGOFA	1ST APPLICANT
And	
ELLEN MAZOMBWE	2ND APPLICANT
And	
FERESIA MANDIZVIDZA	3RD APPLICANT
And	
DAVISON CHIGUDUGUDZE	4TH APPLICANT
Versus	
ZB BANK	RESPONDENT

Before the Honourable D L Hove : Judge

For the Applicants : R Matsikidze (Legal Practitioner)

For the Respondent : S Sadomba (Legal Practitioner)

HOVE J:

The parties are agreed in these proceedings that only four applicants remain in this matter and these are Silver Anne Mungofa, Eileen Mazombwe, Feresia Mandizvidza and Davison Chigudugudze.

The parties agreed that I could also decide the application on the papers.

This is an application for review. The employer ("the bank") in this matter retrenched several of its workers who challenged the retrenchment process in this court.

The allegations raised in the application for review are that:

- (1) *The employees had been denied the right to be heard.*
- (2) *That the retrenchment process was flawed.*
- (3) *That the notice to retrench was defective and the provisions of law had not been followed in the entire process.*
- (4) *The minister did not hear the employees before he awarded the package.*
- (5) *That the package was grossly unfair, unjust and defective.*

The record shows that the applicants submitted that sometime in June 2009 the bank notified its works council of its intention to retrench workers. The "works council" approved the retrenchment and set up a committee tasked with the responsibility to negotiate the package. The applicants were not involved at all in the deliberations.

They raised, through the banking union, objections to the process alleging that:

- 1) *There was no legitimate workers committee and therefore there was no properly constituted works council.*
- 2) *That in terms of s 12 C of the Labour Act [Cap 28:01] ("the Act"), even a properly constituted works council cannot negotiate terms and conditions of a retrenchment without the involvement of the affected employees.*

Faced with these legal obstacles and in a futile attempt to comply with the law the respondent notified the employment council of its intention to retrench and asked the employment council to facilitate the negotiations.

The employment council ruled that the Bank had not complied with the retrenchment Provisions. It remitted the matter back to the bank with specific instructions to form a

proper workers committee and initiate the proceedings again through a properly constituted works council. That decision was not appealed against or in any way challenged.

The employment council's ruling was that there should be formed a workers committee and a proper works council which would then facilitate the retrenchment negotiations.

Following this ruling, a workers committee was formed and a works council was then properly constituted. The applicants thought that the works council would invite them to commence negotiating. This did not happen. Negotiations commenced without their input.

The applicants objected again through their union. The objection was ignored. The matter then proceeded without the affected workers involvement, to the retrenchment board. The applicants argue that the retrenchment board had no authority to determine a retrenchment process with no input from the affected employees and without hearing them.

The whole process was allegedly flawed for want of compliance with the provisions of s 12 C of the Act. The works council was bound to hear the views of the affected employees and or their representatives. The workers were represented by their union but the bank and the works council completely ignored the union and the affected employees were not given an opportunity to present their views.

Section 12 C (2) of the Act provides that:

"A works council or employment council to which notice (of intention to retrench five or more workers) has been given in terms of subsection (1) shall forthwith attempt to secure agreement between the employer and employees concerned or their representatives as to whether or not the employees should be retrenched and if they are to be

retrenched, the terms and conditions on which they may be retrenched..." (emphasis added)

The facts of the matter reveal that the works council did not comply with the provisions of s 12 C (2) of the Act in that it did not attempt to secure agreement between the employer and employees concerned or their representatives.

The whole process was therefore not in compliance with the provisions of law and accordingly defective, improper and a legal nullity.

See in this regard the case of **Chidziva & Ors v Zimbabwe Iron & Steel Company Limited 1997 (2) ZLR 368 (S)** and also the case of **Prosser & Ors v Zimbabwe Iron & Steel Company HH 201-93** were the learned judge underscored the need and importance of precisely following the procedure in a retrenchment process were such have been laid down.

The bank did not specifically answer to the allegations that the concerned workers were not consulted by the works council. That the whole process was flawed right from its inception by the failure to consult the workers. The retrenchment board and the minister were proceeding to deal with a fatally defective process.

The rules of natural justice require that a party be heard before any decision is made against them. A party whose rights are likely to be affected must be heard before an administrative decision is taken. **Anthony Zindoga & Ors v Ministry of Public Service, Labour & Social Welfare & Anor HH-75-2006.**

Having found that the employees were not heard, the proceedings cannot be allowed to stand. I therefore make the following order:

- 1) That the retrenchment process in this matter and the ministerial award be and is hereby set aside.
- 2) That the applicants be reinstated into their former positions.
- 3) That the bank re-initiates the retrenchment process in terms of law.
- 4) That should re-instatement no longer be an option, the applicants are to be paid damages for the premature loss of their jobs and in *lieu* of re-instatement.
- 5) That if parties fail to agree on the damages, either party can approach the court for quantification.

D L HOVE
JUDGE

Matsikidze & Mucheche Legal Practitioner, applicants' legal practitioners

Gill Godlonton & Gerrans, respondent's legal practitioner