IN THE LABOUR COURT OF ZIMBABWE **JUDGMENT NO LC/H/03/2014**
HARARE, 18 NOVEMBER 2013 & **CASE NO LC/H/366/2013**
31 JANUARY 2014

In the matter between:-

TOBIAS DHOVA **APPELLANT**

Versus

MARANATHA FERROCHROME **RESPONDENT**

Before the Honourable D L Hove : Judge

HOVE J:

The appellant was employed by the respondent.

In 2011, the appellant was part of seven employees who suffered burns at respondent's plant in Kadoma.

Following that accident, a dispute arose between the parties which was later referred for arbitration. The dispute evolved around the issue of what it was that was payable to the appellant as compensation. The appellant alleged that the respondent was withholding his compensation from the insurers. It was further alleged that the respondents were reneging on an agreement which had been reached during conciliation.

The arbitrator found that there was no proof that the insurers had paid monies which the respondent was holding on to and refusing to release to the applicant. Further, the arbitrator held that the applicant ought to have been claiming from the insurers and not from the company.

The appellant was aggrieved by these findings and appealed to the Labour Court.

The grounds of appeal are in brief that:

1. ***The arbitrator erred in not finding that the respondent's failure to effectively manage its affairs does not take away the right to employer-added security of compensation over and above the basic payments from NSSA.***
2. ***That the arbitrator erred by not paying the appellant in terms of the representations it had made to him.***
3. ***The arbitrator erred grossly in his conclusions as to the correct meaning of the certificate of settlement concluded at conciliation stage.***
4. ***The arbitrator erred in failing to realize that the appellant had a clear right in terms of the contract to be compensated upon suffering a disability***.

The respondent raised a preliminary issue wherein it argued that the grounds of appeal only raised issues of fact and no points of law are raised in his grounds of appeal.

He argues that an appeal from an arbitral award is provided for in terms of s 98 (10) of the Labour Act [*Cap 28:01*](“the Act”) which provides that:

> “***An appeal <u>on a question of law</u> shall lie to the Labour Court from any decision of an arbitrator appointed in terms of this section***.” (emphasis added)

The act does not therefore provide for appeals on questions of facts.

The court was referred to the case of ***Claudious Murawo* v *Grain Marketing Board* SC-27-09** and the case of ***Sable Chemical Industries Limited* v *David Peter Easterbrook* SC-18-2010** wherein the court quoted with approval the case of ***Muzuva* v *United Bottlers (Pvt) Ltd* 1994 (1) ZLR 217.**

In the *Muzuva* case, the court clarified what a point of law is as distinguished from a point of fact.

I have looked at the grounds of appeal and I am not persuaded that the point in *limine* be upheld. This, I say because in the fourth ground of appeal for instance an allegation is made that in arriving at the conclusion of facts which he did, the arbitrator's factual conclusions were so grossly outrageous in their defiance of logic that no reasonable person would have drawn such a conclusion.

It is trite that factual conclusions can amount to a misdirection on a point of law if the findings are grossly unreasonable. The allegation is made that the findings were grossly unreasonable. On the face of it, the ground is thus raising a point of law and is properly before the court.

For me to actually decide, on whether the actual finding was grossly unreasonable, I would have to go into the merits of the case. Since the ground is, on the face of it, raising a point of law, I am of the view that it is fair and just to allow the parties to proceed beyond the preliminary point. This will enable both parties to properly ventilate their positions on whether or not the findings were indeed grossly unreasonable. For now, the preliminary point in relation to this ground must be dismissed. Further, whether or not a party should be bound by the terms of an agreement it freely entered into is an issue that questions what the true position of law is. It is therefore properly before the court. See ***Muzuva*** case (*supra*).

The third ground of appeal is raising a point of law. Can a party to a contract be bound by a representation it made during the negotiating process? Is the innocent party entitled to have a legitimate expectation? This raises a question as to

what the true position of law is. It is therefore raising a point of law and is properly before the court.

The second ground is clearly raising a point of fact. The arbitrator made a factual finding and there is no allegation that the factual findings were grossly unreasonable.

The first ground of appeal is also raising matters of facts which by operation of law cannot be raised on appeal from the decision of an arbitrator.

But since I have found that ground three and four are properly before the court, I will dismiss the said point in relation to these two grounds but uphold the point in *limine* in relation to grounds of appeal number one and two.

I accordingly make the following order:

1. The point raised in *limine* is dismissed in relation to grounds of appeal number one and two.
2. The point raised in *limine* is upheld in relation to grounds of appeal number three and four.
3. There is no order as to costs.

L HOVE
JUDGE – LABOUR COURT

***I Murambasvina Legal Practitioners*, appellant legal practitioners**
***Kantor & Immerman Legal Practitioners*, respondent's legal practitioners**