NOT REPORTABLE/NOT REPORTABLE: (16)

CFI HOLDINGS LIMITED
V
(1) PEGGY RAMBANEPASI (2) JEPHINIAS CHIUMBURA (3) TAWANDA CHINOERA (4) LETWIN SIGAUKE N.O

SUPREME COURT OF ZIMBABWE
GUVAVA JA, MAVANGIRA JA & KUDYA AJA
HARARE, 6 JULY 2020

S.M. Hashiti, for the appellant

G. Madzoka, for the first, second & third respondents

GUVAVA JA:

1. This is an appeal against the judgment of the Labour Court dated 16 June 2017 in which the court *a quo* confirmed the draft ruling by the Labour Officer. The Labour Officer held that that the termination of the respondent's employment by the appellant was unlawful. At the commencement of the hearing the appellant abandoned the second and third grounds of appeal. After hearing submissions on the remaining grounds from both parties we found no merit in the appeal and issued the following order:

   "The appeal be and is hereby dismissed with costs."

We indicated that the reasons for this decision would follow in due course. These are set out hereunder.

BACKGROUND FACTS

2. The first to third respondents were employed by the appellant as Managing Director CFI Holdings Retail, Managing Director Victoria Foods and Chief Operating Officer CFI Holdings Limited respectively. Their contracts of employment were terminated on notice by identical letters dated 26 January 2016. They were each given three months' written notice. The letters of termination indicated that they were not required to serve the period of notice but that they should immediately leave the premises of the appellant.

3. The respondents were disgruntled by the appellant's decision to terminate their employment and approached a Labour Officer with claims of unfair dismissal, reinstatement and payment of arrear salaries and benefits from date of termination to date of reinstatement. The fourth respondent found for the respondents and held that the termination of the respondents' employment was unfair as they had not been terminated in accordance with the Labour Act [*Chapter 28:01*] (the Labour Act). The fourth respondent approached the court *a quo* for confirmation of the draft ruling in terms of s 93 (5) of the Labor Act as amended by Act 5 of 2015.

4. The court *a quo* confirmed the draft ruling by *Sigauke* N.O. and ordered that the respondents be reinstated without loss of salary and benefits as the termination of

their employment was unlawful. The court *a quo* also ordered that in the event that the appellant did not wish to reinstate the respondents then it should pay damages in *lieu* thereof.

5. The appellant was aggrieved with the outcome and filed this appeal. At the commencement of the hearing the appellant's counsel submitted that he was abandoning grounds 2 and 3 as they were raising the same issue as ground 1. The case thereafter proceeded on grounds 1, 4 and 5 which were couched as follows:

> "1. The court a *quo* erred at law in making a finding that the Respondents termination on notice was unlawful, when in terms of section 12 (4a) as read with 12 (4b) of the Labour Act [*Chapter 28:01*], termination on notice is lawful provided there is compensation, for the avoidance of doubt the payment of the minimum retrenchment package provided in s 12C of the Labour Act.
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> 2. The court a *quo* erred at law in giving parties an option to quantify damages, when s 12 C of the Labour Act clearly provides for a minimum retrenchment package and how it is calculated.
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> 3. The court a *quo* erred in failing to make a finding that there was a compromise by the respondents through their letter of dated 15 February 2016, wherein they sought to discuss the minimum retrenchment package"

SUBMISSIONS ON APPEAL

6. Mr *Hashiti*, for the appellant, argued in the main that the court *a quo* erred in failing to find that there was a compromise between the parties. It was his submission that the letter dated 15 February 2016, by the respondents constituted such evidence of a compromise. It was his submission that the parties, at all times were in agreement,

that during the negotiations that they had, they were discussing a retrenchment package.

7. It was further contended, for the appellant, that the respondents' contract of employment contained a provision which allowed for termination of employment by giving three months' notice. Thus it was argued that the appellant had fully complied with the requirements set out in s 12 (4a) of the Labour Act as read with s 12C.

8. Mr *Madzoka* in response, whilst accepting that the right of termination on notice is part of our law, submitted that the fourth respondents' ruling was correct as the appellant had not complied with the provisions of the law. He argued that s 12(4a) of the Labour Act does two things; firstly, it prohibits termination of contracts of employment on notice and secondly, sets out conditions that must be complied with in the event that termination on notice is to be carried out. It was his submission that the conditions were not complied with and as such the dismissal of the respondents was unlawful.

He also submitted that in any event their was no contract on record in respect to the first respondent and for the second respondent the contract was silent on the issue of whether or not it could be terminated on notice.

APPLICATION OF THE LAW TO THE FACTS

9. In my view one issue falls for determination by this Court. The issue is whether the

appellant complied with the requirements for termination on notice, which are set out in the Labour Act.

10. Following the judgment of *Don Nyamande v Zuva Petroleum* SC43/15 the Legislature amended the Labour Act. Section 12 (4a) of the Labour Amendment No 5 of 2015 reads as follows:

> "No employer shall terminate a contract of employment on notice unless-
>
> (a) The termination is in terms of an employment code or, in the absence of an employment code, in terms of the model code made under s 101 (9); or
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> (b) The employer and employee mutually agree in writing to the termination of the contract; or
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> (c) The employee was engaged for a period of fixed duration or for the performance of some specific service; or
>
> (d) Pursuant to retrenchment, in accordance with s 12 C."

11. It was not in dispute that termination on notice has always been part of our law. It was also not in dispute that the above provisions were applicable to this case. Clearly the intention of the Legislature in coming up with this amendment was to ensure that an employee whose contract is terminated on notice, did not walk away empty handed. The provision also outlined which employees were covered by the enactment. Section 12 C provides for a calculation of the retrenchment package in the event of no agreement between the parties. Section 12 C only applies where termination is in terms of s 12 (4a) of the Labour Act.

12. The wording of the above quoted provision is clear and requires no in depth interpretation. The language must be given its grammatical and ordinary meaning unless this would lead to some absurdity or inconsistency with the rest of the instrument. (see *Chihava & Ors v The Provincial Magistrate Francis Mapfumo N.O. & Anor* 2015 (2) ZLR 31 (CC). Clearly termination on notice may only take place when there is full compliance with the provisions of s 12 (4a) of the Act.

13. Appellant terminated the respondents' contracts on notice. It is our view that the appellant clearly did not comply with the mandatory provisions of the Act. Firstly, there was no contract of employment on the record in respect to the first respondent. Thus it was unclear how the appellant was able to determine the kind of agreement it had with the first respondent. In respect to the second respondent, although there was a contract of employment, it was silent on the aspect of notice.

14. In order to comply with s 12 (4a) the parties could only terminate the contract of employment if there was a registered Code of Conduct for the workplace, or in the absence of such code, a model code, or there was mutual agreement to terminate the contract of employment. It is common cause that there was no code of conduct used. It is also common cause that there was no agreement as between the parties to terminate the contract.

15. It was quite apparent on the facts of this case that the appellant failed to comply with

the provisions of the Labour Act in terminating the employment of the respondents. The appellant submits that in terminating the employment contract it complied with s 12(4a) as it tendered the minimum retrenchment package set out in the Act. It is as clear as daylight that in seeking to perform in terms of s 12 (4) (b) of the Act the appellant overlooked the fact that, for it to fall under the said section, it must have complied with s 12 (4a). As already outlined above this they did not do. The appellant could therefore not pay compensation in terms of s 12 (4) (b).

16. For the sake of completeness it is necessary to set out in full the provisions of s 12 (4) (b) which provides as follows:

> "Where an employee is given notice of termination of contract in terms of subsection (4a) and such employee is employed under the terms of a contract without limitation of time, the provisions of s 12C shall apply to compensation for loss of employment."

As stated above, the appellant failed to comply with s 12 (4a). Thus the above stated provision could not be applied to the respondents. Given the above set of circumstances, the court *a quo* was clearly correct in finding that the respondents' contracts of employments had been improperly terminated by the appellant and that they had been unfairly dismissed.

DISPOSITION

17. The appellant failed to comply with the clear provisions of s 12(4a) of the Labour Act

in terminating the contracts of the respondents. The finding by the Labour Officer, as confirmed by the court *a quo*, that the dismissal was unfair cannot be impugned.

It was for the above reasons that we dismissed the appeal.

MAVANGIRA JA **I AGREE**

KUDYA AJA **I AGREE**

Matsikidze Attorney's, appellants legal practitioners

Coghlan, Welsh & Guest, 1st ,2nd & 3rd respondents legal practitioners.