

Civil Appeal No. 223/04

MUDZI RURAL DISTRICT COUNCIL v  
GODFREY MAKWEMBERE

SUPREME COURT OF ZIMBABWE  
CHIDYAUSIKU CJ, SANDURA JA & CHEDA JA  
HARARE, NOVEMBER 15, 2005

*C Warara*, for the appellant

*T Pasipanodya*, for the respondent

CHEDA JA: After hearing submissions from both counsel in this matter, we dismissed this appeal with costs and indicated that reasons would follow in due course. These are they.

The appellant is a Rural District Council established in terms of the Rural Districts Councils Act [*Chapter 29:13*], hereinafter referred to as “the Council”. The respondent was employed by the appellant as its chief executive officer.

Following two meetings of the Council, it was decided that the respondent be discharged from employment for maladministration of the Council’s affairs. He was suspended pending dismissal.

On 20 November 2001 an application was made to a labour relations officer to dismiss the respondent from employment. The labour relations officer determined that the respondent be reinstated without loss of status, salary and other benefits that he had enjoyed, with effect from the date of his suspension. The date of the hearing was given as 10 July 2002 and the date of determination of the application as 24 September 2002.

On 15 August 2003 the same matter was placed before another labour relations officer, who made an arbitration award on 26 September 2003. According to the record, this was because the Council appealed against the first labour relations officer’s determination on 30 January 2003.

There is nothing in the papers to show whether the second labour relations officer was a senior labour relations officer, but, even assuming that he was, he did not deal with the matter as an appeal case but treated it as an arbitration matter.

Acting as an arbitrator, the second labour relations officer set aside the determination of the first labour relations officer, thus confirming the dismissal of the respondent.

The Council then appealed to the Labour Court, but its appeal was dismissed and the Labour Court ordered the reinstatement of the respondent. The Council is now appealing against the Labour Court's decision.

In its grounds of appeal the Council submitted that the Labour Court erred by overlooking the fact that the matter brought before the second labour relations officer was not an appeal but a review. This contention is not supported by the papers.

The Council also submitted that the Labour Court ordered reinstatement of the respondent without dealing with the appeal filed on 30 January 2003.

What the appellant has overlooked in this matter is that after the determination of the first labour relations officer, an appeal should have been made to the senior labour relations officer within fourteen days. This was not done.

The treatment of the matter by the second labour relations officer as an arbitration matter was also wrong. He purported to be acting in terms of s 93 of the Labour Relations Act [*Chapter 28:01*] ("the Act"), but he did not follow the provisions of that section. The matter had not been referred to him as an unfair labour practice or referred for arbitration.

In any case, when the matter was placed before the second labour relations officer, s 93 had been repealed and substituted by a new section. He could have tried conciliation as provided in the amendment, section 30, of Act 17/2002 and not arbitration.

It follows that the only valid proceedings concerning the matter were those before the first labour relations officer. Proceedings before the second labour relations officer were a nullity.

No condonation had been sought for the delay in noting the appeal from the decision of the first labour relations officer. This means that there was no appeal on the matter. There was, therefore, no basis upon which the Labour Court could consider the merits of the matter, as submitted by the appellant.

In short, there was no condonation applied for before the noting of the appeal and it was out of time. The second hearing, which was supposed to be an

appeal and later called arbitration, was a nullity. The second labour relations officer who purported to treat it as arbitration did not follow the provisions of s 93 that he referred to.

The Labour Court's decision was sufficiently clear and I do not see any misdirection in it.

It was for these reasons that we ordered the appeal dismissed with costs.

CHIDYAUSIKU CJ: I agree.

SANDURA JA: I agree.

*Warara & Associates*, appellant's legal practitioners  
*Manase & Manase*, respondent's legal practitioners