



the appeal timeously was that he did not know that he had a right to appeal. He also said that he did not know the procedure to be followed in noting the appeal to the Labour Court. He sought to note the appeal at the time he did because of advice from friends.

On the prospects of success, the appellant had argued before the Labour Court that there were irregularities in the proceedings before the disciplinary committee, in that the regional manager of the respondent sat as a member of the committee. He also complained that he was not given an opportunity to call witnesses to say that he had not stolen the beer.

The learned President of the Labour Court held that the explanation for the inordinate delay in noting the appeal was unacceptable. The appellant had been represented by a legal practitioner at the hearing before the chief executive officer. The legal practitioner would have advised him of what to do and when, had he expressed an intention to appeal against the decision dismissing him from employment. The length of the period he took before he sought to note an appeal to the Labour Court and the fact that he was jolted into action by the advice of friends suggest that he did not have the intention of appealing against the decision of the chief executive officer.

It is also clear that the appellant had used the procedure under the Code of Conduct to appeal against the decision of the disciplinary committee. He could not then profess ignorance of the provisions of the same Code of Conduct granting him the right to appeal to the Labour Court from the decision of the chief executive officer.

The learned President of the Labour Court also held that there were no prospects of success on appeal. She found that the regional manager was a complainant at the proceedings before the disciplinary committee and not a member of the committee. He was not a deliberating member.

On the complaint that the appellant was not allowed to call witnesses, the court *a quo* observed that the appellant was legally represented and had not indicated that he wanted to call particular witnesses other than those who gave evidence.

Condonation of the late noting of an appeal and granting an extension of time within which an appeal is to be noted are matters within the discretion of the court of first instance. Unless it has been shown that the learned President of the Labour Court misdirected herself in dismissing the application, this Court will not interfere with the exercise of that discretion.

The delay was indeed inordinate. The explanation given for the delay was correctly found unacceptable. There is nothing to gainsay the finding by the court *a quo* that there were no prospects of success on appeal.

The appeal is therefore dismissed with costs.

SANDURA JA: I agree.

GWAUNZA JA: I agree.

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