

LABOUR RELATIONS TRIBUNAL  
HARARE, MAY 7 AND 8, 2001

JUDGMENT NO. LRT/MT/11/01  
CASE NO. LRT/MT/34/94

In the matter between

FREDERICK MWENYE

Versus

TEXTILE INVESTMENT COMPANY

Before The Honourable C E Bhunu, Chairman

E. Makamure, Member

G. Mhuri, Member

BHUNU C E:

The appellant was employed as the respondent's Financial Chief Executive. The respondent also employed a young single girl Miss Gwelo as a Secretary.

On the 17th January, 1994 Miss Gwelo addressed a minute to the General Manager complaining that the appellant had subjected her to constant and persistent sexual harassment. The memorandum reads

"Private and Confidential

17 January, 1994

To The General Manager

2/.....

After a long time contemplating all possible non embarrassing solutions to my problem, it looks like I have no option but to officially appeal to you to assist and resolve my problem with one of your Senior Managers, Mr Mwenye.

I have discussed with my head of department Mr Gandiwa who has advised that I approach you direct since the member of staff concerned reports to you direct.

I attach a copy of a note, my boyfriend sent to Mr Mwenye thinking that the whole issue would be resolved without embarrassing your senior Manager. However on the 4th of January when Mr Mwenye was in Harare, he visited our offices and poured scorn on me regarding the whole issue.

He claimed to me that he was a Christian and could not do such a thing but loved everybody he worked with including other secretaries in Bulawayo. He had only felt pity for me because of my meagre salary which he knew could not fully support me, and therefore had decided to pay my rentals in full every month without anything from me in return.

I tried to explain to him how embarrassing the whole issue was to my boyfriend and I. My boyfriend had talked to him over the telephone two months ago. But he made me look like a fool.

I even wondered whether I was dreaming about everything.

Mr Mwenye used to telephone my flat after hours and my flat mate is prepared to testify. He told me that if I was not going to love him, he would make my life very difficult at National Blankets. He asked me for kisses on several occasions.

This I view as sexual harassment at the work place. I also think that this might be happening to other ladies in Bulawayo but for fear of losing their jobs they probably keep quiet, or concede to the demands.

Please instruct your Mr Mwenye to stop harassing me in my last days with the company. I do not want to play games with him.

Please ensure that I get all the benefits due to me, without victimisation. I have confidence that in your capacity as General Manager you will resolve this without any further embarrassment to me."

Upon receiving Miss Gwelo's complaint the employer hired a private investigator. The private investigator was instructed not only to investigate Miss Gwelo's complaint but all the other female employees to find out if they had been subjected to sexual harassment by the appellant as well.

When approached some stated that they had been subjected to sexual harassment by the appellant but others denied. I take the view that it was improper for the employer to go on a general witch hunt on the basis of one employee's personal complaint.

It is trite in sexual offences that for the person accused of improper conduct to be rendered liable the victim must have taken the first reasonable opportunity to lodge a complaint. Complaints lodged as a result of prodding by a third party are unacceptable. This is so particularly where the complainant is a mature lady of sound and sober senses.

For that reason I hold that the allegations levelled against the appellant concerning all the other ladies apart from Miss Gwelo are unsustainable and not worth considering.

I therefore turn to consider Miss Gwelo's complaint.

The General Manager duly asked the appellant to comment on the allegations levelled against him by Miss Gwelo. He responded by a memorandum dated 31st January 1994 which reads:

"In connection with our discussion on the above letter my response is as follows:

- (1) I do not need this lady because I am a respectably married man. I have been married for 10 years and have never been involved with any other woman. Before that I was engaged for three years and only to my wife. My family is stable and happy.
- (2) The allegations made are a shock to me - I view them seriously and only wonder why this lady would pick on me. All I can say is that she has accused me in

an area where I am least exposed. I may have said one or two words to her e.g. "In our tribe we greet with a kiss." When greeting her. But it all ended there.

- (3) I have never said that she should love me and I do not see myself needing that kind of love from her. If she loves me as a person, that is fair, but not beyond that. I love people and are good and kind to them. But let not my goodness be evil spoken of. I uphold Christian principles to the highest level."

The appellant's defence amounted to a bare denial which raised no material issues. Simply stated, his defence was that he was happily married and a Christian of good character such that he could not possibly indulge in such objectionable conduct.

It is however common knowledge that devout Christians, married men and persons who appear in public to be morally upright are some of the worst sexual offenders. A brief examination of court records and newspapers will establish this point.

Thus the appellant cannot solely rely on his good name and social standing as a defence in these matters.

It is common cause that Miss Gwelo raised the complaint of sexual harassment at a time she had given notice to resign in order to join another company. There was no animosity between her and the appellant. Indeed

the appellant was unable to fathom any reason why she should falsely implicate him. There was therefore no improper motive for her to falsely implicate the appellant.

The appellant himself corroborated the complainant's evidence to the effect that he had engaged her in discussions with sexual connotations. For instance he admitted that he had suggested to her that she should greet him with a kiss because in his tribe they greet with a kiss. He also attempted to justify the lewd and lubricious request on biblical grounds.

If it were so, then, he should have extended the same invitation to other ladies at the workplace, yet the evidence on record clearly establishes that the appellant never asked any other lady at the workplace to greet him with a kiss.

The complainant made many specific allegations which the appellant was unable to refute. She alleged that she had to enlist the intervention of her boyfriend in a vain attempt to prevent the appellant's behaviour. Despite the boyfriend's intervention the appellant persisted with his objectionable behaviour. This the appellant did not refute.

He also failed to rebut her allegation that he suggested to her that if she did not succumb to his sexual advances he would make things difficult for her at work.

- I am not aware of any local cases that have given a judicial definition of the term sexual harassment. In its ordinary grammatical meaning the term connotes subjecting a person to unpleasant, objectionable treatment of a sexual nature.

The International Labour Organisation (ILO) Convention on The Elimination of All Forms of Discrimination Against Women (CEDAW) General Recommendation Number 19 of 1992 however defines sexual harassment as including "unwelcome sexually determined behaviour (such as physical contact and advances, sexually coloured remarks, showing pornography and demands, whether by words or actions." In this case the evidence clearly establish that the appellant made repeated unwanted sexual advances to Miss Gwelo to her annoyance and discomfort. Despite her clear -objections the appellant persisted with his objectionable behaviour.

On the facts I am satisfied on a balance of probabilities that the appellant's conduct, behaviour and attitude towards Miss Gwelo can only be consistent with sexual harassment. -

- Sexual harassment is a form of abusive immoral behaviour which strikes at the very core of human dignity and integrity. It undermines the fundamental freedom of association.- It is a dehumanising abomination which must be eradicated wherever it rears its ugly head.

- CEDAW General Recommendation Number 12 of 1989 recognised sexual harassment as violence against women. -

That being the case the Senior Labour Relations Officer cannot be faulted for authorising the appellant's dismissal. It is accordingly ordered that the appeal be and is hereby dismissed with costs.

James, Moyo-Majwabu and Nyoni, the appellant's Legal Practitioners.

Gill, Godlonton and Gerrans, the respondent's Legal Practitioners

C E Bhunu .....

E. Makamure ..... I agree.

G. Mhuri ..... I agree