

**IN THE LABOUR COURT OF ZIMBABWE**

**JUDGMENT NO LC/H/358/2023**

**HARARE 30 OCTOBER 2023 05**

**CASE NO LC/H/490/23**

**DECEMBER 2023**

**SHORAI KAMUZONDE**

**APPLICANT**

**NEC TEXTILE MANUFACTURING INDUSTRY**

**1<sup>ST</sup> RESPONDENT**

**AGRI VALUE CHAIN ZIMBABWE (PRIVATE) LIMITED** 2<sup>ND</sup> RESPONDENT

Before the Honourable G. Musariri Judge:

|                                |                            |   |
|--------------------------------|----------------------------|---|
| For Applicant                  | Mr N. Zvidzayi, Attorney   | - |
| For 1 <sup>st</sup> Respondent | No Appearance, Absentia    |   |
| For 2 <sup>nd</sup> Respondent | Mr L. Zinyengere, Attorney | - |

**MUSARIRI, J:**

Applicant applied to this Court for review of disciplinary proceedings conducted against him by Respondent. The application was made in terms of Rule 20 of the Labour Court Rules S.I. 150 of 2017.

The grounds for review were two-fold thus,

“1. The First Respondent erred by showing bias and corrupt tendency by avoiding to deal with a pertinent point in limine raised by the Applicant as well as the merits of the appeal.

2. The First Respondent committed a gross irregularity in its direction by holding or ruling that the Labour Court had not ordered a re-hearing of the Applicant's appeal when it was quite apparent that it was a fresh appeal."

These grounds basically raise one issue, that is whether the NEC's failure to determine applicant's appeal amounts to a gross irregularity.

Applicant worked for Respondent as a Security Officer at its Chegutu depot. He was charged with misconduct and got dismissed from employment on 15<sup>th</sup> December 2021. His appeal to the NEC was unsuccessful. He then appealed to this Court. On 22<sup>nd</sup> July 2022 the Court dismissed the appeal because it had cited the wrong employer. On 31<sup>st</sup> August 2022 applicant filed a complaint with the NEC. On the 16<sup>th</sup> December 2022 the NEC which ruled "That Shorayi be reheard under fresh proceedings by Agri Value Chain (Pvt) Ltd who had been cited as the correct company by the Labour Court."

Respondent conducted fresh proceedings which ended with the dismissal of Applicant on 18<sup>th</sup> January 2023. Applicant appealed to the NEC. On 26 May 2023 the NEC dismissed the appeal thus,

"This case was once dealt by the Appeals Board on the same merits hence your appeal to the Labour Court.

The Labour Court dismissed your appeal because of the origins at law,

That is

- The appeal had sighted the wrong party,
- The appellant did not seek leave at the High Court since the company was on Judicial Management and that;
- Your case was struck off the roll on account of a fatally defective appeal.

In the circumstances the Court did not direct fresh proceedings and the Board was unanimous on its decision that you were supposed to have complied with the findings of the Labour Court."

The 2<sup>nd</sup> ruling was both right and wrong. It rightfully noted that the Labour Court did not order a fresh hearing. But that was a red herring. It was the NEC itself which ordered the fresh hearing in its ruling of the 16<sup>th</sup> December 2022. The 2<sup>nd</sup> ruling wrongfully ignored its 1<sup>st</sup> ruling which ordered fresh proceedings. The 2<sup>nd</sup> ruling does not mention let alone set aside the 1<sup>st</sup> ruling.

The ruling being extant could not be ignored or wished away. It had to be engaged with. The avoidance of the 1<sup>st</sup> ruling by the NEC was irrational and thus amount to a gross irregularity.

See Hama v NRZ 1996 (1) ZLR 664 (S) at 670C

In his draft order applicant prayed that the NEC's 2<sup>nd</sup> ruling be set aside and the NEC be ordered to determine applicant's appeal to it. As indicated by the foregoing analysis the prayer is well-founded. The NEC grossly erred by failing to determine applicant's appeal on merits.

**Wherefore it is ordered that**

- 1. The application for review be and is hereby granted;**
- 2. The determination by the 1<sup>st</sup> Respondent dated 26<sup>th</sup> May 2023 is set aside;**
- 3. The matter is remitted back to 1<sup>st</sup> Respondent for the determination by it of Applicant's appeal to it on the merits;**
- 4. If the 1<sup>st</sup> Respondent fails to comply with paragraph 3 within 30 (thirty) days of this order, Applicant is may appeal directly to this Court; and**
- 5. Each party shall bear its own costs.**

**G MUSARIRI  
J-U-D-G-E**