

Judgment No. SC 64/04
Civil Appeal No. 111/02

Shadreck Hlahla V O.K. Zimbabwe

SUPREME COURT OF ZIMBABWE
SANDURA JA, ZIYAMBI JA & GWAUNZA JA
HARARE, JUNE 7 & SEPTEMBER 6, 2004

The appellant in person

M Gwaunza, for the respondent

ZIYAMBI JA: This is an appeal from the Labour Relations Tribunal ("the Tribunal"), now the Labour Court.

The appellant was dismissed from his employment with the respondent after a hearing conducted in terms of the respondent's Code of Conduct. It was alleged that the appellant, who was at the time a till operator assisting in the cash office, received a bag containing money which had already been counted and verified correct by the appellant's branch manager, one Mr Chikaonda. The appellant opened the bag and, according to his evidence, found the money therein contained to be short by \$5 000. Without consulting management or the persons who had counted the money, the appellant altered the figures on the cash count to match the amount of money which the appellant alleged he had. He then adjusted the sundry debtors by increasing the figure from \$1 000 to \$6 000. The respondent was prejudiced in the sum of \$5 000, which was not recovered.

The appellant was found guilty of theft by the disciplinary committee of the respondent and, needless to say, all appeals to the domestic tribunals in terms

of the Code of Conduct failed. Dissatisfied, the appellant noted an appeal to the Tribunal.

The Tribunal upheld the determination of the appeals committee of the respondent and, in dismissing the appeal, said:

"Had the appellant found himself with less money than that stated in the cash count, it was his duty to verify with the two persons who had signed the cash count and physically counted the money. He could even have raised it with the Manager.

His failure to query and his decision to alter are so unreasonable an action for a person working in a cash office, that it can only be explained on the basis of someone who had actually stolen the money."

The grounds of appeal, four in number, are as follows:

- "1. I being a trainee I work under instructions from the supervisor who is in turn answerable to the manager so (there) was no way in which I could go to the manager.
2. As soon as I noticed that something was not going well, I reported to the manager who in turn made the auditor to come for an audit.
3. In the judgment the Honourable Hove states that the bag was locked, which is wrong.
4. The Honourable Hove did not take into account that I counted the money in the presence of my supervisor in his office not in the manager's office."

In terms of s 92(2) of the Labour Relations Act [*Chapter 28:01*] ("the Act"), appeals from the Tribunal lay to this Court only on a point of law. Section 92(2) has now been repealed by the Labour Relations Amendment Act, No 17 of 2002, but the effect of the new s 92D of the Act is the same. Appeals now lie on a question of law to the Supreme Court against any decision of the Labour Court.

What constitutes a question of law was discussed by this Court in *Muzuva v United Bottlers (Pvt) Ltd* 1994 (1) ZLR 217 (S) at 220 D-G:

"... the term 'question of law' is used in three distinct though related senses. First, it means 'a question which the law itself has authoritatively answered to the exclusion of the right of the court to answer the question as it thinks fit in accordance with what is considered to be the truth and justice of the matter'. Second, it means 'a question as to what the law is. Thus, an appeal on a question of law means an appeal in which the question for argument and determination is what the true rule of law is on a certain matter'. And third, any question which is within the province of the judge instead of the jury is called a question of law. This division of judicial function arises in this country in a criminal trial presided over by a judge and assessors.

I respectfully adopt this classification, although the third sense is of no relevance to a matter such as this."

The appellant, who appeared in person, could not point us to any point of law raised in the Notice of Appeal which would endow us with jurisdiction to entertain this appeal.

None of the grounds of appeal stated above raise a question of law and, in our view, no question of law arises from the determination of the appeal by the Tribunal. We accordingly have no jurisdiction to entertain this appeal and it is therefore struck off the roll with costs.

SANDURA JA: I agree.

GWAUNZA JA: I agree.

Wintertons, respondent's legal practitioners