

JESHUWA ZVINAVASHE
AND
CEPHAS TARUVINGA
AND
JUDITH NYATSANGA
AND
CLYDE CHARUNDA
AND
EMELIO GWEMENDE
AND
JUSTIN MUGADZA
AND
SILAS GONOUYA
AND
NORMAN MARUMISA
AND
ABUNERI CHETENI
VERSUS
ASTRA BUILDING CENTRE

HIGH COURT OF ZIMBABWE
MOYO J
BULAWAYO 8 MARCH 2017 AND 16 MARCH 2017

Registration of an arbitral award

S Mlaudzi for the applicant
K Kachambwa with *E Mlala* for the respondent

MOYO J: This is an application for the registration of an arbitral award by the applicants wherein an award was granted in their favour by M Nkomo an arbitrator. Respondent has strenuously opposed the registration of same citing reasons, firstly that the application for the registration of the award is incompetent in that there is no legal basis for such registration as the registration of an award presupposes default and that in this case there is no need to register the arbitral award since respondent is complying with the award. Secondly that the arbitrator ordered the respondent to pay salary arrears due to applicants over a period of 13 months starting March 2015 and ending March 2016. That this application was filed on 15 June 2015 and that

therefore the applicants complaints be deemed to relate to the payments due for the months of March, April, and May 2015.

That such salaries for the aforementioned three months have been paid in that the applicants owe respondent \$15000 being damages resulting from applicant's holding of respondent's bus unlawfully and thereby causing it damages.

I will deal with section 98 (14) of the Labour Act [Chapter 28:01], first. The section provides that:

“Any party to whom an arbitral award relates, may submit for registration the copy of it furnished to him in terms of section 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 arbitral award exceeds the jurisdiction of any magistrates court, the High court.”

This section provides for the registration of arbitral awards, it does not qualify itself in any manner. It is just a straightforward section providing for the registration of an arbitral award.

It does not provide that first, the arbitral award must be unfulfilled, neither does it provide for that the respondent must have defaulted for the award to be registered. The legislature has spoken in very clear and unambiguous terms I do not intend to read into this section more than what has been provided therein in very clear terms. I find that the case of *Matthews v Craster International Pvt Ltd* HH 707/15 is not applicable in this case as MAFUSIRE J dealt with an irregular award which is not the case before me.

In the case of *Obadia Giya v Ribitiger Tyres* HH 59/16, CHITAPI J held that in such an application, the court is called to register an arbitral award and nothing else. He quoted in that case the words of CHIWESHE JP in the case of *Vasco Olympio and 4 others v Shomet Industrial Development* HH 191/12 wherein the learned JP held thus:

“In an application such as the present one, this court is not required to look at the merits of the award. All that is required of this court is that it must satisfy itself that the award was granted by a competent arbitrator, that the award sounds in money, that the award is still extant, and has not been set aside on review or appeal, and that the litigants are the parties, subject of the award----”

He further held in that case that he would dismiss respondent's argument that the application for registration of the award was premature because it had been filed on 20 June 2014 and yet the period for payment given by the arbitrator was expiring on 30 June 2014.

CHITAPI J commented in that case, which he dismissed solely because the applicant's papers, were in shambles, that the respondent had opposed the application on grounds that were not sound and were in fact invalid at Law. One of the grounds of opposition in that case was similar to the second ground raised by respondent herein.

I agree with the learned judges opinion that such an argument is inviting the court to delve into issues outside the purview of section 98 (14) of the Labour Act (*supra*). This court registers an award in terms of section 98 (14) of the Labour Act in my view and BHUNU J in the case of *Yobe Wells and 66 others v Dunstan Transport Pvt Ltd* HH 787/15 held that whether the respondent has made partial payment is a matter between it and the sheriff or his deputy. Partial compliance with the award does not therefore affect the registration of the arbitral award furnished by the arbitrator in terms of section 98 (13).

He held further that:

“Justice fairness and equity demands that a worker who has expended his labour and proved his claim in a court of law or tribunal be paid his dues without any further ado because his livelihood and those dependent on him depends on it.”

I accordingly hold the view that respondent's argument that some months were not yet due for payment is illogical and totally untenable as already mentioned herein. As for the argument that the months of March, April and May were paid through an illegal set off by the respondent. I find that argument without basis and in fact an attempt by the respondent to seek this court to bless his unlawful action of making a claim against the applicant's, adjudicating upon the liability of the applicants to it, then proceeding to assess the quantum of damages due to it, and consequently executing its own order against the applicants. I do not know why legal practitioners would be drawn to advance such an argument on behalf of a client. Basic legal principles would show that respondent's actions are illegal and cannot be advanced in any court of law, with an expectation that administrators of justice would condone such behaviour and find in respondent's favour. The respondent cannot be allowed to take the law into its own hands. It should sue the applicants in a competent court first. I accordingly find respondent's

argument in this respect to be unwarranted and that its actions should be condemned with the contempt they deserve.

On the issue of costs, it is trite law that costs are in the discretion of the court. Applicants have asked for costs at an attorney and client scale in this matter. They have expressed the delays with which the respondent dealt with and finalized an application for rescission of the judgment of this court which respondent's previous lawyer purportedly conceded to without instructions from his client. However, I find that the application for rescission of judgment cannot be the basis upon which attorney and client costs are awarded in this matter, as the application for rescission of judgment was dealt with by another court, and applicants should have sought punitive costs before that court, specifically in relation to that application. I do not hold the view that costs can be awarded in this matter on the basis of a matter that was before another court. I have not even been advised what the order for costs in that application was. Again, there is no factual basis in both the applicant's founding affidavit and the answering affidavit for an award of costs on a punitive scale. Applicants' counsel has sought to make factual submissions in the heads of argument and from the bar, on how the application for rescission of judgment was processed. It is for these reasons that I do not hold the view that a proper foundation has been laid by the applicants for an order of costs at a higher scale.

I accordingly from the reasons enunciated herein, grant an order for the registration of the arbitral award with respondent bearing the costs.

Samp Mlaudzi and partners, applicants' legal practitioners
Dube-Banda, Nzarayapenga and partners, respondent's legal practitioners