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Judgment No. S.C. 139/99
Civil Appeal No. 346/98

(1) WILLIAM CHIWANZA (2) MUCHINERIPI ZINDOGA

(3) STEPHEN CHIHOTA vs

COPPER CREATIONS (PRIVATE) LIMITED

SUPREME COURT OF ZIMBABWE
GUBBAY CJ, EBRAHIM JA & SANDURA JA
HARARE, OCTOBER 19, 1999 & JANUARY 7, 2000

P N Nherere, for the appellants

I C Chagonda, for the respondent

SANDURA JA: This is an appeal against a judgment of the Labour Relations Tribunal ("the Tribunal") which authorised the respondent to dismiss the appellants from its employment.

The facts are as follows. The appellants were employees of the respondent. Because the respondent believed that the appellants had resorted to unlawful collective job action in the form of a go-slow and had incited other employees of the respondent to join them, the appellants were suspended without pay pending the granting of the authority to dismiss them.

The following letter was written to each appellant on 18 May 1995:

"This letter serves to inform you that with immediate effect you are suspended without pay, pending a decision to have your contract with this company permanently terminated.

Reasons:

1. Your illegal strike action.

2. Management believes that you have continuously misinformed other workers of their rights and purposely created friction between management and workers.

3. You continue to aggravate any move management makes to try and resolve the problems between management and workers.

4. You openly lie about the situation in this company in order to incite other workers to follow you.

Management can no longer tolerate the above …".

Subsequently, on 1 June 1995, the respondent submitted an application to the National Employment Council for the Engineering and Iron and Steel Industry ("the NEC") for the authority to dismiss the appellants.

Thereafter, on 19 June 1995 an official of the NEC wrote the following letter to the respondent:

"I refer to your letter dated 1st June 1995 in regard to your application to terminate the employment of Messrs W. Chawanza (sic), M Zindoga and S Chihota.

At a meeting of the Appeals Subcommittee of the General Engineering Committee held on 13th June 1995 it was agreed after considering all the evidence forwarded by the company and the employees that the employees should be given (a) Last Written Warning and that Mr Nezandoyi was instructed to speak to all the employees of the company and reinstate a Workers Committee.

An Appeals (sic) on the matter may be lodged with the Labour Relations Tribunal."

It is pertinent to note that although the letter states that the appellants should be given a final written warning it does not say whether the appellants were found guilty of any act of misconduct and what that act was.

Nevertheless, on 29 June 1995 the respondent appealed to the Tribunal against the decision of the Appeals Subcommittee on the ground that the authority to dismiss the appellants should have been granted.

The appeal was heard by the Tribunal on 27 May 1998. However, five days before the appeal was heard the respondent filed an application for leave to lead *viva voce* evidence at the hearing of the appeal. The application was in these terms:

> "At the hearing of the above matter on (27) May 1998, the appellant (the respondent) will apply to the Tribunal for leave to lead *viva voce* evidence from the appellant's (the respondent's) Managing Director and supervisors.
>
> The reason for the application is that the record is defective in that it does not contain satisfactory evidence of the 'go slow' which occurred at (the) appellant's (the respondent's) premises; nor does it contain satisfactory evidence of the involvement of (the) respondents (the appellants) therein."

However, when the appeal was heard, the Chairman of the Tribunal discouraged the respondent's representative from persisting with the application for leave to lead oral evidence and no such evidence was, therefore, led. It appears from the record of the proceedings before the Tribunal that the learned Chairman did not consider it necessary for the respondent to lead oral evidence.

Subsequently, the respondent's appeal was allowed with costs and, as a result, each appellant was dismissed with effect from the date of his suspension. Aggrieved by that decision, the appellants appealed to this Court.

When the matter came before us, counsel for the respondent took a point *in limine* and submitted that the appeal was not properly before us because it did not raise any point of law as required by s 92(2) of the Labour Relations Act [*Chapter 28:01*] ("the Act"). He submitted that the issue raised by the appellants, namely that the Tribunal erred in finding that the appellants incited and participated in a go-slow, was a question of fact and not one of law.

It is, of course, correct that in terms of s 92(2) of the Act no appeal against the decision of the Tribunal lies to this Court unless it raises a question of law. See, for example, *Muzuva v United Bottlers (Pvt) Ltd* 1994 (1) ZLR 217 (S) at 219C; *Ruturi v Heritage Clothing (Pvt) Ltd* 1994 (2) ZLR 374 (S) at 377D; and *Hama v National Railways of Zimbabwe* 1996 (1) ZLR 664 (S) at 669 G-H.

However, it is well established that this Court will entertain an appeal against the Tribunal's decision based purely on facts if that decision was arrived at as a result of a serious misdirection on the facts. In other words, the Tribunal's decision must be irrational in the sense that, having regard to the evidence placed before it, the decision complained of is so outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the issue to be decided would have arrived at such a decision. See, for example, *Hama v National Railways*

of Zimbabwe supra at 670 A-D. That, in fact, is what the appellants in this case alleged in their grounds of appeal.

In the circumstances, we were satisfied that the appeal was properly before us and proceeded to hear it.

In allowing the respondent's appeal the learned Chairman found that the appellants had incited and participated in a go-slow. That conclusion was drawn from the contents of a document addressed to the management and allegedly prepared by one of the appellants. It is a long document, but the relevant part quoted by the learned Chairman, reads as follows:

> "We have lost nearly thirty workers who were retrenched and some resigned, non (sic) of the thirty workers were replaced. … Despite the loss of such a large number of workers our Management still wants us to produce and maintain the same level of production. … Since 1985 our high production figures have been influenced by a very successful incentive scheme. … The Management made the blunder of their life … by discouraging the workers to discontinue (sic) with the incentive scheme … according to them … they had run out of orders and were not prepared to negotiate any wage increase in March as we have always done. … Further reasons being that they were bankrupt and were considering applying for exemption from paying increases … to be paid in July. … We are all working normally minus (the) incentive scheme. … Mr Cocco never furnished the N.E.C. Employer's Association Officials in advance with the true information that we had an incentive scheme (with) the production figures very high during the previous months and years … (and) recent low production papers without the incentive scheme …".

After quoting what I have set out above, the learned Chairman concluded that there had been a go-slow at the premises of the respondent which had been incited and organised by the appellants. He also concluded that the appellants had participated in the go-slow.

It is difficult to see how the learned Chairman arrived at that conclusion because there is nothing in the document in question which supports it. In fact, there is no evidence in the whole record of the proceedings before the Tribunal which would support the conclusion reached by the learned Chairman. It follows, therefore, that the Chairman's decision was irrational in the sense already set out and must be set aside.

Indeed, the respondent's representative, a consultant on labour matters, acted correctly when he informed the Tribunal that the record did not contain satisfactory evidence of the go-slow and the appellants' involvement therein. In the circumstances, he intended calling the respondent's managing director and supervisors to give oral evidence before the Tribunal. Regrettably, the learned Chairman discouraged him from doing so, thereby giving him the impression that it was unnecessary to lead oral evidence.

In the circumstances, the appeal is allowed with costs. The order made by the Tribunal is set aside. The matter is remitted to the Tribunal so that the parties may lead oral evidence if they so wish before the matter is determined afresh.

GUBBAY CJ: I agree.

EBRAHIM JA: I agree.

Madanhi & Associates, appellants' legal practitioners

Atherstone & Cook, respondent's legal practitioners