

REPORTABLE (21)

EUNICE MADONDO
vs
CONQUIP ZIMBABWE (PRIVATE) LIMITED

SUPREME COURT OF ZIMBABWE
MALABA DCJ, GWAUNZA JA & PATEL JA
HARARE, MAY 18, 2015

Adv. T Zhuwarara, for the Appellant

D.M Foroma, for the respondent

GWAUNZA JA: This is an appeal against the whole judgment of the Labour Court of Zimbabwe handed down by CHIDZIVA J on 28 June 2013 at Harare. The appellant prays that the appeal succeeds and that the respondent be ordered to pay the costs of suit on a higher scale. After hearing counsel for both parties we dismissed the appeal with costs on a higher scale and stated that reasons would follow. These are they:

The facts and background to this matter are as follows:

The Appellant was employed by the respondent as a Finance Director from May 2007 up to February 2012. She was entitled to a number of benefits, one of them being payment of school fees for both of her children. In February 2012 the appellant had a dispute with the respondent's Managing Director and General Manager. A meeting that was held

between the appellant and the General Manager resulted in her being sent home on suspension.

On 13 February 2012, the appellant completed a document called “Pension Withdrawal Claim Form” in terms of which she indicated in writing that the reason for the withdrawal of her pension benefits was that she was “leaving Conquip.” The date of such withdrawal was indicated as 13 February 2012. The withdrawal form was presented to the respondent’s General Manager for the latter to complete the section required to be completed by a designated company official. The General Manager duly completed and signed the form which was then presented to Marsh Employee Benefits Zimbabwe (Pvt) Ltd. The pension company in turn processed and released the pension contributions to the Appellant.

On 16 February 2012 the appellant was given a letter inviting her to attend a disciplinary hearing on the 24 February 2012 at the respondent’s premises. She then approached her legal practitioner who raised a number of procedural issues which in his view would render the hearing unprocedural. The hearing was subsequently aborted upon the realization that the appellant had indicated on the pension claim form that she was leaving Conquip, therefore, resigning from her job.

The appellant disputed that she had resigned from her employment, and stated that she had simply withdrawn herself from membership of the pension scheme because she needed money to pay school fees for her child. She contended that the Marsh Employee Benefits Scheme was an employee’s scheme (not the respondent’s) and was meant to benefit the employee. As such, she further argued, termination of membership with the Pension Scheme did not amount to unilateral termination of her employment.

The dispute was referred for conciliation and the outcome was the issuance of a certificate of no settlement. This led to the matter being referred for arbitration. The arbitrator ruled that the appellant was not unfairly dismissed but had resigned from her employment. The appellant was disgruntled at this decision and appealed to the Labour Court on the main ground that:

“the Arbitrator erred at law by making a finding that the Appellant had resigned from employment when the document that was used as evidence thereof is not a resignation letter nor is it addressed to the respondent.”

The Labour Court upheld the arbitrator’s decision and determined that the appellant was not unfairly dismissed. Rather, that she unilaterally terminated her employment contract through her resignation as was indicated in the Pension Withdrawal form that she had signed. The appellant was not satisfied by the decision of the court *a quo*, hence the present appeal.

The issue which falls for determination is whether or not the court *a quo* misdirected itself by concluding that the appellant resigned from her employment with the respondent.

The appellant submitted that the court *a quo* misdirected itself by concluding that by signing the Pension Withdrawal form she had resigned from her employment. She boldly asserts that the statement ‘leaving Conquip’ that she gave as a reason for seeking to withdraw her pension contributions did not mean that she was resigning from her employment.

The respondent on the other hand contends that the appellant terminated her employment before the conclusion of the disciplinary hearing that had been called by it. Further, that the true meaning of the words “leaving Conquip” was that she was resigning from her employment, and not anything else.

It is in this respect pertinent to first define what a resignation is and then, what form it should take. The Oxford Advanced Learner’s Dictionary defines resignation as:

“an act of giving up one’s job or position”

The form a notice of resignation should take is not ‘cast in stone’ as it were. One can resign verbally, by a letter or through whatever way may be preferred as long as the communication is transmitted to the correct recipient. *In casu* the Pension Withdrawal form which was filled by the appellant contained a section which required one to state the reason why he or she wished to withdraw the pension contributions or why they no longer wanted to be part of the pension scheme. This is where the appellant stated her reason as “leaving Conquip.” Taking the Oxford Dictionary definition of a resignation I am satisfied that this reason denoted an ‘act’ by the appellant, of giving up her job.

When the form which alluded to this act of resignation was then presented to the General Manager of Conquip for her signature as a prerequisite to the pension withdrawal, there can in my view be no doubt that she was by this token, made aware that the appellant was tendering her resignation. The appellant was both the Financial Director of the respondent and Principal Director of the Pension Fund in question. She must therefore have fully appreciated both the requirements for and consequences of, claiming her pension contributions. Thus from the moment the General Manager affixed her signature to the form,

it could no longer be argued that the appellant's resignation was not communicated to the employer, and acknowledged.

In the case of *Jakazi & Anor v The Anglican Church of the Province of Central Africa* SC 10/13 this Court stated that:

“The law is clear. Resignation is a unilateral act which takes effect upon being communicated.”

On the basis of this authority, I find that the appellant's use of the statement 'leaving Conquip' implied a unilateral act of resignation, and that it took effect the moment it was communicated to and acknowledged by, the respondent's General manager.

The point was raised in argument as to whether or not the General Manager was a responsible authority for purposes of receiving the appellant's resignation. I take the view that the General Manager was indeed such an authority and that she could, and did, properly accept the resignation on behalf of the employer. The Pension Withdrawal claim form signed by the appellant had a section requiring the affixing thereto of a company official's signature. This was the part that Christine Moorcroft signed as the General Manager of the company. I am satisfied that she was a proper authority to receive the notice of resignation.

I have no doubt in my mind that in addition to being a pension claim form directed to the pension company concerned, the same document carried a clear and unequivocal message or notice directed to the respondent, that the appellant was tendering her resignation. To suggest that it was not such a notice by virtue of its composite purpose

would, in my view, be to unnecessarily emphasize form over substance. As indicated earlier, there is no set format or method of communicating the act of resignation.

It is in my view noteworthy that Marsh Employee Benefits Zimbabwe also understood the appellant to be resigning from her employment with the respondent, and reacted accordingly. A letter which was written on its behalf to Conquip, and dated 22 February 2012, referenced the subject matter thereof as follows:

“Conquip Pension Fund
Resignation: Makarutse Eunice”

There is no dispute that the letter referred to the appellant.

In that letter, Marsh Employee Benefits Zimbabwe advised Conquip that they had transferred the sum of US\$7 976.93 into the appellant’s Standard Chartered Bank Account because she had resigned from the company. The letter called upon the respondent to similarly release the part of the appellant’s pension contributions that it, as her employer, had contributed on her behalf. There apparently were only three grounds upon which the Marsh Employee Benefits Scheme could release pension funds and these were death of the employee, his or her retirement or resignation from employment. It is not in dispute that the appellant was neither dead nor was she retiring. Therefore, the only way she could have withdrawn her pension benefits was through her resignation. Because payment of pension subscriptions and the beneficiary’s continued employment with the relevant employer are inextricably linked, the pension withdrawal accorded fully with the statement that she was ‘leaving Conquip’. A person who leaves his or her employment cannot expect that his or her employment-linked pension subscriptions would continue to be paid by their former employer.

By asserting in view of all this that the real reason she wished to withdraw her pension contributions was the need to raise school fees for her child, the appellant is effectively suggesting that the respondent should have read into the words ‘leaving Conquip’ a meaning completely different from what the words actually denoted. Further, that the respondent should have authorized the release of pension contributions that in reality would have been claimed under false pretenses. I find such suggestion to be both fanciful and totally devoid of any logical basis.

It appears to me that the conduct of the appellant in this respect smacks of a lack of integrity and is not what one may expect from a person holding the type of senior position that she held with the respondent.

Thus when all is told, I find that the appellant properly, or at the very least substantially, notified her employer through the Pension Withdrawal form that she was leaving, therefore resigning from, her employment with Conquip. Further, that the application itself, for pension contributions, served to buttress the notice of resignation, and therefore put the matter beyond any doubt.

In the light of this, I find that the appeal has no merit and ought to be dismissed.

COSTS

Mr *Foroma* for the respondent claimed costs on the legal practitioner and client scale, on the basis that the appeal is entirely without merit. The court was satisfied, on this basis and the clearly demonstrated dishonesty on the part of the appellant, that there was

merit in Mr *Foroma's* submissions. The appellant must have known that the appeal had no merit but nevertheless persisted with it all the way to this Court. In the process she put the respondent to the unnecessary expense of defending the litigation.

It was for these reasons that we dismissed the appeal with costs on the legal practitioner and client scale.

MALABA DCJ: I agree.

PATEL JA: I agree.

J Mambara & Partners, appellant's legal practitioners

Sawyer & Mkushi, respondent's legal practitioners