

ZIMBABWE REPUBLIC POLICE BOARD OF TRUSTEES vs  
GABRIEL MANYANGADZE

SUPREME COURT OF ZIMBABWE  
CHIDYAUSIKU CJ, ZIYAMBI JA & GWAUNZA JA  
HARARE JANUARY 17 & JULY 21, 2005

*R.S. Tsivama*, for the appellant

*S. Mabuye*, for the respondent

CHIDYAUSIKU CJ: The respondent in this case was employed by the appellant as a Club Secretary. On or about 21 April 1997 the Superintendent Amenities ZRP Commandant Depot, Mamera, (hereinafter referred to as Mamera) applied to the Ministry of Labour to terminate the respondent's contract of employment.

On 23 April Mamera suspended the respondent from employment pending a determination by the Ministry of Labour, of the application. The reasons for the application and subsequent suspension were that when a spot check was carried out by the appellant's internal auditors the respondent failed to account for an amount of \$6

939,98 and yet he was the only person with access to the safe in which the money was kept. The respondent had also unlawfully lent an amount of \$3 500 of the appellant's money to a fellow employee.

A hearing of the matter was duly conducted before a Labour Relations Officer on 5 September 1997 who, on hearing evidence from the two auditors, granted the application for termination of the respondent's employment. The respondent noted an appeal to a Senior Labour Relations Officer. When the appeal was dismissed he noted another appeal to the Labour Court which allowed the appeal on the basis that the suspension was a nullity as it was done by Mamera and not the appellant as this implied that the respondent was a member of the Zimbabwe Republic Police which he was not.

In coming to this conclusion the learned President of the Labour Court reasoned as follows:-

“The Constitution does not provide for the removal from office of the Secretary.

Superintendent C E Mamera, on 23 April 1997, acting on behalf of Zimbabwe Republic Police Office of the Commandant Depot suspended the appellant who was the Secretary. In suspending the appellant, Superintendent C E Mamera did not purport to act on behalf of The Board of Trustees or as the Chairman or member of the Club Committee. He acted in his capacity as Superintendent Amenities.

The same Superintendent then proceeded to apply for termination of the appellant's contract of employment to the Labour Relations Officer in terms of Statutory Instrument 371/85. Again he acted as Superintendent Amenities. Permission to terminate the contract of employment was granted by the Labour Relations Officer and by the Senior Labour Relations Officer after the appellant had noted an appeal.

Thereafter the appellant appealed and argued on appeal that the Zimbabwe Republic Police acting through its Superintendent Amenities was not his employer. He was employed by the Police Club and it is the Board of Trustees who ought to have acted on behalf of the Club as is provided for by the Club's Constitution which provides that all actions on behalf of the Club are to be instituted and conducted by the Board.

It was argued on behalf of the respondent that the Constitution derives its existence from the Police standing orders and as such, it is these Police standing orders which state how the Constitution is supposed to be applied. The structures of the Zimbabwe Republic Police have a Superintendent Amenities he is the one who sits on the Board of Trustees for the Club. His actions are therefore valid and bind the appellant.

That argument is fundamentally flawed in that nowhere in the Club's Constitution is the Club made a part of the Zimbabwe Republic Police for purposes of administration. It is a separate body. It is governed in terms of its Constitution. The power to bring any action or suits on behalf of the Club are vested in the Club's Board of Trustees not one member of the Board acting in his capacity as an officer of the Regular Police Force with the approval of the Commissioner of Police.

The Constitution does not make the Club subject to the Zimbabwe Republic Police Standing Orders. The action ought to have been taken by the Board of Trustees. The suspension by anyone other than the Board was *ultra vires* the Constitution and so was the application for dismissal. The authority to terminate was therefore based on an illegal action and is therefore of no force or effect, it is a nullity.”

The appellant was dissatisfied with this determination and appeals to this

Court on grounds set out in the Notice of Appeal which provide as follows:-

- “1. The Labour Relations Tribunal erred at law in finding that the Superintendent C.E. Mamera (Superintendent Amenities) suspended the respondent acting on behalf of the Zimbabwe Republic Police, officer of the Commandant and not on behalf of the Zimbabwe Republic Police, Board of Trustees.
2. The Labour Relations Tribunal erred in finding that the Club's Constitution should make provision for the Club to be part of the Zimbabwe Republic Police for administration purposes.

3. The Labour Relations Tribunal erred at law in finding that the Superintendent Amenities acted as an officer of the Regular Force and not on behalf of the Zimbabwe Republic Police Board of Trustees.
4. The Labour Relations Tribunal erred at law in finding that the suspension was not done by the Zimbabwe Republic Police Board of Trustees.
5. The Labour Relations Tribunal erred in finding that the authority to terminate was based on an illegal action and therefore of no force or effect.
6. The Labour Relations Tribunal erred at law in not taking into account the fact that the respondent was guilty of the theft charges against him.”

The letter seeking permission to dismiss the respondent from employment reads, in part, as follows:-

“Application for order/determination to terminate the contract of employment of Mr Gabriel Manyangadze

The above mentioned is employed by the Z.R. Police Consolidated Fund as Secretary Police Club.”

Thereafter he sets out the grounds for dismissal and concludes by stating:-

“It is in view of these serious allegations that I am hereby applying for an order or determination in terms of Section 3(d) of S.I. 371 of 1985 to terminate the contract of employment.”

The letter is then signed by Mamera, Superintendent Amenities.

The suspension order served on the respondent provided, in part, as follows:-

“Suspension Order

I, Superintendent D.E. Mamera certify that I have this 23<sup>rd</sup> day of April 1997 served a Memorandum of Suspension on Mr Gabriel Manyangadze in the presence of the Acting Secretary Z.R.Police Club, Assistant Inspector Mutasa.

1. You are hereby suspended without pay from performing duties as Secretary Z.R.Police Club or in any capacity whatsoever with effect from today the 23<sup>rd</sup> April 1997.
2. ...
3. ...
4. This order shall stand until a determination for or against your dismissal is given by the labour relations officer.

Officer serving order ..... (signed)  
C.E. Mamera Superintendent Amenities”

It is quite clear from the above documents that Mamera was not acting on his own behalf. He was acting on behalf of the employer of the respondent. The respondent’s employer was the principal and he was the agent. It may well be that he was mistaken as to who he thought the respondent’s employer was and may not have had specific authority from the principal. The respondent’s employer, the Board of Trustees subsequently became aware of what Mamera had done and ratified it. Mamera, in his submission to the Court, explained that the papers relating to the dismissal of the respondent were circulated to the Board of Trustees at the Police General Headquarters for them to sanction the suspension or refuse to sanction it. If the Board of Trustees had disapproved of Mamera’s action they would have refused to sanction his action. It is clear from the record that the Board of Trustees ratified the action taken against the respondent. The Board of Trustees ratified the action taken by Mamera by conduct and

directly in the form of the letter, Annexure “A”. In that letter the Secretary to the Board of Trustees sought to suspend the respondent on identical grounds which is a clear endorsement of Mamera’s action.

The learned President of the Labour Court correctly observed that the Constitution of the Club does not provide a procedure for the removal from office of the respondent. If such a procedure were provided in the Constitution and Mamera had failed to follow that procedure then his action would have been a nullity for failure to comply with the procedure laid down in the Constitution. Indeed if that were the case I would have no difficulty in concurring with the court *a quo* that Mamera’s actions were a nullity for want of compliance with the Constitution of the Club.

The issue in this case is one of agency. What needs to be determined is whether Mamera was authorised by the respondent’s employer to apply for authority to dismiss the respondent. Whether or not he had prior authority is debatable. What is certainly beyond question is that the employer, the Board of Trustees, ratified his conduct. The principle that ratification of the agent’s action has retrospective effect is so trite that it requires no citation of authority.

The learned President of the Labour Court clearly misdirected herself in holding that Mamera’s application for dismissal and suspension of the respondent was illegal and, therefore, a nullity. Even if the application for dismissal and suspension did not have the prior authority of the respondent’s employer that would not render it illegal.

It was simply voidable at the instance of the employer. In a case where the employer subsequently ratifies the application for dismissal and suspension, as is the case here, such ratification retrospectively validates both the application for dismissal and the suspension. The fact that Mamera was confused or mistaken as to who was the correct employer of the respondent does not alter the fact that he was acting for a principal or purported principal.

In the result the appeal is allowed, the order of the Labour Court is set aside and the determination of the Senior Labour Relations Officer is reinstated.

For the avoidance of doubt the appellant's dismissal of the respondent is confirmed.

ZIYAMBI JA: I agree.

GWAUNZA JA: I agree.

*Sawyer & Mkushi*, appellant's legal practitioners

*Mabuye & Company*, respondent's legal practitioners