

Neither reportable nor distributable

IRIS BISCUITS (PRIVATE) LIMITED
v
(1) TRUST MUDIMU (2) MAUD MUBADA (3) KELINETH PELESU

**SUPREME COURT OF ZIMBABWE
GARWE JA, GOWORA JA & MAVANGIRA AJA
HARARE, JUNE 9, 2014**

F Mahere, for the appellant

S Zvinavakobvu, for the respondent

THE FULL COURT: The Labour Court upheld the respondents' appeal against an arbitral award confirming their dismissal from employment on two bases. The first was that the order given by the appellant as employer to work overtime was unlawful. The second was that the instruction was not, in any event, clear and unambiguous.

A perusal of the papers on file confirms that the two issues were not raised before either the arbitrator or the Labour Court. The issues were also not argued. It is clear that the bone of contention before both the arbitrator and the Labour Court was the validity of the final warning issued to the respondents in 2008 and its effect on the penalty.

It is apparent from the papers that, during the hearing of the matter before the Labour Court, the union representative attempted to address the court on the circumstances surrounding the respondents' decision to leave the workplace despite the request for them to

do overtime. However the court *a quo* did not invite either party to make further submissions on that aspect.

The two issues referred to, not having arisen before the arbitrator or the Labour Court, and not having been argued, could not provide a basis upon which the President of the Labour Court could dispose of the matter. The position is now settled that a court cannot dispose of a matter on a basis neither raised nor argued by the parties.

In the circumstances, we agree with Ms *Mahere's* submission that the judgment of the court *a quo* cannot stand and that the appeal ought to succeed. The instruction given to the respondents was, in our view, a lawful one.

In the result it is ordered as follows:-

1. That the appeal succeeds with costs.
2. The judgment of the court *a quo* is set aside and in its place the following is substituted:-

“The appeal is dismissed.”

GARWE JA: I agree

GOWORA JA: I agree

MAVANGIRA AJA: I agree

Honey & Blanckenberg, appellant's legal practitioners

Mutamangira & Associates, respondent's legal practitioners