DISTRIBUTABLE (8)

WEBSTER MBANGANI
v
OK ZIMBABWE

SUPREME COURT OF ZIMBABWE
GWAUNZA JA, GOWORA JA & HLATSHWAYO JA
HARARE, JULY 17, 2017

No appearance for the appellant

Mrs *Matsika*, for the respondent

GWAUNZA JA: This is an appeal against the decision of the Labour Court upholding the appellant's dismissal from his employment with the respondent.

On 17 July 2017, the court dismissed the appeal with costs. The appellant was in default but was aggrieved by such dismissal and wrote to the Registrar requesting reasons for the order. These are they:

The brief facts of this case are as follows:

The appellant was employed as a Branch Manager by the respondent. Sometime in 2009, he was charged with having ordered 180 'fancy' loaves of bread on 11 September 2008 and another 180 loaves on 12 September 2008, contrary to standing orders disallowing bulk

purchases. This was a measure implemented by the employer at the height of bread shortages to avoid employees supplying the "black market" with bread, thereby prejudicing the formal market. The appellant was also charged for allegedly cashing 50 personal cheques with a total value of US$254 015.00 and generally failing to diligently execute his duties.

The disciplinary committee before which the appellant appeared decided that the penalty for the bulk purchases was dismissal, and proceeded to impose it on the appellant. In relation to the charge of encashment of cheques the appellant was acquitted and a final written warning was imposed for failure to discharge his duties diligently. Therefore, the effective penalty imposed by the disciplinary committee was dismissal. We were satisfied on a reading of the papers before us that no misdirection could be attributed to the disciplinary committee in reaching the decisions it did.

Having unsuccessfully gone through the relevant appeals processes both internally and before the Labour Court, the appellant filed this appeal. The appeal was initially set down for hearing on 13 June 2017 following proper service of the notice of hearing on him on 8 May 2017. The service was effected at No. 2208 Manyuchi Road, New Malborough on the appellant's daughter, Samantha V. Mbangani. However, the matter could not be heard on the set down date.

The matter was then set down for hearing on 17 July 2017. The notice of hearing was again served at the same address, this time on Winnet Maniko, who identified herself as a tenant at the address. This was on 23 June 2017. On the date of hearing, the appellant was in default and after having sight of the Sheriff's return of service dated 23 June 2017 the court found that service of the notice of hearing had been properly effected. The address at which service was effected was the appellant's given address for service in terms of the

record and no notice of change of the address had been filed. Further, the appellant's name was called out from outside the courtroom by the Registrar and no response was received.

In these circumstances, the court was satisfied that the appellant was in default, hence its dismissal of the matter.

GOWORA JA: I agree

HLATSHWAYO JA: I agree

Atherstone & Cook, respondents' legal practitioners