Judgment No. SC 56/03
Civil Appeal No. 171/02

STANLEY TICHAZIVANA v TROJAN NICKEL MINE BINDURA

SUPREME COURT OF ZIMBABWE
SANDURA JA, ZIYAMBI JA & GWAUNZA JA
HARARE, SEPTEMBER 15, 2003 & FEBRUARY 12, 2004

C Warara, for the appellant

J Muchada, for the respondent

ZIYAMBI JA: The point of law at issue here is whether the judgment of the Labour Court is "so grossly unreasonable that no sensible person who applied his mind to the facts would have arrived at such decision". See *Reserve Bank of Zimbabwe v C Granger and Anor* SC 34-2001.

The appellant, a data capture clerk with the respondent, was on 29 March 2001 dismissed from his post on allegations of his failure to carry out critical control procedures, as a result of which the respondent was the victim of a "massive fraud" by its employees to the tune of $6.8 million. The disciplinary hearing was held in terms of the respondent's Code of Conduct ("the Code") and presided over by one B Mamvoto.

Dissatisfied with his dismissal, the appellant appealed to the Disciplinary and Grievance Committee in terms of the Code. The appeal was heard on 27 April 2001 and dismissed.

The appellant appealed to the then Labour Relations Tribunal ("the Tribunal"). At the hearing, it was agreed by the parties to the dispute that the issues to be determined were –

(a) Whether the disciplinary body was lawfully constituted;

(b) Whether on the facts the appellant was properly convicted; and

(c) Whether the hearing of the appeal was within the prescribed time limits.

The appellant took issue with the fact that Mr Mamvoto was the presiding officer at the initial proceedings. He argued that Mr Mamvoto, as director of the company, was not competent to sit on the hearing panel. However, the respondent argued that Mr Mamvoto was head of the finance department and as such was qualified to preside over the matter in terms of the Code of Conduct. The other line supervisors who could also have qualified to preside over the matter were either interested parties, co-suspects or witnesses. The Tribunal found Mr Mamvoto to be a competent presiding officer by virtue of his being head of the finance department.

On the second issue, the appellant had argued that the notice period was too short and that he was not allowed to call witnesses. A perusal of the record reveals that the appellant made no such complaint at any of the hearings held in terms of the Code of Conduct; nor did he request time to prepare, or indicate his desire to call more witnesses. The Tribunal found that the appellant not having raised any of

these issues at the previous hearings, he could not raise them for the first time before the Tribunal.

On the third issue, the Tribunal found that the appellant had himself admitted his culpability but stated that his failure to follow correct procedures was because the creditors' supervisor was too busy. It was found by the Tribunal that as a result of the appellant's admitted failure to follow correct procedures the company suffered serious financial prejudice.

As to the final issue, the appellant was not specific as to why he alleged the time limits were not adhered to and the Tribunal found that no specific allegations had been made to warrant a finding that prescribed time limits were not met.

The Tribunal therefore dismissed the appeal.

The notice of appeal to this Court initially contained no averment that the appeal was based on a point of law. Counsel for the respondent, in the respondent's heads of argument, drew the attention of the Court to this fact and to the following remarks of MUCHECHETERE JA in *Reserve Bank of Zimbabwe v C Granger and Anor supra* at pp 5-6 of the cyclostyled judgment:

> "An appeal to this Court is based on the record. If it is to be related to the facts there must be an allegation that there has been a misdirection on the facts which is so unreasonable that no sensible person who applied his mind to the facts would have arrived at such decision. And a misdirection of fact is either a failure to appreciate a fact at all or a finding of fact that is contrary to the evidence actually presented. See *Hama's* case *supra* and *S v Pillay* 1997 (4) SA 531 (AD) at 535 C-E."

At the hearing before us the appellant sought and was granted leave to amend his grounds of appeal to include the following ground:

> "The court *a quo* misdirected itself with the result that the resultant judgment is grossly unreasonable so as to defy logic and cannot be reasonably supported in arriving at the conclusion reached."

It remains for this Court to consider whether there is any merit in this ground of appeal.

A perusal of the record and the judgment of the Tribunal does not support such a finding. The Tribunal's decision was properly reasoned and balanced. Indeed counsel for the appellant was unable to point to any misdirection on the facts and it cannot be said that the decision arrived at was so unreasonable that no sensible person who applied his mind to the facts would have arrived at such a decision.

The appeal is, therefore, devoid of merit and is dismissed with costs.

SANDURA JA: I agree.

GWAUNZA JA: I agree.

Warara & Associates, appellant's legal practitioners

Dube, Manikai & Hwacha, respondent's legal practitioners