

NICHOLAS KHUMBULA TSHILI

Versus

SIMON WILLIE N.O.

And

T.M. SUPERMARKET (PVT) LTD

IN THE HIGH COURT OF ZIMBABWE
MAKONESE J
BULAWAYO 15 & 23 MAY 2019

Chamber Application

Applicant in person
Mrs S. Ngwenya for respondents

MAKONESE J: This application purports to be a chamber application for directions. The order sought in the draft order is in the following terms:

- “1. The respondent be and is hereby directed to complete the draft ruling in terms of the Labour Act (Chapter 28:01) Amendment No. 5 of 205 and issue a certificate of settlement to enable the applicant to register his names in terms of the Labour Act section 10(6) and proceed to arbitration.
2. There shall be no order as to costs.”

This application is opposed by the respondents who contend that there is no basis at law for applicant to seek the order as framed in the draft order. Further, the respondents argue that the order sought is incompetent at law in that the court cannot direct a *functus officio* Labour officer to make another draft ruling. There is a ruling that was made on the 26th of May 2016 and the applicant ought to enforce such draft ruling which has not been set aside. In any event, the application itself is *prima facie* meaningless and incompetent at law. The court is being asked to grant an incompetent order which has no basis at law. The applicant is alien to this court and is not provided for in terms of the Rules. It is trite law that the Labour Officer had no jurisdiction in this matter in terms of Statutory Instrument 15/2006, section 8(b). The Labour Officer can only deal with a matter where a decision of the Appeals Committee or Officer has

been made. In this matter, the applicant only has a decision of a Hearing Officer. In spite of sound legal advice having been given to the applicant by the respondents, he has chosen, with much courage and determination to pursue this application.

Brief Background

The applicant was employed by the 2nd respondent as a section manager. On the 9th of March 2016 he appeared before a Hearing officer for misconduct in terms of the National Employment Code of Conduct Regulations of 2006. The applicant faced allegations of gross incompetency or insufficiency in the performance of his duties in that he failed to supervise the conduct of daily stock counts. As a consequence of the dereliction of duty 2nd respondent lost television sets worth \$798 as a result of thefts. The applicant was dismissed from work with effect from 9th March 2016. The parties were advised that any aggrieved party could appeal to the Appeals Officer within the stipulated 7 days. On 26th May 2016 the 1st respondent issued a draft ruling. In that draft ruling the applicant was advised to exhaust his remedies through internal appeal structures. Applicant appealed to the Labour Officer, 1st respondent, and on the 9th of March 2016 conciliation proceedings were held on the 4th and 20th April 2016. A certificate of no settlement was issued on 1st May 2016. The draft ruling was issued on 20th May 2016. The applicant then filed another claim for unfair dismissal before a Labour Officer on 16th October 2017 the Labour Officer came up with a ruling in the following terms:

“In the result I hold that this matter is dismissed because the Labour Officer lacks jurisdiction over this appeal matter and the Labour Officer has to protect parties against multiple proceedings in terms of section 124 of the Labour Relations Act. Consequently the appeal is dismissed.”

The application for confirmation of the draft ruling was withdrawn by the Labour Officer Mr Simon, Willie after he admitted to the court that he had no jurisdiction. In the present application, the applicant is seeking an order for directions compelling 1st respondent to complete the draft ruling in terms of the Labour Act.

Disposition

This court clearly has no jurisdiction to interfere with the proceedings between the parties. This dispute is purely a labour dispute. The Labour Court has jurisdiction to entertain any disputes arising in this matter. It has not escaped my attention that on the 2nd of May 2016 the learned KABASA J, did issue an order relating to these parties and issued an order which is still extant.

In the result, I find no basis to entertain the application for the reasons given in this judgment.

The application is accordingly dismissed with costs.

Coghlan & Welsh respondent's legal practitioners