REPORTABLE (15)

Judgment No. SC 18/06

Civil Appeal No. 273/03

AUTOMOTIVE AND ALLIED WORKERS' UNION

v MOTOR TRADE WORKERS' UNION

SUPREME COURT OF ZIMBABWE
CHIDYAUSIKU CJ, CHEDA JA & MALABA JA
HARARE, MAY 16 & JUNE 19, 2006

R Matsikidze, for the appellant

T D Muskwe, for the respondent

CHIDYAUSIKU CJ: This is an appeal against a judgment of the Labour Court. The appeal is made in terms of s 92D of the Labour Relations Act [*Cap. 28:01*] ("the Act"). The appellant is a trade union which has been in existence since 1963 and is duly registered in terms of the Act. The respondent is a newly registered union, representing members of the same trade as those represented by the appellant union.

The respondent union was registered on 15 June 1999 by the Registrar of Trade Unions ("the registrar") following its application for such registration. The appellant objected to the registration of the respondent. The respondent was, however, registered despite the objection. The appellant was aggrieved by the registration of the respondent and appealed to the Labour Court for the registration to be set aside. The appeal was dismissed by the Labour Court. Aggrieved by that decision, the appellant appeals to this Court.

The grounds of appeal to the Labour Court are essentially the same as the grounds of appeal to this Court. The grounds of appeal to this Court are set out in the

notice of appeal filed of record, which provides in the relevant part as follows:

> "1. The learned President of the Labour Court erred in including (concluding?) that the Registrar of Trade Unions complied with mandatory provisions of s 45 of the Labour Relations Act [*Cap. 28:01*] in registering the respondent trade union when (the) facts on record indicate that he did not comply with these, particularly as he –
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> 2. (i) accepted an unverified membership of 5 000,00 which he himself doubled;
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> (ii) did not elicit the Minister of Labour's comments and attitude to the respondent's application;
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> (iii) did not consult and elicit the comments of the Minister of Transport and Energy's comments (sic) and attitude to the respondent's application;
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> (iv) did not consider and address the objections to the respondent's application by important relevant players in the motor industry;
>
> (v) did not consider the desirability (of) affording the majority of employees and employers within the motor industry effective representation in negotiations affecting their rights and interests;
>
> (vi) did not consider seriously the desirability of reducing to the least possible number the number of trade unions in the industry as envisaged by statute.
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> 3. The registration of the respondent as a trade union may only be done in terms of and subject to strict compliance with mandatory statutory provisions. As this was not done the learned President of the Labour Court ought to have set aside the registration."

Thus, in essence the appellant contends that the registrar did not comply with s 45 of the Act when he registered the respondent. The Labour Court concluded that there was compliance with s 45 of the Act. The appellant persists in its contention that there was no such compliance.

Section 45 of the Act provides as follows:

> "**45 Considerations relating to registration, certification or variation, suspension or rescission of registration or certification of trade unions or employers organisations**
>
> (1) In any determination of the registration of a trade union or employers organisation or of the variation, suspension or rescission thereof, the Registrar shall –

(a) take into account –

(i) representations by –

A. employers and employees who might be affected; and

B. the Minister and any other Minister whose Ministry or Department may be affected; and

C. any member of the public or any section thereof likely to be affected;

and

(iii) the desirability of affording the majority of the employees and employers within an undertaking or industry effective representation in negotiations affecting their rights and interests;

and

(iv) the desirability of reducing, to the least possible number, the number of entities with which employees and employers have to negotiate;

and

(vi) whether representations made in terms of subsection (3) of section *thirty-nine* or at any accreditation proceedings in terms of section *forty-one* indicate that the trade union or employers organisation will not be substantially representative of the employees and employers it proposes to represent;

and

(b) ensure compliance with the following requirements –

(i) a trade union shall not represent employers;

(ii) an employers organisation shall not represent employees other than managerial employees; and

(iii) the constitution of a trade union or employers organisation shall not be inconsistent with this Act.

(2) Where any person asserts that there should, in any particular case, be any departure from the general rule referred to in subparagraph (iv) of paragraph (a) of subsection (1), the burden of proving such assertion shall lie on

such person."

The appellant's first ground of challenge is that the registrar erred in accepting the unverified membership of the respondent. The respondent, in its application for registration, stated that it had a membership of 5 000. The appellant never disputed the authenticity of the membership of the respondent at the registration hearing. In fact none of the stakeholders questioned the authenticity of the membership of the respondent. The registrar commended the respondent for having raised its membership from about 1 500 members in June 1998 to 5 000 members at the time of accreditation. The registrar attributed this phenomenal increase in the membership to the hard work of the respondent. There is nothing on the record to suggest that the membership of the respondent is not genuine. If the appellant wanted the registrar to verify the membership of the respondent, then it should have asked the registrar to do so. It is not open to the appellant to impugn the determination of the registrar on the basis of an issue it never raised at the determination of the registration. Accordingly, this challenge has no merit.

The appellant also contends that the views of the Minister of Labour and Social Services and those of the Minister of Transport and Energy were not sought and considered, as is required in terms of s 45 of the Act. The record clearly shows the opposite. Both the Ministers approved the registration of the respondent. The Ministers' approvals are on the record.

In paras 2 (iv), (v) and (vi) of the notice of appeal the appellant contends that the registrar did not consider or address the objections to the respondent's application by important players in the motor industry and did not consider the desirability of affording the majority of employees and employers within the motor industry effective representation in negotiations affecting their rights and interests. A perusal of the record of the proceedings of the registration, and in particular the reasons of the registrar for approving the registration of the respondent, clearly shows that he took into account the factors it is alleged he did not take into account.

This same point was raised in the court *a quo*. The learned President of the Labour Court in her judgment at pp 4-7 quoted extensively from the reasons for registration of the registrar before concluding as follows:

> "The registrar's conclusions show that the registrar did as much as possible to comply with the requirements of the Act. It may be worth referring to the Amtec members as an example of employees who needed representation but did not have access to representation before the respondent union was registered. Such representation can now be obtained from the respondent."

Further on in her judgment, the learned President of the Labour Court cited ss 33, 34 and 45 of the Act and concluded:

> "A look at the registrar's considerations when he was seized with this application will show that the registrar acted in terms of section 45 of the Act.

Having commented on the procedure followed by the registrar in having the respondent registered, what remains is to say whether or not the registrar acted erroneously. The registrar made the necessary consultations in terms of the Act. He specifically commended (commented?) upon the provisions of section 45 of the Act and concluded that it was desirable under (in?) the circumstances to have the respondent registered. I see no error in the manner he conducted the registration. The registration is confirmed."

The President of the Labour Court for the foregoing reasons dismissed the appeal.

In my view, the reasoning and the conclusion of the learned President of the Labour Court cannot be faulted. It is quite clear from the record that the registrar, before registering the respondent, took into account everything that was required to be taken into account in terms of ss 33, 34 and 45 of the Act. Whether the registrar came to the correct conclusion after taking into account the relevant factors is an issue of the exercise of the registrar's discretion.

The exercise of the registrar's discretion can only be interfered with by this Court and the court *a quo* on the basis that it was so grossly unreasonable that no registrar, applying his or her mind to the facts before him or her could have come to the conclusion that he or she did without having taken leave of his or her senses. There is absolutely nothing indicative of that on the record.

Mr *Matsikidze*, for the appellant, cited the case of *Agricultural Labour Bureau and Anor v Zimbabwe Agro-Industry Workers' Union* 1998 (2) ZLR 196 (S) as authority for his submission that this matter be remitted to the registrar for further consideration. The two cases are distinguishable on the basis that in the *Agricultural Labour Bureau supra* the reasons of the registrar were so inadequate as to amount to no

reasons at all, while in the present case the reasons could have been more detailed and lucid but they sufficiently indicate that the registrar did consider the factors that he was required in law to consider before arriving at the conclusion that he reached. The conclusion he reached cannot possibly be characterized as grossly unreasonable.

In the result, I hold that this appeal is devoid of any merit and it is accordingly dismissed with costs.

CHEDA JA: I agree.

MALABA JA: I agree.

Sinyoro & Co, appellant's legal practitioners

Muskwe & Associates, respondent's legal practitioners