

WONDER CHAIRE
and
A.CHANGAMBIKA
and
M. GOLIATH
and
D. CHARI
and
C. MBUMBURU
and
T.RANJISI
and
R. BHERO
and
M. CHIDEMBO
and
P. MATUNHU
and
M. MANDOVHA
versus
MT DARWIN BAZAAR

HIGH COURT OF ZIMBABWE
MATHONSI J
HARARE, 5 APRIL 2013

Z. Kajokoto, for the applicants
Respondent in default

Opposed Application

MATHONSI J: The applicants are former employees of the respondent who were dismissed from employment between May and June 2011. A labour dispute having arisen at the time of the termination, such was referred to arbitration in terms of the Labour Act [*Cap 28:01*].

On 1 November 2011, M.C. Kare, the arbitrator, made an arbitral award directing the respondent to pay the applicant certain terminal benefits. He also gave the parties leave to

approach him for quantification of those terminal benefits in the event of any doubt as to quantum.

The matter was duly referred to the arbitrator for quantification and on 30 November 2011, he quantified the various amounts due to the 10 applicants. They totalled \$23 569-00. It is that award which the applicants seek to have registered as an order of this court for enforcement.

The application is opposed by the respondent on the ground that it had challenged the arbitral award in the Labour Court by way of a review application and for that reason the respondent is entitled to refuse “to pay because the matter is *sub-judice*.” The applicant also stated that a further application for stay of execution was filed in the Labour Court.

It is not clear from the papers what became of those 2 applications filed in the Labour Court although the applicants insisted in the answering affidavit of the first applicant that no application for a stay of execution was made.

What we have therefore is a subsisting arbitral award which has been challenged by way of review in the Labour Court. The question of whether such an award should be registered by this court pending appeal has been the subject of a number of decisions of this court; *Baudi v Kenmark Builders (Pvt) Ltd* HH 4/2012; *Ndlovu v Higher Learning Centre* HB 86/10.

In respect of the effect of a review application made to the Labour Court I did state in *Greenland v Zichire* HH93/2013 at page 3 that;-

“While the Act is silent on the effect of a review application, it would be absurd to formulate a construction that would allow litigants to circumvent the provisions of section 92 E (2) by couching their challenge of an arbitral award to the Labour Court as a review instead of an appeal. Clearly such a review application would not suspend the award.”

That should really put the matter to bed. Registration, or is it recognition or enforcement, of an arbitral award can only be refused where an application for a stay of execution or suspension of the award made in terms of section 92E (3) of the Act or upon the person against whom it is invoked satisfying the court of the existence of grounds of refusal set out in Article 36 of the model law in the Arbitration Act [*Cap 7:15*]. see *Tapera & others v Fieldspart Investments (Pvt) Ltd* HH 103 /13 at page 2.

The respondent has not set out any acceptable grounds for refusal and has not secured an order suspending the award. To the extent that the award remains in subsistence, this court has no reason not to register it.

In the result, I make the following order, that:-

1. The arbitral award of M.C Kare dated 1 November 2011 as well as the quantification award dated 30 November 2011 are hereby registered as an order of this court.
2. The respondent is directed to pay the applicants the respective sums set out therein totalling the sum of US\$23 569-00.
3. The respondent shall bear the costs of this application.

Kajojoto and Company, applicants' legal practitioners

Manyurureni & Company, respondent's legal practitioners