

**IN THE LABOUR COURT OF ZIMBABWE**

**JUDGMENT NO LC/H/361/2023**

**HARARE, 19 OCTOBER 2023 05**

**CASE NO LC/H/774/22**

**DECEMBER 2023**

**PATRICK MURAMBIWA**

**APPLICANT**

**SEED CO LIMITED**

**RESPONDENT**

Before the Honourable G. Musariri Judge:

For Applicant - Mr P. Tichaona, Attorney

For Respondent - Mr D. Peneti. Attorney

**MUSARIRI, J:**

Applicant filed a composite application for condonation and review by this Court. Composite applicants are permissible per the ruling by the Supreme Court in matter Read v Gardener 2019 (3) ZLR 575 (S) at 581 F-G. The matter shall hereafter be dealt with under two subtitles.

**Condonation**

On the 17<sup>th</sup> March 2022 applicant was dismissed from employment by respondent for misconduct. He filed an application for review by this Court on 24<sup>th</sup> March 2022. The application was struck off the roll on the 27<sup>th</sup> June 2022. On 14<sup>th</sup> July 2022 application applied for condonation of a belated review. On the 15<sup>th</sup> July, 2022 he withdrew the application. He intended to file a composite application for condonation and review which he filed on 26<sup>th</sup> August 2022.

Rule 20(1) of the Labour Court Rules S.I. 150/17 requires that an application for review be filed within 21 (twenty-one) days of the conclusion of misconduct proceedings. Thus the present application is about 4 months late. Applicant has accounted for delay as set out above

He was in this Court battling to get the matter reviewed. But for technicalities, the matter would have been resolved at the first attempt. Thereafter he filed the application for condonation which he soon withdrew. Though that course taken aggravated delays his explanation therefor is reasonable. A composite application will lead to an effective and expeditious resolution of the matter. That is consonant with the purposes of the applicable law that is section 2A (1) f of the Labour Act Chapter 28:01 which calls for the

“.....effective and expeditious resolution of disputes...”

The Court is satisfied that this matter calls for condonation.

### **Review**

The grounds for review were triplicate thus,

- “1. The Respondent procedurally erred at law by conducting a disciplinary hearing whilst improperly constituted in that one of the members of the disciplinary committee played a double role of being a committee member and complainant or witness at the same time in the same matter.
2. The Respondent procedurally erred at law by failure to afford the applicant’s right to address the Disciplinary Committee in mitigation before the ultimate penalty is imposed as covered by section 6 (4) e of the National Employment Code (S.I. 15 of 2006).
3. The Respondent erred at law by dismissing the applicant based on the production of a wrong exhibit of contaminated diesel when the respondent never alleged to have been deprived of such contaminated fuel by the Applicant.”

The third ground raises an issue related to the assessment of evidence. That is a matter dealing with the content or merit of a decision and not the decision-making process. The content/merit of a decision is a matter for appeal rather than review. It cannot be properly considered in a matter like the present review.

The second ground states that applicant was denied the opportunity to mitigate. The following excerpt from minutes of the hearing is apposite;

“LM. We have taken note of your points Dr Tembo am sure we can proceed to do our own mitigating factors since the accused preferred not to present his mitigating factors for now.

Mitigatory Factors

LM Besides this issue how has been Murambiwa’s conduct in general?”

The panel then proceeded to note the mitigatory and aggravatory factors. It appears that it is applicant who declined the opportunity to mitigate. In his founding affidavit applicant does not clarify or contradict the contents of the above excerpt.

The first ground refers to one Dr Soko who was the Complainant during the disciplinary hearing. Applicant's heads of argument submitted that;

“20. It is incumbent to aver that on Dr T. Soko was a member of the disciplinary Committee as it more fully appears from the charge, charge outline and also the ruling confirms that he was the Disciplinary Committee member who initiated charges against me.”

The issue is however clarified by the minutes of the hearing thus;

“PT (Attorney) My question directed on who will be saying you are guilty or not. Who constitutes that?

LM (Chairman) The two of us, myself and Dr Tembo

PT Okay.”

It was clarified that the disciplinary committee comprised the Chairman (L. Mupangwa) and E. Tembo. It did not include Dr Soko who participated as the Complainant. The record does not show any part where Dr Soko played an adjudicative role.

Conclusion: The foregoing shows that all the three grounds for review were not substantiated. Thus the application for review lacks merit and ought to be dismissed.

**Wherefore it is ordered that**

- 1. The applications for condonation and review be and are hereby dismissed; and**
- 2. Each party shall bear its own costs.**

**G MUSARIRI**

**J-U-D-G-E**