

ELVIS NDLOVU

VERSUS

HIGHER LEARNING CENTRE

IN THE HIGH COURT OF ZIMBABWE
MATHONSI J
BULAWAYO 3 AND 19 AUGUST 2010

M Ndlovu for the applicant
No appearance for the respondent

Judgment

MATHONSI J: This is an application for registration of an arbitral award made in terms of section 98 (14) of the Labour Act, Chapter 28:01. That section provides:

“Any party to whom an arbitral award relates may submit for registration the copy of it furnished to him in terms of subsection (13) to the court of any magistrate which would have had jurisdiction to make an order corresponding to the award had the matter been determined by it, or, if the award exceeds the jurisdiction of any magistrate court, the High Court”

The arbitral award sought to be registered was made by an arbitrator P.A Chenyika on 13 June 2008. In the award the arbitrator ruled that the applicant had been unlawfully dismissed by the respondent and he ordered his reinstatement without loss, that he be paid the agreed salary of R8 000,00 per month and arrears of his salary.

It would appear that when the applicant presented himself for reinstatement the respondent refused to comply with the arbitral award. It also did not pay the applicant his outstanding salary. As a result the applicant returned to the arbitrator and sought a quantification of damages in lieu of reinstatement as provided for in section 89(2) (C) (iii) of the Labour Act.

On the 21st July 2008 the arbitrator quantified damages in lieu of reinstatement. Again the respondent did not pay the damages in lieu of reinstatement. Basically the respondent did not do anything at all about the award as it did not challenge it in the Labour Court either by way of appeal or review.

The applicant then filed this application seeking to register the award. The application for registration has been opposed by the respondent on the basis that when the award was

made respondent had applied for a 6 month postponement of the hearing up to December 2008 as its executive chairman was going to be away in Namibia on business. The respondent has also argued that there was a breach of the rules of natural justice in that it was not afforded an opportunity to be heard before a determination was made and that the arbitrator did not avail a copy of the award as provided for in section 98(13) of the Labour Act.

None of the reasons for opposing the application for registration are sustainable. It is common cause that there is an arbitral award in existence which award was made in terms of the law. That award has not been set aside and indeed nothing has been done by the respondent to challenge that award as it is entitled to do by the Labour Act. It is common cause that there is nothing pending in any court putting to question that award.

Respondent cannot seek to challenge an arbitral award in opposing papers filed in an application for registration. In an application of this nature this court does not inquire into the merits or otherwise of an arbitral award. That is the province of the Labour Court upon an application or appeal being made to that court.

Registration of an arbitral award is only done for purposes of enforcement because the labour structures have no enforcement mechanism. Upon registration the award has the effect of a civil judgment of the appropriate Court. This is in terms of section 98 (15) of the Labour Act. As long as the award stands unchallenged the appropriate court has no mandate to inquire into the propriety or otherwise of that award and is obliged to register it.

In the result I make the following order:

1. That the arbitral award of arbitrator P.A Chenyika dated 13 June 2008 and the subsequent quantification of damages in lieu of reinstatement dated 21 July 2008 be and are hereby registered in terms of section 98(14) of the Labour Act Chapter 28:01.
2. That the respondent shall bear the costs of suit on an ordinary scale.

Mlweli Ndlovu & Associates, applicant's legal practitioners