

EDWARD MISIHAIRAMBWI & 14 ORS

v

AFRICARE ZIMBABWE

**SUPREME COURT OF ZIMBABWE
ZIYAMBI JA, BHUNU JA & UCHENA JA
HARARE, JULY 5, 2016**

S T Mutema, for the appellants

E T Moyo, for the respondent

ZIYAMBI JA:

[1] This is an appeal against a judgment of the Labour Court which struck off the roll an appeal, by the appellant, against an arbitral award on the grounds that the appeal was not based on points of law contrary to the provisions of s 98 (10) of the Labour Act [*Chapter 28:01*].

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[2] The appellant alleges, in the three grounds of appeal raised, that the court *a quo* misdirected itself in failing to find that the grounds of appeal before it were based on points of law.

[3] As conceded by the appellant, all the grounds of appeal raised in the court *a quo* were directed against factual findings made by the arbitrator. However, nowhere in the grounds of appeal was it alleged that the said findings were irrational or grossly unreasonable.

[5] At the hearing before the Labour Court a point *in limine* was raised by the respondent alleging that the appeal was invalid in that no point of law was raised in the notice of appeal.

The court reasoned as follows:

“Section 98(10) of the Labour Act makes it clear that appeals against arbitral awards only lie to this court on points of law. The definition of what a point of law is, is contained in a number of authorities including the case of **SABLE CHEMICAL INDUSTRIES VS DAVID PETER EASTERBROOK SC 18/2010**. A gross misdirection on the facts if properly pleaded and shown to exist can entitle one to appellate relief. A reading of appellant’s grounds of appeal shows that the plea is that the arbitrator misdirected himself on the facts as to constitute a point of law. There is no averment of gross misdirection on the part of the arbitrator in the grounds of appeal. The true rule of law to be determined by the court has not been identified.

Appellants, when one considers the grounds of appeal, are requesting the Court to “re-consider” the decision made by the arbitrator on the facts presented. Appellants have not clearly averred what points of law lie for determination by this court. Appellant’s submissions in the grounds of appeal are a general ‘disgruntlement’ with the decisions of the arbitrator. As already stated in numerous decisions of the Supreme Court and this court, an appeal made in terms of section 98 (10) of the Act shall only be entertained if it is on a question of law or where there is a gross misdirection on the facts which is so unreasonable that no sensible person who applied his mind to the facts would have arrived at such a decision.”

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The court upheld the point *in limine* and struck the appeal off the roll.

[6] Before us Mr *Mutema* pressed his contention that the court *a quo* had erred in its finding that the grounds of appeal before it did not raise any point of law.

Mr *Mutema* was at pains to explain and interpret each ground by adding to each what ought to have been, but was not, stated therein. However, despite his efforts, we are satisfied that the grounds of appeal as pleaded in the notice of appeal before the court *a quo* raised merely factual issues and not points of law for determination by that court.

The Labour court was acting in its appellate capacity. It is settled that an appellate court will not interfere with factual findings made by a trial court unless those findings were grossly unreasonable in the sense that no reasonable tribunal applying its mind to the same facts would have arrived at the same conclusion; or that the court had taken leave of its senses; or,

put otherwise, the decision is so outrageous in its defiance of logic that no sensible person who had applied his mind to the question to be decided could have arrived at it.¹

[7] We are therefore of the view that the judgment of the court *a quo* was correct. On that finding alone the appeal stands to be dismissed.

[8] In addition, however, the prayer in the notice of appeal before us is defective. The appellant prayed that the appeal be allowed with costs against the respondent and for the judgment of the court *a quo* to be substituted with:

“The matter is remitted back to the court *a quo* for determination on the merits and the merits should be heard by a different judge.”

This is a prayer that this Court cannot grant in that it requires the lower court to make an incompetent order, namely, an order remitting, to itself, a matter for determination.

[9] It appears to us that the significance of the extensive questioning by the Court as to the meaning of that prayer eluded counsel for the appellant who remained adamant that the notice of appeal should stand as it is.

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[10] In view of the above, we are of the unanimous view that the appeal lacks merit and ought to be dismissed.

[11] Accordingly it is ordered as follows:

“The appeal is dismissed with costs.”

BHUNU JA:

I agree

¹Herbstein and Van Winsen the Civil Practice of the Superior Courts at page 738-9;
Hama v National Railways of Zimbabwe 1996 (1) ZLR 664 (S) at 670

UCHENA JA:

I agree

Stansilous & Holderness, appellant's legal practitioners

Scanlen & Holderness, respondent's legal practitioners

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