

REPORTABLE (125)

EXTEMPORE

SAMSON ZUKWA DANDIRA
v
ZIMBABWE POST (PRIVATE) LIMITED t/a ZIMPOST

SUPREME COURT OF ZIMBABWE
MAKONI JA, MATHONSI JA & MWAYERA JA
HARARE, 13 JUNE 2023

The appellant in person

O. Kondongwe, for the respondent

Judgment No. SC 125/23
Civil Appeal No. SC 164/23

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MAKONI JA. After hearing submissions from the parties, we delivered an *extempore* judgment. The appellant has requested for written reasons. These are they.

This is an appeal against the decision of the Labour Court dated 23 September 2023 in which it dismissed the appellant's appeal.

Briefly, the appellant was employed by respondent as the Operations Director on a fixed term contract. The tenure was 1 June 2003 to 31 May 2008. Before its expiry, the contract was terminated in 2007 by the respondent. Pursuant to the termination the respondent paid the appellant what would have accrued to him up to the expiry of the contract had the contract subsisted to the date of expiry.

The appellant was dissatisfied and lodged a complaint of an unfair Labour Practice, to a Labour Officer who conciliated the matter and issued a certificate of no settlement.

On 17 July 2007, the Labour Officer referred the dispute to arbitration on terms of reference set out in the Form LR 4. The same terms of reference were replicated before the Arbitrator and signed for by both parties on 28 August 2008.

The appellant does not refuse the signature appearing on the terms of reference but says it belongs to a friend of his. The terms included *inter alia* whether or not the employer was at liberty to terminate the employee's fixed term contract and pay out the remainder of that contract.

The arbitrator found that by accepting the new offer and signing it, the appellant was bound by the new contract in that he had terminated the previous contract. She found further that the respondent terminated the fixed term contract in terms of the law and that it acted within its rights.

Again the appellant was unhappy with the outcome and he appealed to the Labour Court. After protracted proceedings, which culminated in an appeal to this Court and a remittal of the matter to the Labour Court, the court *a quo* finally rendered the judgment appealed against in the present appeal.

The court *a quo* upheld a preliminary point taken by the respondent on the validity of most of the grounds of appeal. It struck them out on the basis that they were not valid

appeal grounds, but review grounds. On the merits of the remaining grounds, the court *a quo* upheld the findings of the arbitrator that the employment contract was lawfully terminated.

The appellant was aggrieved and lodged the present appeal on four grounds, the essence of which, is that the unfair labour practice which he referred to a Labour Officer has never been determined and resolved.

In his oral submissions, the appellant submitted that the entire proceedings from the Labour Officer right up to the Labour Court were null and void by reason that all lower tribunals resolved issues that he had not placed before them.

Per contra, Mr Kondongwe, for the respondent, submitted that the appellant's grounds of appeal and his submissions raise new issues which were not placed before the court *a quo*. He further submitted that the sole issue for arbitration was always whether the employment contract was lawfully terminated.

In our view, the legitimate terms of reference to arbitration were confirmed by the Labour Officer in Form LR4 and regurgitated by the arbitrator before being signed for by the parties. The arbitrator was squarely within her terms of reference in determining the lawfulness or otherwise of the termination of the employment contract. Such a determination resolved the entire dispute between the parties. The appellant confirmed the terms of reference before the arbitrator through the signature appended by his friend. He did not object, in the proceedings before the arbitrator, that the terms of reference did not cover the issue he referred to the Labour Officer.

By extension the court *a quo* properly resolved that dispute on appeal. There is no merit in the appeal which ought to fail.

Regarding the granting of costs we see no reason why costs should not follow the cause.

Accordingly, it be and is hereby ordered as follows:

“The appeal is dismissed with costs.”

MATHONSI JA : I agree

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MWAYERA JA : I agree

Dube, Manika & Hwacha, respondent’s legal practitioners