

DISTRIBUTABLE (128)  
Judgment No. SC. 141/04  
Civil Appeal No. 90/02

**ZIMBABWE CONGRESS OF TRADE UNIONS  
V IGNATIUS MAKONESE**

SUPREME COURT OF ZIMBABWE  
CHIDYAUSSIKU CJ, CHEDA JA & MALABA JA  
HARARE, MAY 4, 2004 & JUNE 16, 2005

*T Biti*, for the appellant

*T Garabga*, for the respondent

CHEDA JA: The respondent was employed by the appellant as a director of organisations. On 1 March 1995 the appellant applied to a labour relations officer for permission to dismiss the respondent from employment. The appellant had no Code of Conduct and, as such, the request to dismiss the respondent had to be in terms of Statutory Instrument No. 371/85 before it was amended.

The authority to dismiss the respondent was sought after several disciplinary hearings, at which the conduct of the respondent had been discussed.

The letter to the labour relations officer, in which permission to dismiss the respondent was sought, stated as follows:

"We wish to seek permission to dismiss Mr I Makonese, Head of Organising Department, in terms of SI 371(a) H.

1. We will submit evidence that Mr Makonese refused to drive the assigned organising vehicle because it was labelled with the ZCTU logo, thereby undermining and compromising the organising programme.

2. We will further submit that Mr Makonese is incompetent and inefficient in the performance of his duties by not submitting 1995 Department Work Plan (SI 371 H), the ZCTU programmes like May Day Preparation, Labour Forums and Regional Conferences have been severely compromised."

Following the above request, a hearing was convened at the Harare Regional Offices of the Labour Relations Department of the Ministry of Labour on 4 May 1995, at which the respondent was present. The summary of the hearing officer is to the effect that he wondered why the respondent did not want to be identified with the organisation that represented the interest of the workers and said that if he did not want to be so associated, he was not fit to be part of that organisation. He noted that the respondent refused to take lawful instructions from his employer. He granted permission to dismiss him. The labour relations officer found that the respondent had refused to drive for personal reasons a Zimbabwe Congress of Trade Unions ("ZCTU") vehicle marked with the ZCTU logo, then parked the vehicle at a hotel and surrendered the keys to the Secretary General.

It is noted from the numerous hearings held with the respondent that he had not denied that he refused to drive ZCTU vehicles, but had instead said that the Secretary General had excused him so that he could attend a "*bhira*" for his son who was going overseas. The suggestion that he declined to drive for the sake of his life seems to be an afterthought.

At the hearing before the Labour Relations Tribunal ("the Tribunal"), the respondent said:

"If he had given me instructions, I could have altered my visit to the rural area because I wanted to take my groceries to go and drop my groceries and bring back the car unless they wanted me to attend the workshop, but he said 'Okay that are going home and do your *bhira* laughing me off' (*sic*)."

This is in direct contrast to the submission that he declined to drive as his life was at risk.

With regard to his fear to drive the vehicle, the respondent was asked by his counsel the following question:

“After the vehicle had been labelled did you continue to use this vehicle?”.

His reply was:

Whenever I was given a duty I could use the motor vehicle during the day.”

Again this shows that the refusal to drive for the sake of his safety, as earlier stated, was not true.

A suggestion has been made as to whether the order to drive the vehicle was lawful or not. Since the respondent denied that he refused to carry out the instruction, the lawfulness or unlawfulness of the order is irrelevant and cannot be available to him as a defence.

However, on the other hand, if one were to consider that, can it be said an order is unlawful when –

- (a) it is given by one’s employer;
- (b) it is capable of being carried out by the employee;
- (c) it is for the advancement of the employer’s business;
- (d) it is closely related to the duties of the employee; and
- (e) it is not a wrongful act?

In this case, the respondent was responsible for organising conferences and seminars and the driving concerned was to take people to one such conference.

It was not necessary for the Tribunal to refer to the respondent's duties as not being a driver. His duties involved organising conferences and seminars. The vehicle was issued to him for that purpose, and the instruction to drive was for the purpose of taking officials to a conference. I do not agree that this was an instruction to carry out a duty that was unrelated to the nature of his employment.

I find that there was nothing unlawful about the order. It was lawful. He refused to obey it. He gave false and different excuses.

Once the labour relations officer made a finding that the respondent refused to carry out the order, he was entitled to allow the dismissal of the respondent.

The respondent was aware of the allegation against him. He gave conflicting excuses. Having alleged that he was excused, he turned around and said he refused because he feared for his life. At some stage he said if he had been instructed to drive, he would have taken his groceries with him and returned.

These different stories would have made the labour relations officer find, as I do, that the respondent was not being truthful. The conclusion that he had refused to carry out the order to drive people to a conference cannot be faulted. The order was to advance the business of his employer. Refusal to

carry it out would have frustrated arrangements of the conference if the Secretary General had not finally driven the people to the conference himself.

The respondent has not shown that there was any real danger to his life, as he admitted that he used to drive the vehicle.

It is clear that there was a wilful and deliberate refusal to carry out the order given by the Secretary General. The suggestion that the respondent refused for his own safety does not excuse him from disobeying a lawful order or instruction. See *Matereke v C T Bowring & Associates (Pvt) Ltd* SC-80-87.

It was not necessary for the appellant to show that its programme was compromised. The Secretary General saved that situation by driving the vehicle himself.

The suggestion that the respondent had not disobeyed a lawful order entitled this Court to deal with the appeal and the question of law as to whether the order was lawful or not.

I am therefore of the view that the refusal to obey the order by the respondent was sufficiently proved.

The appeal is allowed with costs. The order of the Tribunal is therefore set aside and the decision of the labour relations officer is reinstated.

CHIDAYUSIKU CJ: I agree.

MALABA JA: I agree.

*Honey & Blanckenberg*, appellant's legal practitioners

*Chingore & Garabga*, respondent's legal practitioners