

M DENHERE v CIMAS

SUPREME COURT OF ZIMBABWE
HARARE, FEBRUARY 8 & JULY 11, 2006

Applicant in person

P Magomo, for the respondent

Before MALABA JA, in Chambers in terms of r 31(7) of the Supreme Court Rules.

The applicant argued on the basis that he wanted to appeal against the orders of the labour court granted on 23 May 2003 and 13 July 2004. He did not appeal against the first order until it was executed by the employer in the exercise of the option not to re- instate him but pay damages in lieu of reinstatement. In terms of the first order the labour court quantified the damages to be paid to the applicant on 6 July 2004.

The applicant seems to think that he was unfairly treated by the labour court when it gave the employer the options to pay him damages in lieu of his reinstatement. That complaint has nothing to do with the merits of the order and is not a ground of appeal even if he would have appealed against it timeously. The

reason is that there is a law giving the labour court the power to grant an employer the option to pay an employee damages in lieu of reinstatement.

The applicant sought to suggest that the law in question is a bad law. But that cannot be a ground of appeal against an order made in term of the law the validity of which has not been successfully challenged in a court of law.

Similarly the order granted on 13 July 2004 was given in default of appearance by the applicant. He did not apply for rescission of the order. As such it is not an appealable order. In any case the applicant accepted the payment of his damages in lieu of reinstatement and used part of the money thereby waiving the right to challenge the correctness of the order in terms of which the payment was made.

The application for condonation of the late noting of appeal and for extension of time within which to note an appeal is dismissed with costs.