

CHRISTOPHER MANHANGA
vs
HAULONG CONSTRUCTION (PRIVATE) LIMITED

HIGH COURT OF ZIMBABWE
SMITH J,
HARARE, 29 November, 2001 and 9 January, 2002

Mrs *Gasa* for plaintiff
Mr *Muskwe* for defendant

SMITH J: The plaintiff (hereinafter referred to as "Manhanga") issued summons claiming from the defendant (hereinafter referred to as "the Company") \$70 316. The basis of his claim is as follows. He was employed by the Company as a painter on a contract basis from 1986 to 31 August 2000. On 1 March 1996 he was appointed by Mr Gao, the general manager of the Company, to work as a charge-hand. He was told that he would receive the extra monies due to him as a charge-hand on his resignation. His contract of employment expired on 31 August 2000 and he was not paid the additional monies he had been promised. The Company denied that Manhanga had been promoted to the position of charge-hand. Therefore it did not owe him any additional payment when his contract of employment was terminated.

The first witness called was Prosper Denis, who testified as follows. He had been employed by the Company from 1985 to 2000 and was a personnel officer when he was discharged. Manhanga had started employment with the Company in 1986 as an assistant painter. He later passed his trade test and was promoted in 1995. He was in charge of all the painters. The promotion had been made orally and nothing was committed to paper. Under cross-examination he agreed that it was not normal business practice to promote an employee and then to give him the increased wage only when he retired or resigned.

Manhanga then testified as follows. The Company was staffed at senior levels by Chinese employees. He was employed in 1986 as an assistant painter. After passing his trade test in 1995 he was promoted to the position of charge-hand. Mr Gao, the project manager, had called him to his office and told him that he was in charge of all the painters. The promotion was

not reduced to writing. He was promised that on his resignation or retirement, he would be paid the wage commensurate with his position. Under cross-examination Manhanga said that as charge-hand, he employed painters when needed and filled in the time sheets, which he thereafter handed to Mr Gao for checking. It was on 1 January 1995 that he was promoted. Although in the summons it was stated that he had been appointed as charge-hand on 1 March 1996, that was a mistake.

The last witness was James Zhang, an employee of the Company. He said that Mr Gao, whom Manhanga claimed had promoted him has since returned to China. He produced a written statement from Mr Gao Dengwen, former project manager with the Company, in which he certified that he never promoted Manhanga as so-called charge-hand; that Manhanga always worked for the Company as a painter; that he had never promised to pay him a charge-hand's wages; that any promotion in the Company needed a written notice. The witness then testified as follows. The Company has laid-down procedures for promoting staff. If a local is to be promoted, the site manager must write a report to management for approval of the promotion. Approval must be given in writing. If the employee is promoted, the Company issues a document to show the promotion. Once a person is promoted, he is paid the appropriate wage or salary for his new position from the date of promotion. The Company would not agree to pay the newly-promoted person the enhanced portion of his salary on his retirement or resignation. Under cross-examination this witness said that he did not know Manhanga. If Manhanga had been promoted there would have been some written record in the Company's files.

The claim by Manhanga cannot be upheld. His allegation that he was promoted to the position of charge-hand is not substantiated by any credible evidence. In the summons he claims that he was promoted on 1 March 1996 and yet, when giving evidence, he asserted that he was promoted on 1 January 1995. In addition, his claim is highly improbable. It is extremely unlikely that an employer would promote an employee and then continue to pay him at the same rate, on the understanding that when the employee eventually retires or resigns he will be paid the

difference between what he was paid and what he should have been paid. It is even more unlikely that an employee would be prepared to accept such an arrangement. It would mean that he would be doing more demanding work after his promotion without getting the remuneration for the job. The final hurdle which Manhanga came nowhere near clearing was the quantum. He produced no evidence whatsoever to substantiate his claim for \$70 316. There is no evidence as to what his wages were as a painter and no evidence as to what he should have been paid had he been promoted to the position of charge-hand. Therefore, even if Manhanga had satisfied the court that he had been promoted to the position of charge-hand (which he did not) and that the Company had agreed to pay him the enhanced element of salary on his retirement or resignation (which he did not), the court would not have been able to quantify the amount owing to him by the Company.

The plaintiff's claim is dismissed with costs.

Mushonga & Associates, legal practitioners for plaintiff
Muskwe & Associates, legal practitioners for defendant