

MARCUSSEN AND COCKSEGE v BENJAMIN DZIKITI

SUPREME COURT OF ZIMBABWE  
SANDURA JA, CHEDA JA & MALABA JA  
HARARE, NOVEMBER 21, 2006 & MARCH 19, 2007

*F Nyakabau*, for the appellant

*C T Mantsebo*, for the respondent

CHEDA JA: A severance package dispute arose between the appellant (“the employer”) and the respondent (“the employee”). The retrenchment committee resolved the matter by recommending a package in favour of the respondent.

The appellant appealed to the Labour Court and on 29 September 2003 the appeal was dismissed.

The appellant then accepted the decision (by the Labour Court) to pay what was ordered by the retrenchment committee on 14 June 2001.

It is important to point out here that the accepted package did not have figures but only said four months’ salary, two months’ pay for every year worked, one month’s notice, six months’ medical aid payment and payment for all the leave days

due. In figures this would result in the following payments to the respondent based on the 2000 to 2001 rates -

4 months salary severance package	\$ 108 000
2 months salary x 31 years service	\$ 1 674 000
1 month's notice pay	<u>\$ 27 000</u>
Total	<u>\$ 1 809 000</u>

The above figures were adjusted by consent to \$1 863,000,00.

After this order, the respondent proceeded to make his own quantification of what he claimed was due to him. His total was \$57 288 866,96. He submitted this new total to the Registrar of the Labour Court in terms of s 92B of the Labour Act as a judgment of the High Court and sought execution.

The respondent's quantification had neither been agreed nor discussed with the appellant. This raised a dispute which resulted in the parties going back to the Labour Court. When the matter was heard the respondent submitted that inflation should be taken into account and that \$1 in 2000 to 2001 is now worth \$70. The Labour Court accepted the submissions made by the respondent and concluded as follows:

“Having stated the above, I turn to Mr *Mantsebo*'s argument that \$1 in the period 2000 to 2001 is now worth \$70. This was not disputed by the employer's representative who failed to argue in the alternative just in case the court was not with it. The affidavit of Moses Chundu has thus remained uncontroverted and must stand.

In the result the employer is to pay the employee the retrenchment package. The package to be paid is arrived at by multiplying the agreed sum of \$1 863 000 by 70 to cater for the fall in the value of money, the amount payable is thus \$130 410 000,00 to be paid together with interest at the prescribed rate calculated from the date of this order to the date of payment in full.”

The Labour Court did not have any authority at all to do what it did. The matter had been resolved before the Labour Court by one Labour Court President, Mrs Makamure. The amount to be paid had been set and accepted by the appellant.

The reason why the matter went to the Labour Court again was because the respondent made his own quantification of what was to be paid and issued a writ for the amount set by himself which differed from what the court had ordered. Worse still, he never consulted, or discussed these figures with the appellant.

What the respondent did was a clear fraud as he purported to act on the order of the court when in fact that was not correct.

There was no legal basis for issuing a fresh order when the previous order had not been set aside or appealed against.

In a letter dated 7 May 2004 the respondent stated as follows:

“We confirm that we have now reached a settlement of the matter in terms of the order granted by His Lordship, by consent on 29 April 2004 save for the question of costs in respect of which it has further been agreed between the parties that this will be reserved pending the outcome of the application filed by the applicants before the Labour Court.”

It is therefore clear that the Labour Court erred in revising the package that was agreed to and taking inflation into account as it did.

Accordingly, the appeal succeeds. The respondent was dishonest in trying to get execution on figures which were not awarded him in the judgment. I see no reason why he should not pay the costs of the appeal. The judgment of the Labour Court dated 18 February 2004 is set aside and substituted by the following:

- “1. The application is granted with costs.
2. The retrenchment package payable by the applicant to the respondent is fixed at \$1 863 000,00, together with interest thereon at the prescribed rate calculated from the date of retrenchment to date of payment.”

SANDURA JA: I agree.

MALABA JA: I agree.

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

*Mantsebo & Partners*, respondent's legal practitioners