REPORTABLE (32)

Judgment No. SC 29/06
Civil Appeal No. 383/04

WILBERT MUGABE AND 129 OTHERS

v

ZVIMBA RURAL DISTRICT COUNCIL

SUPREME COURT OF ZIMBABWE
CHIDYAUSIKU CJ, SANDURA JA & MALABA JA
HARARE, OCTOBER 18 2005 & JULY 31, 2006

L Uriri, for the appellants

P Matizanadzo, for the respondent

MALABA JA: This is an appeal from a judgment of the Labour Court dated 16 December 2004 dismissing an application for an order setting aside the retrenchment of the appellants from employment with the respondent.

The first appellant, Wilbert Mugabe, was the chairman of the Workers Committee. On 29 September 2003 the appellants were served with notices to the effect that their contracts of employment were to be terminated on 30 October on retrenchment. On 30 October 2003 they received payment of varying sums of money in cheques as part of the retrenchment package. They thereafter left employment.

On 11 November 2003 the applicants made an application to the Labour Court challenging the validity of their retrenchment on the ground that it was

not carried out in accordance with the procedure prescribed under s 12 of the Labour Relations Act [*Chapter 28:01*]. The court *a quo* held that there had been an agreement on the retrenchment, its terms and conditions between the appellants and the respondent which was approved by the Works Council. It held that there was compliance with the legal requirements for a lawful retrenchment set out in s 12C of the Act.

The appellants appealed on the grounds that:

> "1. The court *a quo* erred in holding that the respondent had complied with the legal requirements for the retrenchment of appellants.
>
> 2. The court *a quo* seriously erred and failed to appreciate that respondent did not have a properly constituted Works Council.
>
> 3. The court *a quo* erred in holding that the appellants were bound by the decision of the Works Council.
>
> 4. The court *a quo* further erred in holding that there was agreement between the parties."

None of the grounds of appeal is in my view sustainable on the facts of the case. The facts are these:

In 2002 the respondent found itself with a redundant work force after an amalgamation of five local authorities. As a result there were many areas of duplication of roles and responsibilities of employees. The respondent was incurring a huge wage bill for a redundant work force.

At a meeting of representatives of the respondent and those of employees held on 17 September 2002 the need to have workers who were mainly general hands retrenched was discussed. The respondent's representatives put forward the proposed retrenchment package and the representatives of workers were asked to come up with their own proposal on the retrenchment package. At a meeting held on 12 June 2003 the workers' representatives put forward their proposal for the retrenchment package which was as follows:

"(a) Three months notice pay;
(b) Five months salary for every year served;
(c) $210 000 to cover relocation expenses;
(d) Severance package of five months salary;
(e) Three months notice for those staying in council houses;
(f) For those on medical aid to continue for six months and
(g) Financial assistance should remain for six months."

Most of the items proposed by the workers' representatives to be included in the retrenchment package were accepted by the respondent. The package which was finally agreed upon by the parties at a meeting held on 20 June 2003 was as follows:

"(a) One month notice
(b) Three months pay for loss of job
(c) One month salary for each year of service (factoring in 70% on current salaries)
(d) Payment of other terminal benefits like pensions and cash *in lieu* of leave
(e) Relocation assistance within Zvimba District
(f) Free treatment at Council Clinics for three months
(g) Three months notice for those in Council accommodation."

On 17 July 2003 the respondent gave notice to the Works Council of its intention to retrench the workers whose names it listed. The notice which was on Form LRR1 read:

"**NOTICE OF INTENTION TO RETRENCH**

To: Zvimba RDC Works Council

Kindly take note that Zvimba Rural District Council of Private Bag 2001 Murombedzi intend to retrench the employees whose names are listed in Annexure 1 and seek approval to effect such retrenchment. Our reasons for the retrenchment are listed in Annexure 2 to this notice."

On the same day the first appellant in his capacity as the chairman of the Workers Committee and the secretary thereof sent a memorandum to the respondent which they signed. It reads:

"**ZVIMBA RURAL DISTRICT COUNCIL**

We members of the Workers Committee have agreed to the conditions for retrenchment as shown in Annexure 2."

Annexure 2 referred to in the memorandum contained the proposed retrenchment package agreed upon by the parties on 20 June 2003.

The Works Council gave notice to the respondent on Form LRR2 on 17 July 2003. It reads:

"**APPROVAL OF RETRENCHMENT OF EMPLOYEES**

The Zvimba RDC Works Council hereby grants approval to Zvimba Rural District Council of Private Bag 2001 Murombedzi to retrench the employees whose names are listed in Annexure 1 to this form on 1 September 2003 subject to the terms and conditions which are listed in Annexure 2."

Annexure 2 referred to in the notice of approval of the proposed retrenchment contained the retrenchment package accepted by the workers' representatives.

On 29 September 2003 the respondent gave each retrenchee a notice of termination of employment. It wrote:

> "This serves to advise you that due to the retrenchment exercise being undertaken by the Organisation the Zvimba Rural District Council will terminate your service of employment with effect from the 31st of October 2003.
>
> During this notice period you are required to communicate with the Administration Department pertaining payment of your package which will be based on the following bargaining agreement terms." (The retrenchment package mentioned in the judgement was then set out).

It is clear from these documents that the finding by the court *a quo* that there was an agreement between the representatives of the respondent and those of the employees on the need for the retrenchment and on its terms and conditions was supported by evidence. The agreement on the terms and conditions of the retrenchment was not reached within the Works Council. A careful reading of the finding by the learned President that the approval by the Works Council suggested "**that the parties agreed on the retrenchment package**" does not, as contended by Mr *Uriri*, justify the conclusion that the agreement referred to was between members of the Works Council. The case of *Fungura & Anor v Zimnat Insurance Company Limited* 2000(1) ZLR 379(H) relied upon by counsel is of no assistance. The principle that a Works Council is an entity separate from the employees and employers and that its duty is to secure an agreement between these parties or their representatives was not put in issue by the facts of this case. I accept the contention by Mr *Matizanadzo* that the fact of the signed approval of the retrenchment by the Works Council is *prima facie* evidence of the existence of an agreement on the

retrenchment package between the parties. That was the basis of the finding made by the court *a quo*.

It was not a ground of appeal that there was no Works Council for the establishment. What was alleged was that it was not properly constituted. There was no evidence on the papers to suggest that the Works Council was not properly constituted. On 17 July 2003 when it approved the retrenchment of the appellants on the terms and conditions agreed upon by the parties, the question whether the Works Council was made up of equal members representing the employer and employees was raised at a meeting held on 12 June 2003. The chairman ruled that the Works Council was properly constituted and the meeting proceeded with its business. The fact that the Works Council may not have been properly constituted on 12 June would not be evidence that it was not properly constituted on 17 July 2003. The *onus* was on the appellants to show that the Works Council was in fact not properly constituted on that day.

The last question for determination is whether the court *a quo* misdirected itself in holding that the respondent had complied with the legal requirements for the retrenchment of the appellants. Section 12C of the Act is relevant. It provides that:

> "(1) An employer who wishes to retrench five or more employees within a period of six months shall –
>
> (a) give written notice of his intention-
>
> (i) to the Works Council established for the undertaking.

(ii) ….

(iii)….

(b) provide the Works Council … with details of every employee whom the employer wishes to retrench and of the reasons for the proposed retrenchment, and

(c) send a copy of the notice to the Retrenchment Board.

(2) A Works Council to which notice has been given in terms of subs (1) shall forthwith attempt to secure agreement between the employer and employees concerned or their representatives as to whether or not the employees should be retrenched and, if they are to be retrenched the terms and conditions on which they may be retrenched, having regard to the consideration specified in subs (ii).

(3) If, within one month after receiving notice in terms of subs (1), a Works Council secures an agreement between the employer and employees concerned or their representatives on the matters referred to in subs (2), the Works Council shall –

(a) send the employer its written approval of the retrenchment of the employees concerned in accordance with the agreement, and

(b) send the Retrenchment Board a copy of the approval.

(4) …

(5) No employer shall retrench any employee without affording the employee the notice of termination to which the employee is entitled."

The object of the requirement of the steps to be taken in accordance with the procedure for the retrenchment of employees prescribed under s 12C of the Act is to ensure that the retrenchment is by agreement between the employer and employees concerned or their representatives with the approval of a third party. The role of the Works Council in the prescribed procedure is not to have an agreement reached between its own members. Its role is that of a mediator to secure an

agreement on the retrenchment, its terms and conditions between the employer and the employees concerned or their representatives.

See *Prosser & 35 Ors v Ziscosteel* HH 201 – 93; *Chidziva & Ors v Zisco* 1997 (2) ZLR 368(S); *Nyangoni & 14 Ors* v *ZDC* HH – 34 - 98

In this case the representatives of the employer and the employees concerned reached an agreement on the retrenchment, its terms and conditions without the involvement of the Works Council. The Works Council which was required by law to approve the retrenchment in terms of the agreement did so. The retrenchment therefore was to be carried out in accordance with the approval granted in terms of s 12C of the Act. The employer gave the employees concerned written notice of termination of their employment as it was obliged to do in terms of s 12C (5) of the Act.

Mr *Uriri*'s submission that the retrenchment of the appellants was not in accordance with the procedure prescribed under s 12C of the Act cannot be correct in light of the finding that the court *a quo* correctly found that there was an agreement on the retrenchment package between the representative of the employer and the employees concerned.

I would accordingly dismiss the appeal with costs.

CHIDYAUSIKU CJ: I agree.

SANDURA JA: I agree.

Messrs Honey & Blanckenberg, appellant's legal practitioners

Manase & Manase, respondent's legal practitioners