

ELISHA DENDEUKA
versus
PAPER PLACE (PVT) LTD

HIGH COURT OF ZIMBABWE
BHUNU J
HARARE, 11 August 2011 and 28 September 2011

Chamber Application

Mr *Matika* for, the applicant
Thomas Vallance, for the respondent

BHUNU J: The applicant obtained an arbitral award in terms of the Labour Act [*Cap. 28:01*] in the following terms:

“Wherefore after carefully analyzing the facts and the law, I make the following award:

- That Claimant is hereby reinstated as a permanent worker to his position without loss of salary or benefits with effect from the date of dismissal.
- That if reinstatement is not an option, the Claimant should be paid damages of US\$16 184-00 within Thirty (30) days from the date of the arbitral award.

The arbitrator Mr. Munyaradzi Dangarembizi duly signed and authenticated each page of his reasons for registration with the High Court. The section provides as follows:

“(14) 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 arbitral award exceeds the jurisdiction of any magistrates court, the High Court.

(15) Where arbitral award has been registered in terms of subsection (14) it shall have the effect, for purposes of enforcement, of a civil judgment of the appropriate court.”

Mr. *Thomas Vallance* submitted a copy of the Respondent’s Opposing affidavit in his capacity as agent of the Respondent authorized thereto by a special power of attorney granted to him by the company’s managing director one Mohamed Hafiz- Abdulla.

The position in our law is however that a company not being a fictitious legal persona it cannot act on its own. There is therefore need for a company resolution to legalize and validate any company acts as observed by MAKARAU J in *Tapson Madzivire and 3 Others V Misheck Brian Zvarwadza and 2 Others H – H – 2005*. In that case the learned judge observed that:

“The fictional legal persona that is a company still enjoys full recognition by the courts . Thus for any acts done in the name of a company a resolution duly passed by the board of directors of a company has to be produced to show that the fictional person has authorized the act.” (My emphasis).

I am in respectful agreement with her ladyship’s observation. In this case the purported company agent produced a power of attorney granted to him by the company’s managing director. A power of attorney is however no substitute for a company resolution. In that case even if the managing director Mr. Abdulla had appeared in person before the court he would still have been required to produce a company resolution as proof that the company had authorized him to do what he is attempting to do on its behalf. Without a company resolution Mr. *Vallance* is merely representing the managing director’s position and not that of the company.

The second hurdle for Mr. *Vallance* arising from the company’s inability to represent itself is that generally speaking a company can only be represented by a legal practitioner in the superior courts. Save in exceptional circumstances, s 9 of the Legal Practitioners Act [*Cap. 27:07*] prohibits and criminalizes anyone who represents another in legal proceedings without being a legal practitioner in possession of a valid practicing certificate. See *Lees Import and Export (Pvt) Ltd v Zimbank 1999 (2) ZLR 36(S.)*.

In the result I hold that the respondent not being properly represented in these proceedings the application should be treated as unopposed. Wherefore after perusing documents filed of record and hearing the Applicant it is accordingly ordered:

1. That the arbitral award of 17 May granted by the arbitrator Dangarembizi be and is hereby registered as an order of this Court.

2. That the Respondent is hereby ordered to pay E. Dendeuka damages in lieu of reinstatement in the sum of US\$16 184.00 (Sixteen Thousand one Hundred and Eighty – Four United States Dollars.) within seven days of receipt of this order.