

IN THE LABOUR COURT OF ZIMBABWE

JUDGMENT NO.

LC/H/42/2014

HARARE, 14 & 31 JANUARY 2014

CASE NO.

LC/H/345/13

In the matter between:-

EDWARD MISIHAIRABWI & 14 OTHERS

Appellants

And

AFRICARE ZIMBABWE

Respondent

Before Honourable L.M. Murasi, Judge

For Appellants - **Mr. S.T. Mutema (Legal Practitioner)**

For Respondent - **Mr. A. Rutanhira (Legal Practitioner)**

MURASI J:

Appellants were employed by the Respondent on fixed term contracts which were periodically renewed. The contracts were terminated and the Designated Agent referred the matter to arbitration. The Arbitrator ruled against the Appellants stating that they were not unlawfully dismissed as their contracts had expired due to effluxion of time. Appellants have approached this Court for relief.

At the beginning of the hearing the parties addressed the Court on the point *in limine* raised by the Respondent. Respondent avers that there is no appeal before the Court as submissions are premised on questions of fact. Respondent relied on the **MUZUVA CASE** for its submissions.

Appellants, on the other hand, stated that the grounds of appeal are on points of law and referred the Court to the grounds of appeal in the Notice of Appeal. Appellants, contended that what was raised in those grounds were legal issues which amounted to points of law. After the submissions, the Court reserved judgment, in order to determine the point *in limine*. This is in line with the pronouncements in **HEYWOOD INVESTMENTS (PRIVATE) LIMITED T/A GDC HAULIERS VS PHARAOH ZAKEYO SC 207/11** where **GOWORA JA** had this to say on page 3 of the cyclostyled judgment:

“It seems to me that the Court a quo failed to appreciate the legal issue raised by the point in limine. It is incumbent upon a Court before which an application is made to determine it. A Court before which an interlocutory application has been made should not proceed to determine a matter on the merits without first determining the interlocutory application.” (own emphasis).

The Court had to stop Appellants’ Counsel from addressing on the merits so that a determination on the merits could be made.

The issue to be determined is whether the grounds of appeal amount to points of law and further whether the question for argument and determination is what the true rule of law is on a certain matter. One of the issues the Arbitrator was tasked to determine, in terms of the fixed term contracts signed by the Appellants, whether the Appellants had any legitimate expectation in having them renewed. The Arbitrator, after analyzing the evidence, came to the conclusion on the facts that they had no legitimate expectation. The Arbitrator also found against the Appellants on the issue of casualisation. The question is do Appellants’ grounds require the Court to determine what the true rule of the law is?

Section 98 (10) of the Labour Act makes it clear that appeals against arbitral awards only lie to this Court on points of law. The definition of what a point of law is, is contained in a number of authorities including the case of **SABLE CHEMICAL INDUSTRIES LIMITED VS DAVID PETER EASTERBROOK SC 18/2010**. A gross misdirection on the

facts if properly pleaded and shown to exist can entitle one to appellate relief. A reading of Appellants' grounds of appeal show that the plea is that the Arbitrator misdirected himself on the facts as to constitute a point of law. There is no averment of **gross misdirection** on the part of the Arbitrator in the grounds of appeal. The true rule of law to be determined by the Court has not been identified.

Appellants, when one considers the grounds of appeal, are requesting the Court to "re-consider" the decision made by the Arbitrator on the facts presented. Appellants have not clearly averred what points of law lie for determination by this Court. Appellants' submissions in the grounds of appeal are a general 'disgruntlement' with the decision of the Arbitrator. As already stated in numerous decisions of the Supreme Court and this Court, an appeal made in terms of section 98(10) of the Act shall only be entertained if it is on a question of law or where there is a gross misdirection on the facts which is so unreasonable that no sensible person who applied his mind to the facts would have arrived at such a decision.

The Court is of the view that pleadings which merely state that the tribunal *a quo* erred in law do not necessarily mutate a point of fact into a point of law. Gross misdirection on the facts amounting or leading to a wrong finding on the law should be specially pleaded. Grounds of appeal have to be clear and specific so that whoever has to respond to them does so from an informed position.

Appellants thus have not made out that this is an appeal within the acceptable standards laid down by the law. The Court is satisfied that the point *in limine* is with merit and should succeed.

It is Ordered:

1. That the point *in limine* being with merit be and is hereby upheld.

2. That the appeal by Appellants be and is consequently struck off the roll for non-compliance with the requirements of section 98 (10) of the Act.
3. That there be no order as to costs.

GUNJE-CHASAKARA LAW FIRM - Appellants' legal practitioners
SCANLEN AND HOLDERNESS - Respondent's legal practitioners