MUKUNDI PLASTICS (PVT) LTD v ELIJAH CHASEKWA & 13 ORS

SUPREME COURT OF ZIMBABWE
ZIYAMBI JA, GARWE JA & OMERJEE AJA
HARARE, JULY 4 & SEPTEMBER 27, 2011

L Uriri, for the appellant

F M Katsande, for the respondents

ZIYAMBI JA: The unanimous decision of this Court is that that appeal ought to be allowed for the following reasons.

The respondents were retrenched as a result of an application for voluntary retrenchment. The retrenchment was approved by the Retrenchment Board and payment was made in the respondents' accounts on 16 January 2009. On or about 29 July 2009 the respondents, discontented by the fact that their packages were paid in Zimbabwean dollars, took the matter for conciliation before a Labour Officer. A certificate of no settlement was issued by the Labour Officer on 21 August 2009. Thereafter, on 9 September 2009, the respondents successfully brought an application to the Labour Court seeking an order for confirmation of the retrenchment package as agreed on 12 December

2008, subject to the basic monthly salary being calculated on the basis of the US dollar at the rate of US55 per month.

The main issue in this appeal is whether or not the Labour Court had jurisdiction to entertain the application. Mr Uriri, on behalf of the appellants contended that the Labour Court had no jurisdiction on two grounds. Firstly, in terms of s 12C of the Labour Court Act, only where there is no agreement can the Labour Court be approached to decide on the terms of the retrenchment. In this case the parties were in agreement and the matter was referred to the Retrenchment Board and approved. Secondly, since there had been no reference to compulsory arbitration by the Labour Officer, it was vital in order to invoke the jurisdiction of the Labour Court, to allege "that it is not possible for a stated reason to refer the dispute or unfair labour practice to compulsory arbitration" as provided in subs 5 of s 93.

We are in agreement with the submissions by *Mr Uriri* on both points. In the absence of a reference to compulsory arbitration, it was incumbent on the respondents to state, in their application, the legal basis provided in subs 7 of s 93 for their approach to the Labour Court. This they failed to do. The application was therefore not properly before the court *a quo* and it erred in assuming jurisdiction.

Accordingly the appeal is allowed with costs.

The judgment of the court *a quo* is set aside and substituted as follows:

"The application is dismissed with costs".

GARWE JA: I agree

OMERJEE AJA: I agree

Kantor & Immerman, applicant's legal practitioners

F M Katsande & Partners, the respondents' legal practitioners