

**IN THE LABOUR COURT OF ZIMBABWE
HELD IN HARARE, 10 SEPTEMBER, 2013 &
31st JANUARY, 2014**

**JUDGEMENT NO. LC/H/27/14
CASE NO. LC/H/337/13 (REV)**

In the matter between

FRED MAKONESE

Appellant

And

**COMMERCIAL SUGAR CANE FARMERS
ASSOCIATION OF ZIMBABWE**

Respondent

Before The Honourable E. Makamure: Judge

For Appellant : Mr M. Mandevere (Legal Practitioner)

For Respondent: Mr Ndlovu (Legal Practitioner)

MAKAMURE J.,

This is an appeal against the decision of an Arbitrator sitting at Chiredzi. The facts of this matter are as follows.

The appellant was employed by the respondent. He served a probationary period of three months in terms of the contractual agreement between the parties. The probationary period ended on 31 October 2012. Thereafter there was no communication between the parties and the appellant continued to perform his duties. In January 2013 the respondent preferred charges of misconduct against the appellant. The respondent thereafter decided not to proceed with the charges and wrote to the appellant as follows:-

“I write with pleasure to inform you that your initial contract expired on 31 October 2012 and the Executive Committee has been consulting on the way forward as has been indicated in your contract.

However your employer resolved that you are not suitable to continue as an Executive material holding the post of an Administrator.

This is mainly so because of your conduct during the initial period e.g. frequency of road accidents with the Association vehicles whilst off duty, failure to follow given instructions by your superiors etc.

It would have been proper to proceed with your disciplinary hearing for the charges you are currently facing but because the decision not to engage you has already been made against your confirmation, please bear with the office that such process has already been overtaken by events.

You may go ahead and process your benefits with the Secretary General.”

The appellant was aggrieved by the dismissal leading to the matter being subsequently determined by an Arbitrator. After considering the facts of the matter the Arbitrator determined that the Appellant:

- (i) be paid his wages and benefits for the period 29 December 2012 to 25 January 2013
- (ii) be treated as a person on suspension without pay and benefits for the period 25 January 2013 onwards
- (iii) and further that the employer should complete the disciplinary proceedings which had been instituted against the appellant.

The employer complied with the Arbitrator’s order. The employer duly paid what was ordered. The employer proceeded to complete the disciplinary proceedings as per the Arbitrator’s order. The appellant now appeals against the Arbitrator’s decision which decision has already been complied with. The appellant did not appeal against the employer’s decision pursuant to the completion of the disciplinary hearing conducted at the workplace. What the appellant ought to have done was to appeal against the employer’s determination of 13 May 2013. There is no compelling reason why the appellant did not appeal in the manner he had done initially. Approaching this Court before exhausting domestic procedures is inappropriate (see *Zikiti v United Bottlers 1998 (1) ZLR 389 (H)*).

In the result the appeal is premature and ought to be dismissed.

Accordingly it is ordered that the appeal be and is hereby dismissed with cost.

Kadzere, Hungwe & Partners, Legal Practitioners for the Appellant

Ndlovu and Hwacha, Legal Practitioners for the Respondent