

GEORGE RIVA
vs
THE NATIONAL SOCIAL SECURITY AUTHORITY

HIGH COURT OF ZIMBABWE
HARARE. 6 November, 2001 and 8 May 2002

Mr. *T Biti* for the applicant.
Mr *Foroma* for the respondent.

BLACKIE J: The respondent (NSSA) employed the applicant (Riva) as an assistant general manager. In what he says was ‘a moment of weakness’, Riva wrote and sent a letter to NSSA tendering his resignation. In this application Riva seeks an order declaring that the letter of resignation be of no legal effect and that he is still employed by NSSA.

The background and facts of this case are as follows. NSSA suspended Riva, alleging misconduct by him, and started disciplinary proceedings against him. A committee was established to hear the allegations against him. After the disciplinary committee had heard the evidence but before it had given its decision, Riva wrote and sent his letter of resignation.

The dispute in this case revolves, in particular, around Riva’s letter of resignation and the correspondence that followed between the parties arising from that letter.

Riva’s letter of resignation stated that, ‘I wish to give three months notice to terminate my employment with NSSA as per my contract. I wish to buy the car, cell phone and cell line as per my contract.’ NSSA did not immediately reply to Riva’s letter. On the 22nd February 2001, ten days after the letter of resignation had been sent, Riva and NSSA wrote letters to each other. Riva’s letter said, ‘I have not received confirmation of (my letter of resignation) to yourselves, I accordingly retract my letter of notice to resign with immediate effect’. NSSA wrote saying, ‘on a purely without prejudice basis, the

authority has considered and agreed to allow you to terminate your services by resignation. The authority accepts that your services be terminated immediately and that you be paid in lieu of notice...'. Thereafter, it set out the benefits to which it said Riva was entitled on resignation. Riva did not agree with the contents of the letter sent to him by NSSA. He replied thereto saying, 'Your conditions of accepting my offer of resignation are in complete violation of my contract and are accordingly unacceptable. In any event as you may be aware by now, I had already retracted my resignation offer.' Finally, on 29th March 2001, NSSA wrote to Riva saying, 'We refer to your letter concerning the terms on which the board had offered to accept your resignation. You have not to date accepted the conditions on which your resignation was accepted. In the circumstances, you are given until 4pm on Tuesday 13 April 2001 to communicate your position after which the board's offer shall be deemed to be withdrawn. In that event, we shall immediately serve on you the determination of the disciplinary committee on the charges of misconduct.'

It is common cause between the parties that "the giving of notice is a unilateral act: it requires no acceptance thereof or concurrence therein by the party receiving notice, nor is such party entitled to refuse to accept such notice and to decline to act upon it. It seems to me to follow that notice once given is final and cannot be withdrawn except obviously with consent..."

Rustenburg Town Council v The Minister of Labour and Others 1942 TPD 220 @ 224,
Darlington Muzengi v Standard Chartered Bank and Mr. Mutasa HH 166/2000.

Riva, however, submits that the principle set out in the *Rustenburg* case (*supra*) is not an absolute one and may be qualified. It can be subject to certain distinctions and exceptions. In particular, it can be modified by the facts of the case, the manner in which the resignation is framed, and the subsequent behaviour of the parties.

Riva says that his letter of resignation was not a formal act of resignation but an offer to resign which was open to acceptance or rejection by NSSA. Further, that he had withdrawn that offer before

NSSA purported to accept it. In addition, and in any event, NSSA's reply to his offer of resignation was not an acceptance of his resignation but a conditional offer to him, which in law is a counter offer, and which he, in turn, has rejected. Finally, he submits that, even if his resignation was formal and final resignation in the sense set out in the *Rustenburg* case, *supra*, NSSA has subsequently given its consent to the withdrawal of his notice of resignation.

NSSA disputes the existence and legal validity of the exceptions and distinctions to the *Rustenburg* case (*supra*) which Riva claims. It also disputes the factual basis on which Riva submits those distinctions apply to his case.

It is not necessary in this case to decide whether the principle set out in the *Rustenburg* case (*supra*) is too narrowly expressed to deal with all cases involving resignation and whether the factors mentioned by Riva in his submission may be taken into account in determining the true intention and relationship of the parties on resignation. This is a case in which the principle set out in the *Rustenburg* case (*supra*) applies.

Riva relies on the wording of the letter – 'I wish to give three months notice...' – to show that this was an offer and not a statement of intention. To express a wish, he says, is not to express an intention. It is merely an expression of desire. It does not make or break any legal obligation or relationship.

Riva's letter of resignation is not expressed as an offer but as a statement. Riva himself refers to it as 'my notice of intention to resign' in his letter to NSSA of 22nd February 2001. Furthermore, he invokes the right given to him in his contract to resign. He claims the benefits that he considers due to him in terms of his contract on resignation. Having expressed and communicated that intention, the principle set out in the *Rustenburg* case (*supra*) comes into effect.

Riva also relies on the subsequent correspondence between himself and NSSA to show that he intended his letter of resignation to be an offer and that NSSA interpreted it and treated it as such. That correspondence does not affect the issue. The letter of 22nd February from NSSA to Riva is expressed as being on 'a purely without prejudice basis'. As such it cannot form the basis for any legal claim by Riva. The letter of the 29th March 2001 does not purport to support his claim to a right of withdrawal from his letter of resignation. Riva relies heavily on three passages in that letter. These passages are, in sequence, 'you have not accepted the conditions on which your resignation was accepted', 'after which the board's offer shall be deemed to have been withdrawn' and 'In that event, we shall immediately serve on you the determination of the disciplinary committee on the charges of misconduct.' The letter as a whole, and the particular passages to which Riva refers, all relate to the without prejudice offer made in the letter of 22nd February and again do not affect the issue.

In addition to the remarks already made concerning the wording of the letters between the parties, there is a distinction to be drawn between the fact of the resignation itself and the terms on which Riva is to depart. Until the letter of 29th March, NSSA did not dispute Riva's right to terminate his services by way of resignation. The only points at issue between Riva and NSSA were when he was to depart and the terms on which he would go. Although the parties loosely use the terms 'offer', 'acceptance' and 'withdrawal', it is clear that, except for Riva's to NSSA dated 22 February, where he talks about withdrawing his resignation, what was being discussed was the terms of that resignation.

Accordingly Riva's letter of resignation could not be withdrawn without the consent of NSSA.

Riva submits, as an alternative argument, that NSSA has by correspondence and by conduct consented to the withdrawal of his notice of resignation. Again he relies, in particular, on NSSA's letter of 29th March. In that letter, so Riva says, NSSA 'agreed to view the resignation as withdrawn if the applicant had not communicated his position'. That interpretation of the letter of 29th March does not

accord with the actual wording of the letter. What was being withdrawn was the offer of the conditions which would flow from Riva's resignation..

On the findings already made in this judgment, the only way that Riva could withdraw his resignation was with the consent of NSSA. NSSA has not given that consent. Accordingly, the application is dismissed with costs.

Honey & Blanckenberg, applicant's legal practitioners
Sawyer & Mkushi, respondent's legal practitioners