Judgment No. S.C. 152/98
Civil Appeal No. 861/97

JULIUS CHIKOMWE AND THREE HUNDRED AND THIRTY-SEVEN OTHERS v

(1) STANDARD CHARTERED BANK OF ZIMBABWE LIMITED
(2) A.G. NYAZIKA N.O.

SUPREME COURT OF ZIMBABWE
EBRAHIM JA, MUCHECHETERE JA & SANDURA JA
HARARE, JUNE 25 & SEPTEMBER 21, 1998

D P Carter, for the appellants

J C Andersen SC, for the respondents

EBRAHIM JA: The three hundred and thirty-eight appellants were all employees of the respondent Bank. On 2 April 1997 the Bank was given notice of the appellants' intention to resort to collective job action (i.e. to go on strike). There were numerous grounds given for the appellants' dispute with the Bank. They included profit-sharing, appraisals, pensions and allegations of victimisation of the workers' committee. When the Bank got the notice, it applied for a show cause order in terms of s 106 of the Labour Relations Act [*Chapter 28:01*] ("the Act"). Attempts were made by a labour relations officer to mediate in the dispute, and only one area of dispute remained by 22 April 1997, the profit-sharing scheme. The labour relations officer referred the matter for compulsory arbitration in terms of s 98 of the Act. In terms of s 99(1) of the Act, any collective job action thereupon became unlawful.

Nevertheless, on 23 April 1997 the appellants went on strike. A show cause order was issued and in due course a disposal order was issued, directing the appellants to return to work.

The learned judge *a quo* who dealt with this matter when it came before her described what transpired in the following terms:-

> "… the applicants went on strike on 23 April 1997 … . A show cause order was issued and a meeting to show cause why the strike should not be terminated was held on 24 April 1997. At that meeting the employees were directed to discontinue the industrial action and return to work. They did not do so and on 25 April 1997 the labour relations officer (the second respondent) issued a disposal order in the following terms:-
>
> '1. All workers should report for work by 12.00 am on Friday 25 April 1997.
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> 2. The employees shall not be paid for the period they were on strike.
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> 3. The employer may take any disciplinary action which he deems fit against any employee who fails to comply with the disposal order.
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> 4. The dispute shall proceed for a compulsory arbitration in terms of sections 23, 99 and 100 of the Labour Relations Act [*Chapter 28:01*] of 1996.'
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> The applicants' response to the disposal order was to file an urgent Chamber application (case number HC 3784/97) for an order setting aside the reference by the labour relations officer of the dispute to compulsory arbitration. The application was refused on 29 April 1997, GILLESPIE J ordering the labour relations officer to state in writing the issue to be referred to compulsory arbitration. Still on 25 April 1997 the first respondent addressed letters to all the employees on strike attaching a copy of the disposal order thereto. The letters were delivered at the residence of each employee by Fawcett Security during the period 25 to 27 April inclusive. The letters contained a request to the employees to report for duty on 28 April 1997, failing which the employee would be considered to be in breach of his contract of employment.
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> A few workers reported for duty on 28 April 1997 but the applicants ignored the letters. Accordingly they were charged by the first respondent with misconduct, letters containing the charges having been delivered to each

> applicant by Fawcett Security. Once again the applicants ignored the letters and neither submitted a written response nor did they attend the disciplinary hearings which were held before the various hearing officers at scheduled times. The hearings were conducted in their absence and those found to have been guilty of misconduct were issued with letters of dismissal. There was an appeal noted *en masse* against the determinations of the hearing officers, following which letters were sent to the workers notifying them to attend the appeal hearing. Once again the applicants did not attend the appeal hearings which were held before the Grievance Disciplinary Committees ('GDC'). In the main the determinations of the hearing officers were confirmed by the GDC and the applicants were so advised and reminded of their right of appeal to the Employment Council. No appeals were made to the Employment Council. The applicants now seek an order setting aside the determination of their employment and other relief as claimed in the draft order."

Acting in terms of its code of conduct, the Bank instituted disciplinary proceedings against the appellants. The proceedings did not take the form of a mass trial, unlike what happened in *Cargo Carriers (Pvt) Ltd v Zambezi and Ors* 1996 (1) ZLR 613 (S). Each appellant received an individual notice of the hearing affecting him or her and individual hearings took place in accordance with the code. The appellants collectively boycotted the hearings, which resulted in each of those persons who did not return to work being dismissed. Instead of following the procedures for appeal provided by the code of conduct, the appellants brought the dismissals on review.

In the High Court the learned judge dismissed the applications but condoned the appellants' failure to note appeals within the time period prescribed in the code of conduct. She followed the principle that the court should not review the decision of a domestic tribunal before the aggrieved persons' domestic remedies were exhausted, unless there were good reasons for approaching the court earlier: *Musandu v Chairperson, Cresta Lodge Disciplinary and Grievance Committee* HH-115-94. Whether or not the court will entertain a review before domestic remedies

have been exhausted is a matter within its discretion: *Cargo Carriers* case *supra* at 618. Unless the learned judge's decision can be said to be unreasonable, this Court will not interfere.

I agree with Mr *Andersen* that the grounds for complaint about the decisions at the disciplinary hearings could have been raised before the appeals board and, if necessary, the Labour Relations Tribunal. In addition, defences on the merits could similarly have been raised. There was no good reason for approaching the court before the domestic remedies had been exhausted and I am satisfied that the learned judge *a quo* did not err in the manner in which she exercised her discretion. There is, therefore, no sound reason justifying an interference with her decision.

The appeal is therefore dismissed with costs.

I would like to comment on the state of the record. It is extremely and unnecessarily bulky, as rightly pointed out by Mr *Andersen*. There are in volume 1 two hundred and twenty-three pages of affidavits, all to identical effect. Only the names of the deponents are different. In volume 2 there are two hundred and sixteen such affidavits, most of which merely duplicate those in volume 1. Both groups of affidavits are preceded by a thirteen page document entitled "Annexure X". It was clearly unnecessary to include this annexure twice. Other documents are similarly duplicated, including copies of correspondence, disposal orders and so on. This waste of paper and time can only be deprecated. Rule 15(8) of the Supreme Court Rules (RGN 565/64) provides:-

> "A registrar of the High Court as well as the parties and their legal representatives shall endeavour to exclude from the record all documents, more particularly such as are purely formal, that are not relevant to the appeal. They shall also endeavour to reduce the bulk of the record as far as practicable to avoid the duplication of documents and the unnecessary repetition of headings and other formal parts of documents and also the inclusion of evidence of witnesses which is not relevant to the appeal."

When it was clear that the record was going to be filled with numerous identically worded affidavits, it seems to me that it could and should have been agreed between the parties that only one sample affidavit needed to be included. The fact that numerous other persons had made identical depositions could have been the subject of an agreement.

The bulk of these unnecessary affidavits were duplicated, thereby increasing the cost of the record. It is hoped that in future this practice will be avoided.

MUCHECHETERE JA: I agree.

SANDURA JA: I agree.

Mwonzora & Associates, appellants' legal practitioners

Honey & Blanckenberg, respondents' legal practitioners