

DISTRIBUTABLE (28)

Judgment No. SC 37/07
Civil Application No. 21/04

JOHN NHARARA v NATIONAL BREWERIES

SUPREME COURT OF ZIMBABWE
HARARE, JUNE 13, 2007

The appellant in person

K Ncube, for the respondent

Before GWAUNZA JA: In Chambers in terms of r 31 of the Supreme Court Rules.

At the conclusion of the hearing in this matter, I dismissed the application and indicated the reasons would follow. These are the reasons.

On 6 January 2004 the Labour Court dismissed the applicant's appeal against his dismissal from employment with the respondent. On 28 September 2004 a document entitled 'Notice of Appeal Against Judgment No. LC\11\281\03' was filed in this Court on behalf of the applicant. Referring to this notice, the respondent in its Heads of Argument raised several points *in limine*, as follows;

- i) that the notice was a nullity since it did not comply with subrule 1 of Rule 29 of the rules of this Court, in particular, that it had not been signed by the

appellant or his legal representative, did not state the date of the judgment sought to be appealed against, the relief sought, nor a physical address for service; and

- ii) that the grounds of appeal raised no issues of law.

In apparent reaction to these arguments, the applicant on 12 April 2005 filed with this Court, a document styled 'Notice of Amendment of Notice of appeal' in which he stated that "for the first time this matter appears before a Judge" he would make an application to amend the original notice of appeal

On 8 May 2007, the date on which the appeal was set down for hearing, this Court struck the matter off the roll on the ground that the purported notice of appeal was not properly before the Court since it did not comply with certain essential requirements for a valid notice of that nature. The notice had also been filed some 9 months out of time, without any application having been made, much less granted, for an extension of time within which to file it. The applicant therefore never had a chance to apply for the 'amendment' of his original notice of appeal, even assuming he would have been able to do so.

Before me the applicant sought an order granting him an extension of time within which to file his notice of appeal. A point *in limine* was raised by the respondent, to the effect that the notice of appeal whose late filing the appellant sought to have condoned, was the same fatally defective notice (therefore a nullity) that had caused the appeal to be struck off the roll on 8 May 2007. It was contended for the respondent that this Court has ruled in *Jack v S* (2) ZLR 166 that a notice of appeal that is a nullity cannot be amended because there was nothing to amend.

There was evident merit in the respondent's submissions. The applicant had indeed not taken the trouble to draft a notice of appeal that complied with the Rules of the Court. His attempt to amend a fatally defective notice of appeal was clearly doomed to failure. He was, therefore, effectively seeking the leave of this Court to file, out of time, a notice of appeal that was fatally defective. For obvious reasons, such an

application could not have succeeded.

Even if the purported notice of appeal had not been a nullity, there would have been other grounds for dismissing the application. The respondents argue correctly that the purported appeal raised no points of law - only factual ones - and therefore did not establish any basis upon which the decision of the Labour Court could be set aside. In addition to this, the applicant proffered no good explanation for the long delay in filing his notice of appeal beyond stating that he considered that it had been properly filed. Finally on the merits, the applicant did not state what his prospects of success were. He was, in any case found to have been at the scene of the commission of the theft of the respondent's property, that is, the pallets. This circumstance in my view, rendered unassailable, the court *a quo*'s finding that, on a balance of probabilities, he had aided and abetted such theft.

For these reasons, I found the application to have no merit, hence my dismissal of it.

Gill, Godlonton & Gerrans, respondent's legal practitioners