

IN THE LABOUR COURT OF ZIMBABWE

JUDGMENT NO LC/H/35/14

HELD AT HARARE 16TH JANUARY 2014

CASE NO LC/H/821/13

& 31ST JANUARY 2014

In the matter between:-

SOS CHILDREN'S VILLAGE

Appellant

And

COLLINS MUTENGWA

Respondent

Before The Honourable F.C. Maxwell, Judge

For Appellant

J Zuze (Legal Practitioner)

For Respondent

V.F. Chinhema (Legal Practitioner)

MAXWELL, J:

Respondent was employed by Appellant and the contract of employment was terminated. Thereafter Respondent approached a Designated Agent alleging underpayment of wages and terminal benefits. Conciliation failed and the matter was referred to arbitration. On 9th January 2012 Honourable Arbitrator Munyaradzi Dangarembizi issued an award in the following terms

“Wherefore, after carefully analysing the facts and the law, I make the following award

- *That there was underpayment of wages and terminal benefits*

- *That the terminal benefits be computed using the US dollar salary scale.”*

Paragraph 2.3.1. (b) of Respondent's Heads of Arguments states that proceedings challenging the award that had been lodged under Case No LC/ORD/H/59/12 had since been withdrawn. The record does not have the application that was filed challenging the award. What is on record is a notice of withdrawal dated 25th March 2013. On 6th August 2013 Respondent's Legal Practitioners advised the Arbitrator that the challenge to the award had been withdrawn and the matter should be set down for quantification. With the letter Respondent's computation was sent to the Arbitrator and a copy was forwarded to Appellant's erstwhile Legal Practitioners, Messrs Tamuka Moyo Attorneys. Appellant subsequently filed a statement of opposition with the Arbitrator. On 7th October 2013 the Arbitrator awarded in favour of Respondent as follows:

“Wherefore after carefully analysing the facts and the law, I make the following award

- *That the Respondent pay to the Applicant the sum of US\$11 525.06 on or before 30th October 2013”*

On 11th October 2013 Appellant noted an appeal against the award handed down on 7th October 2013 quantifying the damages. In the notice of appeal Appellant indicates that it “hereby appeals against the entire award” and makes reference to both the quantification award and the award of 9th January 2012. The grounds of appeal are

1. The Honourable Arbitrator erred and misdirected himself in awarding damages for outstanding wages and underpayment of wages to the Respondent who was not being underpaid by the Applicant.
2. The Honourable Arbitrator erred and misdirected himself in making a finding that the Respondent was a welfare employee.
3. The Honourable Arbitrator erred and misdirected himself in proceeding to award damages based on a salary schedule which did not apply to the Respondent and in the absence of a proper salary scale. This amounted to a gross misdirection as the schedule used by the Arbitrator applied to welfare female employees (“months”) not male farm employees.
4. Relying on the said salary schedule, as the Arbitrator did, was utterly outrageous in its defiance of logic that no reasonably (sic) Arbitrator applying their mind to the facts would have come to such a finding thereby amounting to a misdirection at law.
5. The Honourable Arbitrator erred and misdirected himself by granting an order that unjustly enriched the Respondent at the expense of the Applicant.

Appellant prayed for the setting aside of the arbitral award and costs of suit.

On 16th October 2013 Appellant approached this Court for interim relief in terms of Section 92 E (3) of the Labour Act [Chapter 28.01]

On 24th October 2013 Respondent responded to the appeal pointing out that there was nothing amiss in the Arbitrator applying the salary scale whose applicability had been definitely pronounced in the first award i.e. of 9th

January 2012. Respondent further stated that the first award had not been challenged and the arbitrator was right in not permitting the re-opening of the issue of the applicability of the salary scale.

On 29th October 2013 Messrs Tamuka Moyo Attorneys renounced agency indicating that Zuze Law Chambers was taking over. On the same day interim relief was granted by consent.

The first question that exercise the Court's mind is what is the scope of this appeal?

The notice of appeal specifically states that Appellant is aggrieved by "the quantified arbitral award of the Honourable Dangarembizi handed down at Harare on 7th October 2013..." It thereafter makes reference to Annexure "S 1" and "S 2". According to the record Annexure "S 1" is the award dated 7th October 2013 whilst Annexure "S 2" is the award dated 9th January 2012. Appellant further states that the appeal is against the entire award. In my view Appellant is attempting to appeal against the first award through the back door. Such an approach is inappropriate and unacceptable. As a matter of fact it is a gross misrepresentation to make reference to two awards issued on different dates and give the impression that it is one award issued on one day. The award of 7th October 2013 is premised upon issues decided upon on 9th January 2012. As stated before Appellant withdrew the challenge to the award of 9th January 2012. That challenge was not resuscitated and cannot be through a notice of appeal stating a specific date of the award being challenged, which date does not included 9th January 2012. On this basis alone

the appeal is bound to fail. Nevertheless I will proceed to deal with the issues raised in the grounds of appeal.

The grounds of appeal raise factual issues

- That Respondent was not being underpaid by the Applicant
- That Respondent was not a welfare employee
- That the Arbitrator relied on a salary schedule which did not apply to the Respondent
- That the order unjustly enriched the Respondent at the expense of the Applicant.

Section 98 (10) of the Labour Act [Chapter 28:01] states

“An appeal on a question of law shall be to the Labour Court from any decision of an Arbitrator appointed in terms of this Section.”

However the Supreme Court has ruled that a serious misdirection on the facts amounts to a misdirection of law if it is so unreasonable that no sensible person applying his mind to the facts would have arrived at such a conclusion see **Chinyange v Jagers Wholesalers** SC 24/04. The issue in question is therefore whether the Arbitrator’s quantification is so unreasonable that no sensible person applying his mind to the facts would have arrived at such a conclusion. The facts are that on 9th January 2012 an award was made in which it was stated that there was underpayment of wages and terminal benefits. The award went on to state that a United States Dollar salary scale that had been produced during the proceedings would be used in computing the terminal benefits. That award has not been challenged or overturned.

Respondent made a detailed computation using the scale that was ruled to be applicable. That computation was not sufficiently challenged. The Arbitrator's decision to grant the Respondent's prayer for the quantified amount of \$11 525.06 cannot be faulted.

Accordingly the appeal has no merit and is hereby dismissed with costs.

Zuze Law Chambers, Appellant's Legal Practitioners

Muzondo & Chinhema, Respondent's Legal Practitioners