ZIMBABWE POST (PVT) LTD

versus

BROADWELL CHIGERE

HIGH COURT OF ZIMBABWE

CHIWESHE JP

HARARE, 22 February 2011

Mr *C. Kwaramba*, for the applicant

Respondent in person

CHIWESHE JP: I granted this application with costs and indicated that my reasons would follow. These are they.

The applicant sought an order evicting the respondent and all those claiming occupation through him from House No. 15 Baines Road, Victoria Falls (the property). It also sought an order for costs.

The respondent is a former employee of the applicant. He was employed as a counter clerk stationed at Victoria Falls Post Office. Whilst so stationed he was afforded company accommodation at 15 Baines Road, Victoria Falls. In October 1998 the respondent was charged with misconduct in terms of the applicant’s Code of Conduct. The Regional Hearing Committee presided over the matter. It found him guilty and dismissed him.

The respondent appealed to the National Hearing Committee which upheld the decision of the Regional Committee. The respondent then appealed to the Ministry of Labour which ruled in his favour. It ordered that he be reinstated without loss of benefits, and, alternatively, that he be paid damages in lieu of reinstatement. The applicant appealed against this decision to the Labour Relations Officer who again ruled in favour of the respondent. The applicant further appealed to the Labour Court but withdrew the appeal before its determination. It had then opted to pay the respondent damages in lieu of reinstatement in accordance with the decision of the Labour Relations Officer. Notwithstanding the withdrawal of the appeal, the respondent still caused the matter to be set down before the Labour Court. The Labour Court heard the matter on 10 November 2004. Judgment was handed down on 27 May 2005. The applicant was directed to pay the respondent’s salaries up to 22 May 2001 as well as damages equivalent to six months salaries.

In compliance with the order of the Labour Court, the applicant forwarded to the respondents under registered mail, a cheque in the sum of $44 316 237.94. Apparently the respondent refused to collect this cheque. Annexure C to the applicant’s founding affidavit confirms that the respondent had refused to sign for the cheque. The applicant then decided to dispatch the Regional Industrial Relations Officer, one Onias Tsaurayi Chipadza, all the way to Victoria Falls to personally hand over the cheque to the respondent. He did so on 27 August 2005 and again the respondent refused to receive the cheque. Chipadza also discovered that the respondent was subletting the company accommodation to persons outside the applicant’s employ.

On 29 August 2005 the respondent wrote to the Labour Court asking it to correct its judgment of 27 May 2005. The corrections were made by consent of both parties. The order given under the hand of Honourable President Hove LC/MT/50/01 of 6 April 2006 reads:

“IT IS ORDERD BY CONSENT THAT

The word appellant be changed to Chigere wherever it appears in the court’s judgment of 27 May 2005.”

Clearly nothing of substance turned on this correction of a typographical error.

After this correction the applicant made out another cheque in favour of the respondent. At first the respondent refused to accept the cheque arguing that he had not received the order, which order had been made in his presence with his consent. He eventually received the cheque and signed an acknowledgment to that effect on 3 June 2006.

However sixteen months later the respondent made an application to the Labour Court seeking the rescission or alteration of the judgment by President Hove arguing that there were further errors in the same judgment. President Nare heard the application and in my view properly dismissed it.

The respondent has not lodged any appeal or application for review against President Nare’s decision. To all intents and purposes therefore the judgment of President Hove is still extant and binding on the parties. It effectively and conclusively confirms the dismissal of the respondent from the applicant’s employ. The applicant has met its obligations by paying out the damages assessed in terms of that judgment of the Labour Court.

The respondent, despite this turn of events which should bring finality to this matter, remains in occupation of the property belonging to the applicant. He has resided there all along by virtue of his employment with the applicant. Such employment has terminated. He no longer has any reason to occupy that property. Despite numerous notices for him to vacate the property, the respondent has refused to move. He has no right to do so.

It was for these reasons that I granted the application with costs.

*Mbidzo, Muchadehama & Makoni*, applicant’s legal practitioners