

IN THE LABOUR COURT OF ZIMBABWE

HARARE ON 11th OCTOBER, 2013

AND 14TH FEBRUARY, 2014

CASE NO. LC/H/474/12

In the matter between

SIMON NYENGERAI

– **APPELLANT**

And

CHITUNGWIZA MUNICIPALITY

- **RESPONDENT**

Before The Honourable L.F. Kudya J.

For Appellant : Mr F.G. Gijima (Legal Practitioner)

For Respondent: Ms R.R. Mutindindi (Legal Practitioner)

KUDYA J,

This is an appeal against an arbitral award which was made against the Appellant (employee) in favour of the Respondent (employer).

Facts of the case are that, the Appellant found himself before the Arbitrator following allegations of what he termed unfair labour practices around his receipt of his retirement package. At an earlier point the matter had been referred to the Labour Court which directed that the matter be placed before a Labour Officer to deal with the alleged unfair labour practice. The parties failed to agree at conciliation and the matter subsequently went for arbitration. At arbitration the Arbitrator ruled that based on the facts which were presented before him, the employee had failed to make out a good case for an unfair labour practice having been perpetrated upon him by the Respondent (employer). It is this determination which aggrieved the Appellant and caused him to file the instant appeal which is the subject of this judgment.

The grounds of appeal as amended by consent by Respondent were to the following effect:

- (1) Arbitrator grossly misdirected himself by determining the matter on the basis of submissions made to the Labour Court and not on submissions made by the Appellant after the matter had been re-directed to him by the Labour Court.
- (2) Arbitrator misdirected self by concluding that there was no unfair labour practice yet there was evidence that the Appellants pension money was erroneously calculated and that there were arrear salaries and benefits.
- (3) Arbitrator erred by failing to hold that Respondent was guilty of an unfair labour practice by not remitting medical aid contributions for Appellant for May 2009 to 31 December 2009 thus reducing the Appellant's medical benefit.
- (4) Arbitrator failed to make a determination on the Respondent's failure to submit ZIMRA Audits for January 2009 to 31 December 2009 which action prejudiced the Appellant's terminal benefits.
- (5) In the result he prayed that the arbitral award be set aside and that he be paid salary arrears plus interest on his miscalculated benefits. In the same breadth the Appellant prayed that he be paid salary arrears for February 2009 to March 2009. Finally, appellant prayed that, he be paid the equivalent of 12 months' salary and benefits for his unremitted medical aid and tax deductions.

In response to the appeal the Respondent maintained that;

- (1) Ground one does not raise any question of law. Arbitrator made an award based on evidence which was before him hence allegation that he relied on submissions previously made to Labour Court does not create a question of law to found the appeal properly.
- (2) Issue of pension money was never before the Arbitrator. In any event, it is a factual issue which is not appealable and no averment was made on that point, that Arbitrator grossly misdirected himself on the facts to amount to a question of law.
- (3) This is disputed and does not raise a question of law. Arbitrator's award is unassailable as it was based on facts which were placed before him.
- (4) This is also disputed. Tax rebates were submitted but ZIMRA rejected them. There was nothing before the Arbitrator to find in Appellant's favour. Tax issue is a ZIMRA issue not Appellant's issue.

(5) This is also disputed. Appellant has not placed before Court just reason why the arbitral award should be set aside. There is no averment of gross unreasonableness of the award such that, no reasonable person applying his mind to the facts would arrive at such a decision.

In the result, the Respondent prayed that the appeal be dismissed with costs on a higher scale as in Respondent's view the appeal smacks of abuse of court process.

Before dealing with each of the grounds of appeal in turn it is pertinent to note that both parties filed comprehensive heads of arguments and case law stating the legal position viz. appeals against arbitral awards etc. Since this is apparent on the face of the documents filed of record this Court does not intend to restate these legal positions as the authorities are without debate.

A reading of the response to the grounds of appeal to the point *in limine* raised by the Respondent. This is the argument that, there is no appeal before this Court as all the grounds relate to facts and are thus not appealable at law.

On this point *in limine* it is worth noting that, before concluding on the sufficiency or otherwise of the grounds the Appellant's averments in the amended grounds tend to put the appeal within the ambit of what is envisaged by Section 98(10) of the Act. Appellant averred in its grounds that the Arbitrator grossly misdirected self on the facts as to amount to a question of law. In the Court's view these averments suffice to put the appeal within the parameters required of appeals from Arbitration. On that note the point *in limine* being without merit is dismissed.

Turning now to the merits of the appeal, each ground will be addressed in turn.

Ground one

A reading of this ground fails to demonstrate clearly how the Arbitrator is said to have erred grossly. If indeed he relied on submissions made before the Labour Court then the Court fails to appreciate how that would have changed the complexion of the matter. The facts of the matter would not change simply because it was now before a different tribunal. This ground thus lacks merit and should fail.

Ground two

The Arbitrator ruled that, if there was any miscalculation complained about it was because of a misunderstanding between the parties. In his view that did not amount to an unfair labour practice. In essence he did not dispute that calculations as per Appellant's understanding were possible neither did he hold that Respondent's calculation was erroneous. In any event the whole reason on this is factual and the Court does not glean any

unreasonableness in it to warrant its interference. This ground also lacking in merit should also fail.

Ground 3 and 4

For convenience these two grounds will be dealt with simultaneously. The issue here is that if indeed the medical subscriptions and the ZIMRA papers were not submitted timeously that would effectively be an issue between the Respondent and the bodies which expected the said submissions. Whilst ultimately Appellant could be prejudiced by the reduction of the value of his medical benefits that would not of itself amount to an unfair labour practice. In the result, the Court does not find any fault with the Arbitrator's reasoning on these points. The two points lacking in merit should also fail.

In a nutshell, it is clear from all the grounds that the factual reasoning by the Arbitrator was unassailable and this Court has no basis to interfere with it. The appeal should therefore fail in its entirety.

IT IS ORDERD THAT

Appeal lacking in merit in its entirety it be and is hereby dismissed with costs.

The arbitral award is to stand.

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L. Kudya – Judge

LABOUR COURT

F.G.Gijima and Associates – appellant's legal practitioners

Matsikidze and Mucheche – respondent's legal practitioners