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Judgment No. SC 1/07
Civil Appeal No. 265/04

TANGANDA TEA COMPANY LIMITED v ANDREW MVUDUDU

SUPREME COURT OF ZIMBABWE
SANDURA JA, GWAUNZA JA & GARWE JA
HARARE, JANUARY 16 & MARCH 22, 2007

N Tiyago, for the appellant

T. Nyakunika, for the respondent

GARWE JA: This is an appeal against the decision of the Labour Court reinstating the respondent to his original position with the appellant company.

The facts of this case are largely common cause. The respondent was employed by the appellant company as a garage foreman. On 24 September 2000 the respondent assaulted a Mr. Thumbu in a cocktail bar on the appellant's premises. Mr. Thumbu was a Mozambican national who had come to the cocktail bar for entertainment. Following this incident the respondent was charged with two offences. He was acquitted on the first but found guilty on the second. He was consequently dismissed. Dissatisfied, the respondent appealed to the Labour Court against his dismissal. The Labour Court found that since the fighting or violence directed at Mr. Thumbu was not work related, no offence had been committed. Accordingly the Labour Court ordered his reinstatement without loss of salary or benefits. It is against this order that the appellant company has now appealed to this Court.

The sole issue to be determined in this appeal is whether the fighting or violence envisaged in the Group Employment Code of Conduct of the Tanganda Tea Company Limited ("the Code") should be work related or involve the appellant's employees or other people who might have business with the appellant for it to be an offence in terms of the Code.

The Code has provided a schedule of offences and corresponding disciplinary action guide. Table A – which relates to the highest level of severity (Group 1) – has provided in s 10 as follows:

"10. Fighting/violence at a workplace including any area designated as company property whether it is residential or entertainment premises. Fighting with or attempting to inflict bodily harm upon another employee or any other person within company premises."

Section 17 of the Employment Code of Conduct has placed acts of misconduct into six (6) categories. The relevant category for purposes of the present matter is s 17(3) which relates to indiscipline or disorderly behaviour. That section provides as follows:

"DISORDERLY BEHAVIOUR AND RELATED BREACHES

- a. ...
- b. Threatening violence: threatening to do physical injury to any company employee, any person involved in company business, on work related issues or where such behaviour is likely to interfere with production or affecting industrial relations within the Company.
- c. Assault or attempted assault: occasioning or attempting to occasion bodily harm to any company employee or any person involved in company business on work related issues or where such behaviour is likely to interfere with production or affecting industrial relations within the company.

- d. Fighting: physical combat with any company employee or any person involved in company business who retaliates on company property."

Both parties to this appeal are agreed that for a proper determination of the issue before this Court both ss 17(3) of the Code and 10 of the Schedule of Offences and Corresponding Disciplinary Action Guide Table A: Highest Level of Severity – (Group I) should be read together. Indeed this was the approach taken by the Labour Court.

The issue whether the fighting or violence that is envisaged in the Code should be work related or involve the appellant's employees or other people who might have business with the appellant is one of interpretation.

On a careful reading of s 17 of the Code, it is clear that that section was intended to cater for situations where the violence or fighting was targeted at company employees or other persons involved in company business. In other words if an employee threatens to do physical injury to another employee or any person involved in company business or if he assaults or attempts to assault such person or if he is involved in physical combat with such person then he would be guilty of a breach relating to indiscipline or disorderly conduct.

Section 10 of Table A of the Schedule of Offences on the other hand prescribes a dismissal for fighting or violence at a work place, including any area designated as company property whether residential or entertainment. It also prescribes a dismissal for fighting with or attempting to inflict bodily harm upon another employee or any other person within company premises.

It is apparent that the fighting envisaged by s 10 of the Code also includes the acts provided for in s 17(3) of the Code. In other words s 10 of

Table A expands "fighting" as defined in s 17 of the Code to include any fighting with any person as long as this is on company premises. I would accordingly accept the submission by the appellant that the two sections read together prohibit fighting with anyone on company premises. The word "anyone" is wide enough to include all persons who come to the appellant's premises.

The finding of the Labour Court that the fighting or violence envisaged in the Code should be work related or in respect of employees or persons who have business with the company was based on a restricted interpretation of the Code and ignores the clear provisions of s 10 of Table A. The fact that the offence may be the responsibility of other authorities such as the police is really neither here nor there. It is, I think, common knowledge that criminal offences committed at the workplace will in many instances also be subject to internal disciplinary proceedings.

In the result the appeal must succeed.

The order of the Labour Court is accordingly set aside and in its place the following is substituted:

"The appeal be and is hereby dismissed with costs."

SANDURA JA: I agree.

GWAUNZA JA: I agree.

Scanlen & Holderness, appellant's legal practitioners

Toto & Makoni Attorneys, respondent's legal practitioners