REPORTABLE (70)

Judgment No SC 87/04

Civil Appeal No 344/01

STANDARD CHARTERED BANK LIMITED v WELLINGTON CHINYEMBA

SUPREME COURT OF ZIMBABWE
CHIDYAUSIKU CJ, ZIYAMBI JA & GWAUNZA JA
HARARE JULY 12 & OCTOBER 11, 2004

C. Phiri, for the appellant

A.M. Gijima, for the respondent

CHIDYAUSIKU CJ: This is an appeal from the ruling of the Labour Relations Tribunal (the Tribunal), now the Labour Court. The background of this appeal is as follows.

The respondent was employed by the appellant. He was suspended after police investigated him for exchange control offences. He was placed in police custody and released after three weeks. He continued receiving his salary for a period of 17 months, that is, from the date of his suspension, which was 13 June 1993 to 31 October 1994. On 31 October 1994 the appellant stopped paying the respondent his salary and benefits. The respondent remained on suspension.

In April 1994 the charges against the respondent were withdrawn by the State before plea. In February 1995 the respondent applied to the appellant for voluntary retrenchment which was refused by the appellant on the basis that the appellant

was charging the respondent with misconduct and disciplinary measures against him were pending.

On 6 December 1995 the respondent was charged with misconduct. He was charged with four counts of misconduct, namely:

(1) Gross incompetence and inefficiency in the performance of work;

(2) Absence from work for a period of more than five working days;

(3) Failure to comply with SITO or follow established procedures;

(4) Concealing one's defective work.

The respondent was found guilty on counts 2, 3 and 4, and was dismissed from employment on 13 December 1995. The hearing was conducted in terms of the code of conduct, Statutory Instrument 201 of 1995.

The respondent was aggrieved by the determination to dismiss him and he appealed to the Appeals Committee in terms of the code. The Appeals Committee was unable to reach a decision on whether or not the respondent should be dismissed. He thereafter appealed to the National Employment Council of the Banking Undertaking. It refused to hear the matter because there was no determination by the Appeals Committee in respect of which an appeal could be launched. The Chairman of the Appeals Committee advised the respondent to seek redress with the Labour Relations Officer. The respondent, acting on this advice, referred the matter to the Labour Relations Officer for determination of the lawfulness or otherwise of his dismissal. The Labour Relations Officer determined that the appellant had not complied with the provisions in S.I. 371 of 1985 in dismissing the respondent. In terms of Statutory Instrument 371/85 the appellant was required to obtain the Minister's permission before dismissing the respondent. The permission to dismiss the respondent had to be applied for forthwith upon suspension of the respondent. There was no compliance in that regard.

Statutory Instrument 371/85 has since been repealed and was not operational at the time of the disciplinary proceedings in December 1995.

The appellant was not satisfied with the determination of the Labour Relations Officer and it appealed to the Senior Labour Relations Officer. The appeal was successful and the Senior Labour Relations Officer set aside the determination of the Labour Relations Officer on the basis that the respondent's claim had prescribed in terms of section 96(3) of the Labour Relations Act, (the Act).

The respondent was dissatisfied with that determination and he appealed to the Labour Relations Tribunal. The Labour Relations Tribunal allowed the appeal and set aside the determination of the Senior Labour Relations Officer. The determination of the Labour Relations Officer setting aside the respondent's dismissal was confirmed.

The appellant was dissatisfied with this determination. It now appeals to this Court.

The appellant appealed to this Court on four grounds set out in the Notice of Appeal, namely:-

"1. The Tribunal erred in dismissing the point raised by appellant *in limine* and completely misdirected herself in her interpretation and appreciation of section 14 of SI 30/1993 and thereby misdirected herself in her conclusion that the appeal notice was not fatally flawed, in circumstances where the notice, as aforesaid, was incurable.

2. That the Tribunal misdirected itself and thereby erred in concluding that respondent's claim had not prescribed in terms of section 94 of the Labour Relations Act Cap 28:10, where the respondent applied for recourse for the unfair labour practice found to have occurred by the Senior Labour Relations Officer, at a date more than 180 days after the unfair labour practice had so occurred.

3. That the Tribunal misdirected itself, when it concluded that:

> 'The labour officers clearly had jurisdiction to deal with the matter in view of the fact that the pending disciplinary action had arose (sic) before the registration of the Code of Conduct'

and thereby erred in its conclusion that the labour relations officer had jurisdiction in circumstances where the Code was registered on the 31st March 1995 and the disciplinary action took place on the 13th December 1995.

4. That the Tribunal misdirected itself by its failure to determine the issue of respondent's repudiation of contract after the 2nd July 1993, and thereby erred."

Dealing with the first ground of appeal the appellant argued before the

Labour Relations Tribunal and, indeed, before this Court that the Notice of Appeal to that Tribunal was fatally defective and that the Labour Relations Tribunal should have dismissed the appeal on that basis. The contention is that the impugned Notice of Appeal does not set out the relief sought. The Tribunal dismissed this point *in limine* on the basis that in terms of section 14 of the Labour Relations (Settlement of Disputes) Regulations 1993, (the Regulations) the Court is empowered to seek clarification in respect of notices of appeal which are not clear. She concluded that this provision gives litigants an opportunity to cure defective notices of appeal at the hearing of the Tribunal and consequently any defects in the notices of appeal cannot be fatal.

I agree with the conclusion of the Tribunal. The alleged defect in the Notice of Appeal in this case is not fatal. Statutory Instrument 30/1993 sets out the procedures to be followed on appeal. Statutory Instrument 30/93 does not prescribe the contents of a notice of appeal. It does not, for instance, provide that the appellant should set out the relief sought as does, for instance, Rule 29(1)(e) of the Supreme Court Rules which provides as follows:-

> "29. (1) Every civil appeal shall be instituted in the form of a notice of appeal signed by the appellant or his legal representative, which shall state -
>
> (a) …
>
> (b) …
>
> (c) …
>
> (d) …
>
> (e) The exact nature of the relief which is sought;"

There is no provision in Statutory Instrument 30/93 similar to the Supreme Court Rules. A notice of appeal to this Court would be fatally defective if it does not state the exact nature of the relief sought by reason of Rule 29(1)(e) but the same cannot

be said of an appeal to the Tribunal. A proper reading of Statutory Instrument 30/93 reveals that the law maker intended to allow for a certain amount of latitude in respect of proceedings before the Tribunal. The first ground of appeal therefore fails.

The second ground of appeal is that the Tribunal misdirected itself by concluding that the respondent's claim had not prescribed in terms of section 94 of the Act which provides as follows:-

> "94. **Prescription of Disputes**
>
> (1) Subject to subsection (2) after the 1st January 1993, no labour relations officer shall entertain any dispute or unfair labour practice which –
>
> (a) arose before 1st January 1993, unless it is referred to a labour relations officer within one hundred and eighty days from 1st January 1993, and any debts arising therefrom have not prescribed in terms of the Prescription Act [Cap. 8:11];
>
> (b) arises after 1st January 1993, unless it is referred to a labour relations officer within one hundred and eighty days from the date which such dispute or unfair practice first arose."

It is common cause that:

(a) On 13 June 1993 the respondent was suspended on full pay and benefits;

(b) In October 1994 the appellant stopped payment of salary and benefits to the respondent but the respondent remained on suspension;

(c) On 13 December 1994 the appellant dismissed the respondent from its employment;

(d) On 13 January 1994 the respondent referred his dismissal which he alleged was unlawful to a Labour Relations Officer for determination.

In referring the matter to the Labour Relations Officer the respondent's cause of action was the alleged unlawful dismissal which occurred on 13 December 1994. He referred the matter to the Labour Relations Officer in January well within the 180 days stipulated by the Act. The fact that the respondent might have had other causes of action, namely, arising from what occurred on 13 June 1993 and at the end of October 1994 is, in my view, irrelevant.

I accordingly agree with the conclusion of the Tribunal that the respondent's claim has not prescribed.

The third ground of appeal suggests that the Labour Relations Officer had no jurisdiction in dealing with this matter because the banking sector has a code of conduct. I am not persuaded by this argument. The Tribunal correctly observed that this dispute arose at a time when there was no registered code and the respondent's right to refer the matter to the Labour Relations Officer accrued then.

There is no substance in this ground of appeal.

In the fourth ground of appeal it is alleged that the Tribunal did not consider the issue of the respondent's failure to report for duty. It is correct that the Tribunal did not advert to the issue of absenteeism but it is clear from the proceedings before the Labour Relations Officer that there is no substance in this allegation. The respondent reported for duty but the appellant would not allow him to work. This ground of appeal also fails.

In the result the appeal has no merit and is, accordingly, dismissed with costs.

ZIYAMBI JA: I agree

GWAUNZA JA: I agree

Coghlan Welsh & Guest, appellant's legal practitioners

Matimba & Muchengeti, respondent's legal practitioners