

IN THE LABOUR COURT OF ZIMBABWE

JUDGMENT NO LC/H/24/2014

**HARARE, 3 OCTOBER 2013 &
14 FEBRUARY 2014**

CASE NO LC/H/457/2013

In the matter between:-

JOYCE PHIRI

APPELLANT

Versus

MAZOE RURAL DISTRICT COUNCIL

RESPONDENT

Before The Honourable B S Chidziva : Judge

For the Appellant

J Chaka (Legal Practitioner)

For the Respondent

T Madzingira (Legal Practitioner)

CHIDZIVA J:

This is an appeal against the decision of the Human Resources Development Committee ("HRDC") to dismiss her from employment.

The brief history of this matter is that the appellant was employed by the respondent as a housing supervisor stationed at Christon Bank. She was charged with misappropriating \$18 454-10 which was paid by rate payers.

The appellant's grounds of appeal are that:

- (1) The committee erred in convicting the appellant with a separate misconduct to the one she was charged.
- (2) The committee also failed to take into consideration that the shortfall was experienced during the period when the appellant was not in charge of the moneys.

- (3) The committee erred in finding the appellant guilty of theft/fraud despite having failed to prove the constituent elements of the charge.
- (4) The committee erred in convicting the appellant of embezzlement yet they grossly erred to prove the same during the proceedings.

The respondent in response told the court that:

- i) The appellant failed to show the HRDC where the US18 454-12 is.
- ii) When the appellant was given the books of accounts to enable her to prepare her defence, she admitted that US\$10 340-00 could not be accounted for.
- iii) The appellant was responsible for mastering cash and also kept keys to the safe. Once mastered the cashier no longer had the responsibility of the cash.
- iv) The HRDC only upheld the decision of the Appeals Committee. It did not raise a separate charge.
- v) The dismissal is based on the sum of US\$10 340-00 which the appellant completely failed to account for.
- vi) The respondent managed to prove the charge of stealing/theft in terms of s 11.4.8 of the Code. As a result, the essential elements of the offence were proved.
- vii) The grounds of appeal are not sufficient enough to warrant an overturn of the decision of the Human Resources Development Committee.

The respondent therefore prayed for the dismissal of the appeal with costs. The appellant on the other hand prayed for their re-instatement to the original position without loss of salaries and benefits.

It is common cause that:

- (i) The appellant was employed as a housing supervisor.
- (ii) When books were audited US\$10 340-00 could not be accounted for.

What is to be decided is whether the appellant was wrongly convicted or not.

It has not been disputed that the appellant was responsible for the cash at Christon Bank Office.

Attached to the respondent's heads of argument is a summary of income and expenditure for 2012 which the appellant cannot account for.

There has not been any report of theft of funds.

Pages 18 to 29 of the record shows that, the appellant was mastering the receipts and the money in question. The record shows that there is no evidence of how the money was spend after the appellant had signed for the money. In paragraph 19 of the appellant's heads of argument the appellant stated that:

"The appellant submits that during this period the money was in custody of the accounts clerk. She was only mastering and gives the money back to the accounts clerk for keeping and disbursement".

The appellant was the overall overseer of the whole accounting system. If she has failed to account for the whereabouts of the money then she should be answerable for the misappropriation of the money. From the documents filed of record it is not clear what the appellant did with the money after mastering it. It is the court's view that the respondent managed to prove allegations against the appellant. If she was conniving with the clerk, she is still guilty of theft or misappropriation of the employer's money as she failed to account for the money that she mastered.

The appellant was charged after it was discovered through documents on record that the money in her custody could not be accounted for.

The appellant's argument that the matter had not been concluded when she was charged does not hold any water. If more evidence on new charges is going to come up, then the appellant can always be charged.

In the result therefore:

- (i) The appeal is dismissed with costs.

Mutizanhadzo & Warhurst, respondent's legal practitioners