

DISTRIBUTABLE (24)

Judgment No. SC 24/04

Civil Application No. 331/02

FLORENCE CHINYANGE v JAGGERS WHOLESALERS

SUPREME COURT OF ZIMBABWE  
CHIDYAUŠIKU CJ, CHEDA JA & GWAUNZA JA  
HARARE, FEBRUARY 16 & MAY 18, 2004

*The appellant in person*

*K Ncube*, for the respondent

GWAUNZA JA: This is an appeal from a judgment of the Labour Court, in terms of which the decision of the Negotiating Committee to dismiss the appellant from the respondent's employ, was upheld.

The brief facts of the matter are as follows –

The appellant was employed by the respondent at its Bindura Branch, as a till operator. On the date in question an elderly customer purchased goods worth \$290,00. She tendered \$400,00 but was given change of only \$10,00. Her attention was then drawn, by two concerned customers who had observed the proceedings, to the fact that she had been short-changed by \$100,00. A report was made to a senior official of the respondent, who then led the customer back to the appellant. The senior official did a spot check of the appellant's till and found an extra \$100,00. He gave this amount back to the customer, who then left. At the end of the day the appellant's books balanced, in that no excess amount was found. The appellant was subsequently dismissed from her employment, and thereafter filed appeals with the Local Joint Committee, the Negotiating Committee and the Labour Court. All her appeals were dismissed.

At the hearing of the appeal, the respondent raised the point that the appeal was not properly before this Court, since, as was evident from the appellant's grounds of appeal, such appeal was purely against findings of fact.

There is in my view merit in this contention.

The appellant attacks the decision of the Labour Court on the ground that it made certain findings that were not supported by the evidence before the Court. A closer analysis of the appellant's grounds of appeal shows that the findings complained of are clearly findings of fact. They relate to the correctness or otherwise of the Labour Court's finding on the amount of change given to the elderly customer concerned, the circumstances surrounding the on spot investigations carried out by the respondents' senior officials following the receipt of the complaint in question, whether or not the appellant had earlier reported a faulty till to the authorities and the exact amount found in the till operated by the appellant when a spot check was conducted by the respondent's branch manager.

It is trite that an appeal to this Court, from a decision of the Labour Court, should only be on a question of law<sup>1</sup>. The appellant must in other words not only allege, but also show, that the Labour Court misdirected itself on a point of law.

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(1) See Section 92 (2) of the Labour Relations Act Chapter 28:01

In *National Foods Limited v Mugadza*, SC 105/95, this Court held, as indeed it has in a number of other cases<sup>2</sup> that a serious misdirection on the facts amounts to a misdirection in law. In *Hama v National Railways of Zimbabwe* 1996 (1) ZLR 664 (SC) at 670 D KORSAH JA elaborated on this point as follows:

"... an appeal Court will not interfere with a decision of a trial court based purely on a finding of fact unless it is satisfied that, having regard to the evidence placed before the trial court, the finding complained of is so outrageous in its defiance of logic or accepted moral standards that no sensible person who has applied his mind to the question to be decided could have arrived at such a conclusion. *Bitcon v Rosenberg* 1936 AD 380 at 395 – 7; *Secretary of State for Education and Science v Metropolitan Borough of Tameside* [1976] 3 ALLER 665 (CA) AT 671 E – H; *CCSU v Minister for the Civil Service supra* at 951 A – B; *PF Zapu v Minister of Justice* (2) 1985 (1) ZLR 305 (5) at 326 E – G."

The appellant has not alleged nor shown, that the Labour Court misdirected itself, nor that such misdirection, being one based on findings of fact, was so unreasonable that no sensible person applying his mind to the facts would have arrived at such a conclusion<sup>3</sup>.

In the result the point raised by the respondent, to the effect that this appeal is not properly before this Court, is upheld.

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(2) See, for instance *Muzuwa v United Bottlers (Private) Limited* 1994 (1) ZLR 217 (S)

*and Hama v National Railways of Zimbabwe* 1996 (1) ZLR 664 (SC)

(3) See *Reserve Bank of Zimbabwe v Corrine Granger & Anor* – SC 34/2001

The appeal is accordingly struck off with costs.

CHIDYAUSIKU CJ: I agree.

CHEDA JA: I agree.

*Gill, Godlonton & Gerrans*, respondent's legal practitioners