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Judgment No. SC. 18/05

Civil Application No. 132/05

MAZOWE MINE v LEONARD MLAUZI

SUPREME COURT OF ZIMBABWE  
HARARE, JUNE 7, 2005

Before: CHEDA JA, In Chambers, in terms of Rule 30 of the Supreme Court Civil Rules

The applicant was the employer of the respondent. The respondent was dismissed from employment on the allegation that he had stolen some gold. The matter went to the Labour Court and that court granted the respondent's appeal on the grounds that the allegation against the respondent had not been proved.

The applicant now seeks leave to appeal to this Court against the judgment of the Labour Court, as it is now out of time.

The reason for not noting the appeal in time is that Labour Court judgments are not handed down in the same way as High Court and Supreme Court judgments. However, when a matter is stood down for judgment, it is important that parties should make a follow-up to find out when the judgment is ready.

In this case, the judgment was served on the applicant's legal practitioners on 3 March 2005. The legal practitioners are said to have immediately advised Mr B Mons of Metallon Gold Mining (Pvt) Ltd ("Metallon") about the judgment and the right to appeal. No appeal was noted. There is no explanation why the legal practitioners advised Mr Mons of Metallon instead of the applicant. If the applicant knew that Mr Mons was no longer in charge of its affairs, there is no explanation why the legal practitioners were not advised.

There is no explanation why Mr Mons did nothing or failed to advise the legal practitioners of the change. There is no affidavit from Mr Mons or from the legal practitioners to confirm the above.

In addition, the finding of the Labour Court that the theft was not proved is a point of fact and not a point of law. Section 91 of the Labour Relations Act [*Chapter 28:01*] provides for appeals to the Labour Court. Section 92(2) provides for appeals on a question of law only from a decision of the Labour Court to the Supreme Court.

There is no question of law in this case. The appeal is based on a finding of fact by the Labour Court.

The appeal cannot be allowed. Accordingly leave to file an appeal to the Supreme Court out of time is hereby dismissed with costs.

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