REPORTABLE ZLR (70)

Judgment No. SC 83/05
Civil Appeal No. 25/05

SAGITARIAN (PRIVATE) LIMITED t/a ABC AUCTIONS

v

THE WORKERS' COMMITTEE OF SAGITARIAN (PRIVATE) LIMITED

SUPREME COURT OF ZIMBABWE
SANDURA JA, CHEDA JA & GWAUNZA JA
HARARE, NOVEMBER 1, 2005 & FEBRUARY 6, 2006

E Mushore, for the appellant

J Mambara, for the respondent

GWAUNZA JA: The appellant noted an appeal to the Labour Court against an arbitral award made in favour of the respondent. Pending the determination of the appeal, the respondent sought interim relief in the form of an order for the enforcement of the arbitral award, in terms of the old s 97(4) of Labour Relations Act [*Chapter 28:01*]. The court *a quo* made an order for the partial payment of the award to the respondent.

The appellant was dissatisfied with the order and has now appealed to this Court.

The appellant gives three grounds of appeal, namely, that the Labour Court erred in holding:

(i) that it had jurisdiction to hear the application for interim relief;

(ii) that the balance of convenience favoured the granting of the interim relief sought by the respondent; and

(iii) that the appellant did not have good prospects of success on appeal.

In relation to the first ground of appeal the appellant contends, and is not seriously challenged by the respondents, that its appeal to the Labour Court had the effect of suspending the enforcement of the arbitral award. The respondent's application for interim relief pending the determination of the appeal to the Labour Court, is in effect evidence of its acceptance of this principle.

The real dispute between the parties concerns the interpretation of s 97(4) of the Labour Relations Act which, *albeit* now repealed, was then applicable to the case. It is pertinent to note that even though s 97 of the Act was entitled "Appeals to the Labour Court" it listed in its subsection (1) four specific instances in which an aggrieved person could appeal to the Labour Court under that section. Its subsection (2) outlined the powers of the Labour Court when considering an appeal filed in terms of subsection (1). Subsection 3 of s 97 specifically provided that an appeal filed in terms of subsection (1) would not have the effect of suspending the determination or decision appealed against.

Subsection 4 made no reference to subsection (1) and read as follows:

> (4) Pending the determination of an appeal the Labour Court may make such interim determination in the matter as the justice of the case requires.

The appellant's argument is that subsection (4) referred only to an appeal filed in terms of s 97. The arbitral award, the appellant contends, was made in terms of s 98 of the Act and therefore fell outside the ambit of subsection (4) of s 97.

The respondent is of a different view, it being its contention that subsection (4) of section 97 referred to all appeals filed with the Labour Court under the Act and not only those filed under its sub section(1). The President of the Labour Court was persuaded by the respondent's argument. Relying on a simple reading of the same subsection, the learned President expressed the view that had the Legislature intended subsection (4) of s 97 to apply restrictively, it would have specifically indicated so by referring to "an appeal in terms of subsection (1)." She gave another reason for her conclusion, as follows;

> "The provisions of s 2A (of the Act) give the purpose of the Act as the advancement of social justice and democracy in the workplace. It is thus inconceivable that the Labour Court could be given power to make interim determinations as the justice of the case requires in cases where appeals do not suspend decisions appealed against and not in any other case where the decisions appealed against are suspended by the noting of an appeal."

On the face of it, the reasoning of the court *a quo* points to an apparent legislative ambiguity in that care seems to have been taken to specifically restrict the operation of some of the subsections of s 97 to appeals outlined in its subsection (1), while no such care was taken with subsection (4). It was thus not unreasonable under such circumstances to conclude that subsection (4) was not meant to apply restrictively to appeals in terms of subsection (1) of s 97.

The matter, however does not fall to be determined solely on what the court *a quo* referred to as "the simple grammatical meaning" of the words employed in subsection (4). There is in my view merit in the appellant's contention that the character of the provision in question, that is a subsection as opposed to a section, raises the need to consider what are referred to as other 'non-linguistic aids'[1] inorder to ascertain the true intention of the Legislature.

The one aid that is more often referred to is the **context** in which the words to be interpreted, are used. The appellant, in my view correctly, contends thus in its heads of argument;

> "A subsection is part of a section. It is submitted that in interpreting a subsection the court must read same in the context, first of all, of the section. If the interpretation placed on the subsection is in contextual harmony with the rest of the section and does not offend against or contradict any other provisions of the statute it should be accorded that interpretation."

I am in this respect persuaded by the appellant's contention that restricting subsection (4) of s 97 to appeals made in terms of subsection (1) of the same section would have been in perfect harmony with the other sections of s 97 and would not have led to any absurdity.

Other authorities emphasise the same point, in different words. In *Thornton*'s "*Legislative Drafting*" 2nd edition at p 60, it is stated:

> "A section, of whatever length, must have a unity of purpose. It may consist of one sentence or more; but if it consists of more than one sentence, the general rule is that each should be placed in a separate numbered subsection. Separate subsections must all have some relevance to the central theme which characterises the section."

Applied to the facts of the case before us, it is evident that the central theme characterising s 97 of the Act were the appeals specified in subsection (1). Subsection (4), therefore, fell to be interpreted in such a way that it had relevance to this theme.

Many years earlier, in *Director of Education* (*Transvaal*) *v McCagie,* 1918 AD 616, INNES CJ appropriately put the same argument thus:

> "Where general words have a wide meaning, their interpretation must be affected by what precedes them; general words following upon and connected with specific words are more restricted in their operation than if they stood alone…….. They are coloured by their context and their meaning is cut down so as to comprehend only things of the same kind as those designated by specific words – unless there is something to show that a wider sense was intended." (my emphasis)

In *casu*, the words in subsection (4) of s 97 can appropriately be referred to as general words. Following upon the reasoning of INNES CJ, above, the words are and must be "coloured" by their context, such context being appeals in terms of subsection (1) of s 79.

I am satisfied this interpretation accords with the intention of the legislature and that such intention influenced the arrangement of the words in a subsection, rather than a "stand alone" section.

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[1] See below at page 7

Further authority for the proposition that words alone are not always decisive in ascertaining the intention of the Legislature is to be found in "*Principles of Legal Interpretation – Statutes, Contracts and Wills*" at p 178 where it is stated;

> "In South Africa, the courts generally follow the theory (referred to as the subjective or *will* theory) that behind every enactment there is a purpose or intention (*Regelsberger Pandekten* 143 sqq) and principles have evolved as to how to determine that intention. Account is taken, *inter alia*, of the meaning of the language, but it is not always decisive. Non-linguistic indications of meaning such as the context in which the language is used, the surrounding circumstances and the meaning at the date of the enactment, are considered as aids to interpretation. Indeed *Grotius* says:
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> > 'The non-linguistic indications of the purpose of the legislation may be so lucid that they should be preferred to the literal meaning of the language used.'" (my emphasis)

This *dictum*, too, can appropriately be applied to the circumstances of this case. There is little doubt that the purpose of s 97 was to set out the context in which certain specific appeals to the Labour Court were to be prosecuted. I am satisfied the legislature did not intend subsection (4) to be given an interpretation that embraced situations falling outside of this context. Appeals filed with the Labour Court in terms of s 98 of the Act, as was the one in *casu*, clearly fell outside the context set out in s 97. It follows that the Labour Court did not have the authority to hear an application for interim relief in terms of s 97(4), pending its determination of an appeal filed in section 98.

One other matter calls for comment. The learned President of the Labour Court found it inconceivable that the court could, in terms of the Act, be given power to make interim determinations where appeals did not suspend decisions

appealed against and not in any other case where decisions appealed against were suspended by the noting of an appeal.

This argument, in my view, flows from the presumption that the only interim determinations envisaged under subsection (4) of s 97 were those to do with enforcement of the order appealed against. That clearly cannot be the case. Appeals filed in terms of s 97 did not have the effect of suspending the determination appealed against. Considering, as I have found, that subsection (4) was restricted to appeals specified in s 97 (1), it can be assumed that the Legislature must have envisaged other types of interim relief "as the justice of the cases required", for it to have framed subsection (4) of s 97 in the way it did. I am not persuaded there was anything "inconceivable" about the powers given to the court under that provision.

All in all, I am satisfied there is merit in the appeal, which therefore succeeds.

The determination on the appellant's first ground of appeal makes it unnecessary for me to consider the other two grounds of appeal.

In the result, it is ordered as follows:

1. The appeal succeeds with costs.

2. The decision of the Labour Court is set aside and substituted with the following:

"The application be and is hereby dismissed."

SANDURA JA: I agree.

CHEDA JA: I agree.

Wintertons, appellant's legal practitioners

Kwenda & Associates, respondent's legal practitioners