REPORTABLE (67)

PETROZIM LINE PRIVATE LIMITED
v
SAMUEL HOVA

SUPREME COURT OF ZIMBABWE
MAVANGIRA JA, CHIWESHE JA & MUSAKWA JA
HARARE: 21 OCTOBER 2024 & 30 JULY 2025

A.K Maguchu, for the appellant

The respondent in person

CHIWESHE JA: This is an appeal against the whole judgment of the Labour Court (the court *a quo*) sitting at Harare dated 19 April 2022 in terms of which the court *a quo* granted an application for review of the disciplinary proceedings held by the appellant's disciplinary committee against the respondent.

Aggrieved by the decision of the court *a quo*, the appellant has noted the present appeal.

THE FACTS

The appellant is a company duly registered in terms of the laws of Zimbabwe. The respondent is a former employee of the appellant. The respondent, who was the president of a trade union, was suspended without pay and benefits on 22 April, 2022 over allegations that he had participated in the release of a press statement undermining the image of the appellant's holding company, namely National Oil Infrastructure of Zimbabwe (NOIC) and the image of the

appellant itself. It was alleged that the press statement raised allegations that there was rampant corruption, victimization of employees and poor corporate governance practices at NOIC.

The respondent was arraigned before the appellant's disciplinary committee on 28 April 2022 facing charges in terms of Part 2, s 7 (e)(iv) of the National Employment Council of Zimbabwe Energy Industry Code of Conduct and Grievance Handling Procedures (the Code of Conduct). He faced three charges of disorderly or objectionable behaviour, namely "conducting oneself or behaving in a manner which brings the name of the company or organisation into disrepute", insubordination or disobedience by wilfully failing or refusing to comply with company regulations, protocols, policies and procedures, and breach of secrecy or confidentiality by "issuing, without permission or authority, press statements or information concerning the affairs of the company to the actual or potential prejudice to the company or organisation."

The hearing took place from 2 to 14 June, 2022. By close of day on 14 June 2022, one of the appellant's witnesses was giving evidence. Upon adjournment, the respondent's representative requested the disciplinary committee for time to prepare for the respondent's defence. He needed time to contact some witnesses. Further, the representative advised the committee that the respondent had to appear before the Labour Officer the following day, 15 June 2022. It was on that basis that he applied for the postponement of the hearing. On 15 June 2022, the committee met and heard the rest of the evidence in the absence of the respondent. It disregarded the respondent's application for a postponement and on 16 June 2022, the committee directed that the parties file closing submissions. The respondent failed to file

closing submissions as directed. The respondent was subsequently found guilty and dismissed from his employment with the appellant.

Aggrieved by that decision, the respondent filed an application for review in the court *a quo*. He argued that the disciplinary committee erred in proceeding with the hearing when they had been notified of a meeting scheduled with the Labour Officer and of the fact that he needed time to prepare his defence. He argued that the committee's conduct violated the Code of Conduct which recognised the right to be heard. He said that his dismissal was unfair as it did not afford the parties equal treatment. On its part, the appellant submitted that the disciplinary committee had the discretion to grant or refuse the application for postponement. It submitted that the respondent was not entitled to such postponement as disciplinary proceedings are not complex nor are they bound by strict rules of procedure. The appellant further submitted that the respondent wilfully defaulted in not attending the rest of the hearing and refused to submit anything by way of mitigation.

The court *a quo* found that the disciplinary hearing was unfairly conducted as it infringed upon the respondent's right to be heard. It held that the matter which was before the disciplinary committee was complex and, for that reason, the committee ought to have granted the application for postponement. It accordingly granted the application for review and set aside the decision of the disciplinary committee. It further directed that a fresh hearing be conducted within 60 days, failing which the respondent was to be reinstated with full benefits.

Aggrieved by the decision of the court *a quo*, the appellant noted the present appeal on the following grounds:

"GROUNDS OF APPEAL

1. The court *a quo* erred at law in interfering with the Disciplinary Committee's decision to decline first respondent a postponement in circumstances where the Disciplinary Committee's exercise of discretion was not found to have been exercised capriciously or in a grossly irregular manner.
2. The court *a quo* seriously misdirected itself in interfering with the Disciplinary Committee's decision to decline the first respondent a postponement on the ground that first respondent needed time to prepare for the impending hearing yet the first respondent was in fact ready for the hearing.
3. The court *a quo* seriously misdirected itself in interfering with the Disciplinary Committee's decision to decline first respondent a postponement on the grounds that the Disciplinary Committee had treated parties unequally to the first respondent's detriment when in fact the first respondent had been allowed more latitude, had demonstrated a propensity to delay and/or scuttle the proceedings.
4. The court *a quo* seriously misdirected itself in finding that the first respondent, respondent party in an ongoing disciplinary hearing, was entitled to a postponement to prepare for a hearing." (*sic*)

The appellant seeks the following relief.

"RELIEF SOUGHT

1. That the appeal succeeds with cost.
2. That the judgment and order of the court *a quo* be and is hereby set aside and substituted with the following:

   (a) The application for review be and is hereby dismissed with costs.

(b) That costs follow the cause."

ISSUES FOR DETERMINATION

The grounds of appeal only raise one issue, namely, whether the court *a quo* erred in holding that the hearing was unfairly held as the Disciplinary Committee did not afford the respondent the right to be heard, contrary to the rules of natural justice.

PROCEEDINGS BEFORE THIS COURT

At the hearing of this appeal, the respondent raised two preliminary issues, namely, that the appellant had not paid the respondent's security for costs and that the appeal had been overtaken by events as the appellant had since complied with the order of the court *a quo* and conducted a fresh disciplinary hearing. Following that hearing, the disciplinary committee found the respondent guilty and dismissed him from employment. The respondent is appealing that decision to the internal Appeals Authority and has filed an application for review in the court *a quo*. For these reasons, the respondent urged this Court to strike the matter off the roll with costs.

Counsel for the appellant argued to the contrary in relation to the alleged mootness and peremption, indicating that the appellant had no option but to comply with the order of the court *a quo* which had directed the appellant to conduct a rehearing within 60 days or reinstate the respondent with full benefits. He argued that the appellant stood to lose the right to discipline the respondent in the event that sixty days expired before a hearing. For that reason, counsel argued that the rehearing was not voluntary as it was held purely in order to avoid that untenable consequence.

As for security for costs, counsel for the appellant argued that in terms of r 55 (2) of the Supreme Court Rules, 2018 the appellant was not obliged to pay for the respondent's security for costs. He argued that an appellant was obliged to pay such costs only if the noting of the appeal suspends the operation of the decision of the lower court. He contended that an appeal from the Labour Court to the Supreme Court does not suspend the order being appealed against. For that reason, he submitted that this preliminary point was without merit and should accordingly be dismissed. Counsel was adamant that the decision of this Court in *Matenhere* v *Cornway College* SC 16/24 holding that security for costs was a requirement in appeals to this Court emanating from the Labour Court was wrong at law, more so as it contradicts earlier decisions of this Court.

In view of these submissions by the appellant, this Court directed that the parties file supplementary heads of argument covering the two points *in limine*, namely, whether r 55 (2) of the Supreme Court Rules, 2018 applies to appeals to the Supreme Court from the Labour Court as decided in the *Matenhere* case *supra*, and, whether the appellant's compliance with the court *a quo's* judgment has any effect on the Supreme Court's jurisdiction to hear the present appeal. The appellant filed its supplementary heads on 24 October 2024. The respondent, who is a self-actor, did not file any supplementary heads of argument.

Whether r 55 (2) of the Supreme Court Rules, 2018 applies to appeals to the Supreme Court from the Labour Court as decided in the *Matenhere* v *Cornway College* SC 16/24

In its supplementary heads of argument, counsel for the appellant contends that the *Matenhera* case *supra* was wrongly decided in that the court held, contrary to previous decisions

of this Court, that security for the respondent's costs must be furnished in appeals emanating from the Labour Court.

DECISION

However, on reflection, it is our view that the above point has not been properly taken by the appellant. Firstly, the argument proffered is in direct conflict with appellant`s averment in the notice of appeal that "The appellant hereby offers such security for the respondent`s costs of appeal as may be agreed between the parties or determined by the registrar." Having made that commitment, the appellant cannot now turn around to say that it is not obliged to pay security for the respondent`s costs.

Secondly, the appellant`s point is taken only in response to a preliminary point that was raised by the respondent. The challenge to the *Matenhere* decision ought to have been raised from the beginning. It is then that this Court would have been requested or alerted to the need for a five member bench to determine the issue. The court would then have considered that issue first without proceeding, as it did, to hear other issues.

We conclude therefore that the point, taken by the appellant, is not properly before us. It must be dismissed. Conversely, the point *in limine* raised by the respondent that the appellant has not furnished security for costs in terms of Rule 55 (2) of the Supreme Court Rules, 2018 and in line with the decision in *Matenhere* v *Cornway College* SC 16/24 must be upheld. For that reason, as the point *in limine* is dispositive, it is not necessary to consider the other points *in limine* to do with mootness and peremption.

DISPOSITION

Rule 55 (6) of the Supreme Court Rules, 2018 provides that where an appellant who is required to furnish security for the respondent`s costs of appeal, fails to so furnish such security within one month of filing his or her appeal, the appeal shall be regarded as abandoned and shall be deemed to have been dismissed. The present appeal must be so regarded as having been abandoned and dismissed. For that reason, it must be removed from the roll. Costs shall follow the cause.

Accordingly, it is ordered as follows:

(1) The matter be and is hereby removed from the roll.

(2) The appellant shall pay the costs.

MAVANGIRA JA **:** I agree

MUSAKWA JA **:** I agree

Maguchu & Muchada Business Attorney's, appellant's legal practitioner