Judgment No. SC 96/02

Civil Appeal No. 19/02

PHIAS MARUNZE v LOBELS BROTHERS

SUPREME COURT OF ZIMBABWE
CHIDYAUSIKU CJ, CHEDA JA & ZIYAMBI JA
HARARE, OCTOBER 10 & NOVEMBER 11, 2002

E V Shumba, for the appellant

W Ncube, for the respondent

ZIYAMBI JA: The appellant was suspended from the employ of the respondent on 13 May 1997 and permission sought to dismiss him from the Ministry of Labour. Permission was granted on 24 September 1997, by the labour relations officer (LRO).

An appeal was lodged with the senior labour relations officer, who upheld the determination of the LRO. There followed an appeal to the Labour Relations Tribunal (the Tribunal). The Tribunal having found in favour of the respondent, the appellant appealed to this Court.

In terms of s 92(2) of the Labour Relations Act, [*Chapter 28:01*] (the Act), an appeal lies to the Supreme Court from a decision of the Tribunal on a question of law only.

The ground of appeal advanced before the Tribunal and before this Court was that the respondent had not sought the Minister's approval for the dismissal of the appellant, as the letter seeking such permission was not contained in the record. The Tribunal dealt with this ground of appeal thus:

> "Through a letter dated 19 May 1997 (the) respondent then made an application to the Ministry of Public Service, Labour and Social Welfare in terms of SI 371/85. The application letter, however, is not filed of record, but a reading of the record of proceedings by both labour relations officers clearly indicates that there was such an application. Mr Chagonda, for the respondent, produced a copy of this application and also pointed out that the two labour relations officers mentioned in their proceedings that they were dealing with an application made by the respondent in terms of SI 371 of 1985.
>
> I found as a fact that despite the absence of (a) copy of the application in the record, the respondent actually made an application to the Ministry …".

This was quite clearly a finding of fact. I agree with Mr *Ncube*, for the respondent, that it cannot be appealed against in terms of s 92(2) of the Act unless it was accompanied by a serious misdirection amounting to a misdirection in law or the decision was so outrageous in its defiance of logic that no reasonable court properly applying its mind could have come to it. The notice of appeal contains no allegation of such a misdirection in law or irrationality by the Tribunal. It raises no question of law and is, therefore, "fatally defective and void". See *Hama v National Railways of Zimbabwe* 1996 (1) ZLR 664 (S). See also *Muzuva v United Bottlers (Pvt) Ltd* 1994 (1) ZLR 217 (S).

The appeal is accordingly struck off the roll with costs.

CHIDYAUSIKU CJ: I agree.

CHEDA JA: I agree.

I.f.p., for the appellant

Atherstone & Cook, respondent's legal practitioners