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Judgment No. SC 81/06
Civil Appeal No. 168/99

LUCKSON DLODLO AND TWELVE OTHERS v ROAD MOTOR SERVICES (PRIVATE) LIMITED

SUPREME COURT OF ZIMBABWE
MALABA JA, CHEDA AJA & NDOU AJA
BULAWAYO, DECEMBER 4, 2006

V Majoko, for the appellants

E Matinenga, for the respondent

MALABA JA: At the conclusion of hearing arguments of the appellants and the respondent in this case, we dismissed the appeal with costs and indicated that reasons for our decision would follow in due course. These are the reasons.

The appellants, who were employed by the respondent, engaged in collective job action on 6 August 1998. The collective job action not only constituted ("the Code") an act of misconduct under the respondent's Code of Conduct it was unlawful in terms of s 104(3)(a)(v) of the Labour Relations Act (Cap 28.01). This provision prohibits collective job action by employees if the matter in dispute is governed by or provided for in existing employment regulations or by a collective agreement which had not expired in terms of any provisions specified therein.

It was common cause that the wage increments, which were the matter in dispute for which collective job action was engaged in by the appellants were governed by the Transport Operating Industry Collective Bargaining Agreement dated 3 July 1997 which had not yet expired at the time the collective job action took place.

From 24 August 1998 the appellants appeared before a Grievance and Disciplinary Committee facing charges of having engaged in unlawful collective job action in contravention of clause 6 of code. Whilst each employee admitted taking part in the collective job action he alleged that it was lawful. On 31 August 1998 the Grievance and Disciplinary Committee found the appellants guilty of the misconduct charged against them. They were dismissed from employment. Their appeals to the Managing Director were dismissed on 9 September. They received their terminal benefits and nothing was heard of their case until on 26 October when they made an application to the High Court for review of the decision of the Grievance and Disciplinary Committee to dismiss them from employment.

In giving the reason why they did not appeal to the then Labour Relations Tribunal, the first appellant said in p 25 of the founding affidavit:

> "I am mindful of the fact that more properly my appeal should be directed to the Labour Relations Tribunal but it is my experience that such may take years as there is a serious backlog in the Tribunal and as I am without employment it is in the interest of justice that the matter may be determined by Court Application."

The learned Judge dismissed the application with costs on the ground that the appellants ought to have first exhausted domestic remedies by appealing to the Labour Relations Tribunal. He said:

> "It is trite law that a litigant should exhaust his domestic remedies before approaching courts, unless there are good reasons for approaching the courts. The Judge has a discretion which he must exercise judicially where such special features exist in a case. See *Cargo Carriers (Pvt) Ltd v Zambezi & Ors* 1998 (1) ZLR 613 (s) at 618.
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> In *casu* can it be said that such special features exist? In his founding affidavit the first applicant alleged that there was a serious backlog in the Labour Relations Tribunal and the matter may take years to be heard. It was for that reason that the applicants brought this matter to this court before exhausting their domestic remedies. In *Masunda v Chairperson Cresta Lodge Disciplinary and Grievance Hearing Committee* HH – 15/94 at p 7 SMITH J had this to say:
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> > "In my view, this court should not be prepared to review the decision of a domestic tribunal merely because the aggrieved person has decided to apply to court rather than proceed by way of the domestic remedies provided.
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> > The reason given by the applicants is simply not good enough. Applicants must take their turn like any other litigant in the Labour Relations Tribunal. My view is that allowing the applicants to file the review application in this court, with no good reason shown, would amount to an open invitation to litigants to disregard the Labour Relations Tribunal."

Mr *Matinenga* for the respondent argued that not only was the learned Judge aware of the fact that he had a discretion in the matter he properly exercised it and applied the correct principles. He also pointed out that the effect of the decision of the court *a quo* was that the application was not heard, on the merits of the decision of the Grievance and Disciplinary Hearing Committee.

It is now a well known rule of practice that an appellant court will not interfere lightly with the proper exercise of discretion by a court of first instance. We agree with Mr *Matinenga* that the learned Judge properly exercised his discretion in dismissing the application for review brought to the High Court by the appellants. An examination of the grounds of appeal reveals the fact that no appeal was noted against this part of the decision of the court *a quo*. Whilst it was not really necessary to do so the learned Judge in case, he was wrong on the question of the need on the part of the appellants to exhaust domestic remedies, went on to consider other breaches of the rules of court committed by the appellants in making the application. He considered for example, the fact that the application had not cited the Grievance and Disciplinary Hearing Committee and that the grounds upon which the proceeding were sought to be set aside or corrected were not stated shortly and clearly.

These other matters attracted the attention of the appellants and founded the grounds of appeal against the judgment of the court *a quo*. They were however not the matters on which the decision of the court *a quo* dismissing the application was based.

The appeal was therefore dismissed with costs.

CHEDA AJA: I agree

NDOU AJA: I agree

Majoko & Majoko, appellant's legal practitioners

Mawere & Sibanda, respondent's legal practitioners