

DISTRIBUTABLE (9)

UNILEVER ZIMBABWE (PRIVATE) LIMITED
SIMBARASHE^v MATSHEZA

SUPREME COURT OF ZIMBABWE
ZIYAMBI JA, GARWE JA, GOWORA JA,
GUVAVA JA & MAVANGIRA JA
HARARE, OCTOBER 7, 2016 & FEBRUARY 13, 2017

ZIYAMBI JA:

[1] The respondent herein was employed by the appellant for some 28 years. Following a change in the fortunes of the business, the appellant and the respondent mutually agreed to the termination of the contract of employment in accordance with s 5 of the Labour (National Employment Code of Conduct) Regulations, 2006. On 15 October 2010, the parties signed an agreement in which the respondent was offered, and accepted, a retrenchment package. In terms of the agreement, the package offered was in full and final settlement of all claims, present or future, arising from the respondent's contract of employment with the appellant. On the same date, the respondent executed a document headed "INDEMNITY". In that document he stated:

“Having accepted the retrenchment package offered by Unilever Zimbabwe [I] am terminating my employment with the company with effect from 31 March 2010. I undertake to release from liability and indemnify Unilever, its successors and or assigns and to hold and save the company from and against liability arising from my employment with them and in the future.”

[2] The appellant, shortly thereafter, proceeded to review the basic salaries of its remaining employees. About the same time the appellant reviewed upwards the respondent's retention allowance. By letter dated the 8 March 2010, the appellant advised:

“Please find attached letter, as of our discussions.

We are pleased to review your retention allowance, and this will also be included in your final redundancy package specified in this letter.

We hope this comes as a good gesture amidst your transition.”

[3] The respondent replied expressing his appreciation for the gesture extended to him. That was on 9 March 2010. However this appreciation was short-lived. On the next day, 10 March 2010, the respondent wrote to the appellant requesting a review of his salary along the same lines as that of other employees who had not been retrenched.

[4] The appellant did not accede to this request but proceeded to make payment to the respondent in terms of the retrenchment package. Dissatisfied, the respondent took issue with the failure by the appellant to factor in the salary increment in his retrenchment package and, in breach of his undertaking in both the retrenchment agreement and the indemnity document, reported the matter to a Labour Officer in terms of s 93 (5) (a) and (c) of the Labour Act [*Chapter 28:01*] as an unfair labour practice.

[5] In due course, the matter was referred to arbitration. The arbitrator ruled in favour of the respondent and granted a revision of the retrenchment package as prayed by the respondent. An appeal by the appellant to the Labour court was dismissed. This appeal was noted with leave of this Court granted in terms of s 92F (2) of the Labour Act, the Labour Court having refused to grant leave to appeal.

GROUNDS OF APPEAL

[6] The grounds of appeal essentially raise one question for determination. It is whether the respondent was entitled to a higher retrenchment package than that agreed to in the retrenchment agreement concluded by the parties.

[7] The parties entered into a contract. The contract was freely concluded. The appellant acknowledged in the contract that he was not being forced to sign it. Indeed, he was happy with the contract until he became aware that the salaries of the remaining employees of the appellant had been reviewed. In my view, the rights of the respondent are embodied in the contract which he signed. He cannot look outside the contract to add to its terms. The act of generosity by the appellant in awarding him an increase in his allowance cannot by any stretch of imagination be deemed to be an acknowledgement that the respondent was entitled to more than was agreed to in terms of the contract.

[8] A party who signs a contract is bound by its terms. That is trite. He cannot blow hot and cold by accepting his benefits under the contract and thereafter, as an afterthought, demanding benefits outside the contract. Once he signed the retrenchment package thus accepting its terms he was no longer an employee of the appellant and was not entitled to any benefits awarded to the appellant's employees.

[9] The crisp answer to the question, therefore, is that the respondent was not entitled to any more than he had agreed to in the contract. Accordingly, both the arbitrator and the Labour Court misdirected themselves in holding otherwise.

[10] In the result, it is ordered as follows:

1. The appeal is allowed with costs.
2. The judgment of the Labour Court is set aside and substituted with the following:

“The appeal is allowed with costs.

The award of the Arbitrator is set aside.”

GARWE JA: I agree

GOWORA JA: I agree

GUVAVA JA: I agree

MAVANGIRA JA: I agree

Coghlan, Welsh & Guest, appellant’s legal practitioners

Sawyer & Mkushi, respondent’s legal practitioners