

ZIMNAT LIFE ASSURANCE LIMITED v GEORGE DIKUNYE

SUPREME COURT OF ZIMBABWE
HARARE, JUNE 11 & SEPTEMBER 30, 2008

H Zhou, for the applicant

L Uriri, for the respondent

Before CHEDA JA: In Chambers in terms of r 30(c) as read with s 92F(3) of the Labour Act [*Cap 28:01*] (“the Act”).

The applicant applied to the President of the Labour Court for leave to appeal its decision on a point of law. Leave was refused.

The applicant has now applied for such leave to a Judge of this Court in Chambers as provided for by s 92F(3) of the Act.

The application is opposed by the respondent who contends that the application is out of time and should not be granted.

The applicant argued that it was within the time permitted by the Labour Court Rules in SI 59 of 2006 which allows a period of 30 days.

I invited the parties to file Heads of Argument on this point.

I have since considered their submissions and established that:

Section 92F (2) provides for a party who is refused leave to appeal by the Labour Court to apply to a Judge of the Supreme Court.

It provides as follows:

“Appeals against decision of Labour Court

- 92F (1) An appeal on a question of law only shall lie to the Supreme Court from any decision of the Labour Court.
- (2) Any party wishing to appeal from any decision of the Labour Court on a question of law in terms of subsection (1) shall seek from the President who made the decision leave to appeal that decision.
- (3) If the President refuses leave to appeal in terms of subsection (2), the party may seek leave from the Judge of the Supreme Court to appeal.”

Section 36 of the Labour Court Rules in SI 59/2006 provides as follows:

“Leave to appeal against decision of Court

An application in terms of s 92F (2) of the Act seeking leave to appeal from any decision of the Court shall be made to the President of the Court who made the decision within 30 days from the date of that decision.” (my underlining)

This shows clearly that the period of 30 days is for an application to the Labour Court President and not to the Judge of the Supreme Court.

Rule 30(C) of the Supreme Court Rules provides as follows:

“An appellant shall institute an appeal within the following terms:

- (a) ...
- (b) ...
- (c) If leave to appeal is necessary and has been refused by the High Court, by making application for leave to appeal within ten days of the refusal of leave to appeal.” (my underlining)
Rules 4-6 of the Supreme Court (Miscellaneous Appeals and References)

Rules refer to appeals, but not to applications to a Judge of the Supreme Court where leave has been refused by a lower court.

For that reason I consider that the provisions of r 30(e) of the Supreme Court Rules are the appropriate rules in the circumstances.

In this case, leave to appeal was refused by the President of the Labour Court.

It follows that an application should have been made to the Judge of the Supreme Court within 10 days of such refusal.

Leave was refused by the Labour Court on a date which is not clearly ascertained.

The application was heard on 25 January 2008. There are two dates stamped on it, that is 25 April 2008 and another unclear date stamped on it which looks like 11 April 2008.

None of these days is within the 10 days period. However, the point raised by the applicant in its ground of appeal on the point of law is of such importance that I am persuaded that an opportunity should be allowed for it to be argued on appeal.

It is for that reason that I have decided to exercise my discretion, condone the delay and allow the application.

In view of the positions taken by both parties, I do not consider it appropriate to award costs to either party. There will be no order as to costs.

I therefore order as follows –

- “1. The application for leave to appeal to the Supreme Court is granted.
2. There will be no order as to costs.”

Gill, Godlonton & Gerrans, applicant's legal practitioners

Kantor & Immerman, respondent's legal practitioners