

DISTRIBUTABLE (48)

Judgment No. SC. 57/05  
Civil Appeal No. 305/04

FIRST BANKING CORPORATION LIMITED vs  
BALTHAZAR ZINDOGA MARIMO

SUPREME COURT OF ZIMBABWE  
SANDURA JA, ZIYAMBI JA & GWAUNZA JA  
HARARE, MARCH 21 & OCTOBER 24, 2005

*S V Hwacha*, for the appellant

The respondent in person

SANDURA JA: This is an appeal against a judgment of the Labour Court in terms of which that court quantified the amount of damages payable by the appellant (“the Bank”) to the respondent (“Marimo”), in lieu of reinstatement.

The relevant factual background may be tabulated as follows –

1. On 1 May 1997 Marimo joined the Bank as the manager of the retail banking division. He had previously worked for Barclays Bank for fifteen years and for the Commercial Bank of Zimbabwe for two years.
2. On 20 July 2001 the Bank, acting in terms of s 3(1)(a) of the Labour Relations (General Conditions of Employment) (Termination of Employment) Regulations, 1985 (published in Statutory Instrument 371 of 1985), suspended Marimo without pay and other benefits

because it believed that he had committed an act of misconduct. On the same day, the Bank applied to a labour relations officer for the authority to terminate Marimo's contract of employment.

3. On 30 January 2002 the labour relations officer made the following determination:

“The officer determines that Mr Marimo must be reinstated without any loss of pay and benefits, and must be paid thirty-six months' wages as (an) alternative to reinstate(ment) on top of the back-pay in terms of case no. SC 19/2001.”

4. On 10 April 2002, Marimo submitted to the labour relations officer a document in which he had quantified his back-pay and benefits as being \$4 048 933.29. In addition, he had quantified his damages in lieu of reinstatement as being \$20 438 843.46, which sum represented his salary and benefits for thirty-six months. In the circumstances, the document indicated that the total sum being claimed by Marimo from the Bank was \$24 487 776.75.
5. On 29 April 2002, after Marimo had registered the labour relations officer's determination with the provincial magistrate's court, the clerk of that court wrote to the Bank as follows:

“You are being advised that the above determination order has been registered with us in terms of section 96(2) of (the) Labour Relations Act, *Chapter 28:01*.

Would you, therefore, arrange for the payment of the said sum of \$24 487 776.75 within ten days of the date of this notice, failing which a warrant of execution may be issued against your property for the recovery of same.”

6. On 23 May 2002, when the sum claimed from the Bank by Marimo had not been paid within the time stipulated by the clerk of the provincial magistrate's court, a warrant of execution was issued on behalf of Marimo, and two motor vehicles belonging to the Bank were attached and removed from the Bank's premises by the messenger of court.
  
7. On 12 July 2002 the Bank filed a notice of appeal in the Labour Relations Tribunal ("the Tribunal"), now the Labour Court, seeking an order setting aside the determination made by the labour relations officer on 30 January 2002. No cross-appeal was filed by Marimo challenging the determination made by the labour relations officer.

On the same day, i.e. 12 July 2002, the Bank filed an urgent Chamber application in the Tribunal seeking an order staying the execution of the labour relations officer's determination and releasing the Bank's motor vehicles, pending the determination of the appeal. An order to that effect was issued by the Tribunal on 15 July 2002.

8. On 4 December 2002 the Tribunal dismissed the Bank's appeal with costs. The Tribunal's order reads as follows:

"In the result it is ordered:

1. That the appeal against the labour relations officer's determination be and is hereby dismissed with costs.
  
2. That the appellant (the Bank) is hereby ordered to reinstate the respondent (Marimo) with no loss of salary and benefits with effect from the date of suspension.

3. That in the event that reinstatement is no longer an option, the appellant be and is hereby ordered to pay the respondent damages in lieu of reinstatement, the amount of which the parties may agree upon, failure of (failing?) which either party may approach the Tribunal for quantification.”

In issuing this order the Tribunal overlooked the fact that the basis on which the damages in lieu of reinstatement were to be calculated had already been determined by the labour relations officer and that, as the Bank’s appeal had been dismissed, the determination by the labour relations officer remained intact.

9. On 21 October 2003 Marimo, relying upon the Tribunal’s order issued on 4 December 2002, approached the Labour Court for a fresh quantification of his damages. On that day he filed written submissions claiming much more than he had claimed before the labour relations officer as damages in lieu of reinstatement. He claimed many more benefits than he had claimed in the document that he had submitted to the labour relations officer on 10 April 2002. In addition, he claimed that the Bank was obliged to pay him his salary and benefits until he reached the retirement age of sixty-five years. He was then fifty years old.
10. On 15 June 2004 the parties appeared before the Labour Court and the Bank filed its written submissions. In those submissions, the Bank indicated that it was prepared to pay Marimo back-pay and benefits in the sum of \$4 048 933.29, as quantified by Marimo in the document

submitted by him to the labour relations officer on 10 April 2002. In addition, the Bank indicated that it was prepared to pay six months' salary and benefits amounting to \$3 406 473.90, as damages in lieu of reinstatement. After hearing the parties, the President of the Labour Court reserved her judgment.

11. On 23 August 2004 the judgment was handed down. In the result, Marimo was granted almost everything he had claimed. That included back-pay in the sum of \$38 234 499.00. Aggrieved by that result, the Bank appealed to this Court, alleging serious misdirections on the part of the President of the Labour Court.

In its notice of appeal the Bank prayed for an order setting aside the Labour Court's order, and remitting the matter to the Labour Court for a fresh quantification of the damages payable to Marimo by a different President of that court. However, bearing in mind the fact that the matter has dragged on for about four years, I do not think that remitting it to the Labour Court would be the best thing to do in the circumstances. In any event, I believe that the matter may be put to rest at this stage on the basis of the evidence on the record.

Although fifteen grounds of appeal were set out in the notice of appeal, I believe that the appeal may be disposed of on the basis of one of those grounds. That ground is that the Labour Court erred and misdirected itself in holding that the quantification of damages was to be based on the order issued by the Tribunal on 4 December 2002 and not on the basis of the determination made by the labour relations officer on 30 January 2002. In my view, this is a valid argument.

As already stated, on 30 January 2002 the labour relations officer ordered that Marimo be reinstated without any loss of pay and benefits and be paid thirty-six months' wages as an alternative to reinstatement. Marimo was also to receive his back-pay.

There can be no doubt that Marimo accepted the labour relations officer's determination and was quite happy with it. I say so for a number of reasons.

Firstly, on 10 April 2002 Marimo submitted to the labour relations officer a document setting out the quantum of his back-pay and benefits, which was \$4 048 933.29, and the quantum of the damages to be paid in lieu of reinstatement, which was \$20 438 843.46. The sum of \$20 438 843.46 represented Marimo's salary and benefits for thirty-six months, the period determined by the labour relations officer. The total sum claimed by Marimo was, therefore, \$24 487 776.75.

Secondly, after submitting to the labour relations officer the document setting out the quantum of his damages, Marimo registered the labour relations officer's determination with the provincial magistrate's court in terms of s 96(2) of the Labour Relations Act [*Chapter 28:01*]. The effect of that registration was that, for purposes of enforcement, the determination had the effect of a civil judgment of the magistrate's court.

Thirdly, after the registration of the determination, the clerk of the provincial magistrate's court wrote to the Bank calling upon it to pay the sum of

\$24 487 776.75 within ten days, and indicating that if it was not paid within that period a warrant of execution would be issued in order to attach the Bank's property and sell it. That letter was obviously written with Marimo's approval.

Fourthly, when the sum claimed was not paid within the stipulated period Marimo caused a warrant of execution to be issued by the magistrate's court, and two motor vehicles belonging to the Bank were attached and removed from the Bank's premises by the messenger of court on 23 May 2002. The vehicles were only released after the Bank was granted an order for their release by the Tribunal.

Finally, when the Bank noted an appeal to the Tribunal against the determination by the labour relations officer Marimo did not note a cross-appeal challenging the determination.

When the Bank's appeal was subsequently heard by the Tribunal it was dismissed with costs. That meant that the determination by the labour relations officer remained intact and that the total sum payable by the Bank to Marimo was \$24 487 776.75. There was, therefore, no valid basis on which Marimo subsequently approached the Labour Court seeking a fresh quantification of damages, and his application should not have been entertained.

As far as the Bank is concerned, it would appear from the Labour Court's judgment that when the quantum of damages was debated in that court the Bank did not seriously challenge the quantum arrived at by the labour relations officer. The same approach was adopted by the Bank in this Court.

Finally, with regard to costs it seems to me that the most appropriate order is that each party should pay its own costs.

In the circumstances, the following order is made –

1. The appeal is allowed, with each party paying its own costs.
2. The order granted by the Labour Court is set aside, and the following is substituted –

“(a) The application for a fresh quantification of damages is dismissed with no order as to costs.

(b) First Banking Corporation Limited shall pay to Marimo the sum of \$24 487 776.75, together with interest at the prescribed rate from 30 January 2002 to the date of payment in full.”

ZIYAMBI JA: I agree.

GWAUNZA JA: I agree.