

AARON MWENJE v INTERMARKET BUILDING SOCIETY

SUPREME COURT OF ZIMBABWE
CHIDYAUŠIKU CJ, SANDURA JA & ZIYAMBI JA
HARARE, JULY 21, 2005

The appellant in person

T Biti, for the respondent

SANDURA JA: This is an appeal against a judgment of the Labour Court in terms of which the appellant's application for the quantification of the damages allegedly payable to him in lieu of reinstatement was dismissed. After hearing the submissions made by the parties, this Court dismissed the appeal with costs, and indicated that the reasons for that decision would be given in due course. I now set them out.

The background facts in the matter may be tabulated conveniently as follows –

1. At the relevant time the appellant (“Mwenje”) was an employee of the respondent (“Intermarket”). On 5 January 2000 Mwenje was found guilty of gross negligence in the performance of his duties and was dismissed.

2. On 17 January 2000 Mwenje appealed to the chief executive officer against the termination of his employment, but that appeal was dismissed on 28 January 2000. He then appealed to the Labour Relations Tribunal (“the Tribunal”) (now the Labour Court) and was successful. The Tribunal ordered that Mwenje be reinstated without loss of salary and benefits or, alternatively, that he be paid damages in lieu of reinstatement. A subsequent appeal to this Court against that order by Intermarket was dismissed on 12 December 2003.

3. On 28 January 2004 the legal practitioner acting for Intermarket wrote to the legal practitioner who was then acting for Mwenje as follows:

“... Our client is not reinstating yours and is exercising its option to pay damages. By copy of this letter we so advise your client.

Please may you kindly have your client’s details with regard to the damages he suffered, if any.”

4. Thereafter, Mwenje was paid the sum of \$6 964 433.38, which was back-pay for the period extending from 4 January 2000 to 24 July 2002, the date when his reinstatement was ordered by the Tribunal.

5. On 12 July 2004, after negotiations between the parties had been held, the legal practitioner acting for Intermarket wrote to Mwenje as follows:

“Further to your letter of the 7th July 2004, I confirm that I forwarded your letter under discussion to Intermarket who have given us authority to offer to you twelve months’ salary as damages, which comes to the sum of \$6 672 097.20. This is the final offer that they are making to you and should you decline this, then we will push for a date in the Labour Court.

No more further correspondence shall be entertained in this matter.”

6. On 15 July 2004 Mwenje wrote to the legal practitioner acting for Intermarket as follows:

“Further to our conversation and offer of 12 months’ salary. I have agreed to your offer.

Since you are aware of the problems that I am facing: (1)
School fees
(2) Health

I was hoping you release the money as quickly as possible so that I can attend to these problems.”

7. On 21 July 2004 Mwenje was paid the sum of \$3 691 592.65 by cheque. He then signed the following acknowledgement:

“I, AARON MWENJE, do hereby acknowledge that I have received a cheque in the sum of \$3 691 592.65 ... from my former employer, Intermarket Building Society, representing twelve (12) months’ salary less deductions. I accept that this is in full and final settlement of any claims for damages I have as compensation in lieu of reinstatement.”

The acknowledgement was signed by Mwenje in the presence of two persons who signed the acknowledgment as witnesses.

8. Mwenje alleged that after receiving the cheque and signing the acknowledgement on 21 July 2004 he wrote the following on a blank sheet of paper:

“Comment

This cannot be said to be the full and final settlement of my claims for damages like you mentioned in the acknowledgement. We still have so many outstanding issues to settle. However, as you are aware from our previous discussions I need to pay school fees for my daughter doing Form Three. The six months' salary you are offering is to me a relief, and like what you suggested let's meet in court for further quantification on all outstanding issues."

Mwenje alleged that he left the above-mentioned document with the secretary of the legal practitioner acting for Intermarket, from whose office he had collected the cheque.

9. Subsequently, Mwenje filed an application in the Labour Court seeking a fresh quantification of damages in lieu of reinstatement. That application was dismissed by the Senior President of the Labour Court on 22 October 2004.

Aggrieved by that decision, Mwenje appealed to this Court.

In dismissing the application the Senior President said the following at pp 6 and 8 of the cyclostyled judgment:

"I have carefully looked at the applicant's letter of the 15th July 2004 and the way the acknowledgement was worded. The contents of the two documents leave me convinced that a final position was reached by the parties and that position was that the applicant would be paid twelve months' salary as damages for loss of employment. The acknowledgment was drawn up as a result of the applicant's own acceptance, in writing, of the respondent's offer. That acceptance, which was made in writing, was not conditional. ...

My finding, therefore, is that there was a binding agreement between the parties. Apart from telling the court that he was compelled by need to sign the acknowledgment, the appellant (applicant) openly admitted that he freely signed the document at Mr Biti's office. That act of signing the acknowledgment is consistent with his acceptance of the respondent's offer as clearly stated in his letter of the 15th July 2004. The Courts are enjoined to protect the sanctity of contracts. The appellant (applicant) cannot therefore be allowed to pull out of an agreement which he voluntarily entered (into)."

In reaching that conclusion the learned Senior President rejected Mwenje's allegation that when he collected the cheque from the legal practitioner's secretary he left with her a document in which he disputed that he had received the cheque in full and final settlement.

I am in complete agreement with the Senior President. In my view, this was a hopeless appeal that had no merit whatsoever. That is why this Court dismissed it with costs after hearing submissions by the parties.

CHIDYAUSIKU CJ: I agree.

ZIYAMBI JA: I agree.

Honey & Blanckenberg, respondent's legal practitioners