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Judgment No. SC 39/03
Civil Application No. 269/03

SHACKIEMORE MUCHENJE v BATA SHOE
 COMPANY

SUPREME COURT OF ZIMBABWE
HARARE, NOVEMBER 18 & 26, 2003

Before: CHEDA JA, In Chambers, in terms of s 31(7) of the Supreme Court Rules

The applicant in person

I Chagonda, for the respondent

The applicant was dismissed from employment by Bata Shoe Company. His matter went through the labour relations officers, who determined the case in favour of the respondent.

The applicant then appealed to the Labour Relations Tribunal (“the Tribunal”), but was not successful.

He now wishes to appeal to this Court but, because of the delay in noting the appeal, he is now applying for condonation of the late noting of the appeal. The application is opposed by the respondent.

According to the applicant, he received a copy of the order following the hearing of the Tribunal on 25 June 2003. The reasons were not there. He

asked for them and was later informed that they had been sent to the wrong address, despite the fact that he had informed the registrar of the Tribunal what his new address was.

The applicant was given a copy of the judgment on 8 September 2003. He noted the appeal on 23 September 2003.

The applicant says he did not note an appeal after he received the order as there were no reasons. The respondent pointed out, and this is confirmed by the order of 25 June 2003, that the main reason was given in the order. The order reads as follows:

“IT IS ORDERED –

1. That failure by the appellant to explain or justify absence of the calls register or use of the calculator, does not absolve him from his responsibility.
2. That in view of the above, I find no merit in the grounds of appeal. Accordingly the appeal be and is hereby dismissed.”

The applicant accepted that this reason was given but says it was “patchy” and he wanted full and detailed reasons.

In his grounds of appeal, the applicant does not deal with the point raised above. Instead he raises issues which he accepts were raised before the Tribunal but disagrees with the Tribunal’s findings on the facts. He could not give any proper reasons for the delay other than that he wanted detailed reasons.

It is clear that the applicant could have filed his appeal once he

received the order, which told him the reason for the dismissal of his appeal. Even the detailed judgment gives the same reason.

Even if condonation of the late noting of the appeal were to be granted on the basis that the applicant needed more detailed reasons, the application cannot succeed because of three other reasons that stand in his way.

Firstly, his grounds of appeal simply repeat what he admits to having told the Tribunal and he then says he does not agree with the Tribunal's conclusion. For example, he says he wants to show this Court that the allegations against him were manufactured by Bata. His contract had been renewed and he wants to tell this Court how these things were done. He wants this Court to review his case. He also accuses the Tribunal of echoing the sentiments of a labour relations officer.

The applicant's grounds of appeal do not attack the judgment he is appealing against.

Secondly, the Tribunal made findings of fact regarding his case. No point of law arises at all.

Section 92(2) of the Labour Relations Act [*Chapter 28:01*] provides as follows:

“(2) An appeal on a question of law from any decision of the Tribunal shall lie to the Supreme Court.”

There is, therefore, no room for appealing on a question of fact, except where it can

be shown that there was a misdirection, or the decision arrived at was so grossly unreasonable as to justify interference.

Thirdly, on the merits, it is not disputed, even by the applicant himself, that there was a shortfall for which he was dismissed. He suggested that his contract of employment provided for recovery of a shortfall by his employer only. I cannot read this to mean that where a shortfall is recovered, the employer's general right to dismiss is removed by the right to recover the shortfall.

Accordingly, there is no merit in the application and it is dismissed with costs.

Atherstone & Cook, respondent's legal practitioners