

IN THE LABOUR COURT OF ZIMBABWE

JUDGMENT NO LC/H/38/2014

**HARARE, 26 NOVEMBER 2013, 17
JANUARY 2014 & 24 JANUARY 2014**

CASE NO LC/H/775/2012

In the matter between:

RAINBOW TOURISM GROUP

APPLICANT

Versus

FARAI KABASA

RESPONDENT

Before the Honourable L Kudya: Judge

For the Applicant A K Maguchu & R Mutasa (Legal Practitioners)

For the Respondent I Mataka (Legal Practitioner)

KUDYA J:

This is an application by the Applicant Company for interim relief in terms of Rule 34 of the Labour Court Rules. It is seeking the stay of the arbitral award which was made in favour of the Respondent employee and which it has now appealed against in the Labour Court.

The background of the case is that, the Respondent employee who was in Applicant Company's employ was charged with misconduct following a breach of the Applicant's Code of Conduct. No decision was issued after the hearing and this led to the Respondent employee to approach a labour officer and consequently arbitration in terms of s 101 (3) of the Act so that a determination of the matter could be issued.

The arbitrator ruled in favour of the Respondent, reinstated him and directed the Applicant to regularise the

suspension once again if it was of the view that indeed the Respondent had erred.

Instead, on 25 September 2012, the Applicant filed an appeal to this Court against the arbitral award. On 2 October 2013, this Court got seized with the Applicant's application for interim relief which had been filed with the Registrar on 24 September 2013 if the date stamps on the filed notice are anything to go by.

This Court on 2 October 2013 directed the Registrar to have the application set down for argument on any convenient date taking into account that, it was an opposed application. Pending the set down of the application, the Respondent employee approached the High Court and successfully registered the arbitral award thus, making it effectively an order of that Court.

The Respondent went ahead to have the attachment process in motion. This conduct prompted the Applicant to approach this Court on an urgent basis on 6 January 2014 to have the stay application determined as it was apparent that execution was now in motion. Any further delay in obtaining relief would mean that, the stay application would have been rendered academic.

The Senior Judge, who had the urgent matter placed before her, approached this Court which indicated that, it was free to deal with the matter on 17 January 2014 given the urgency of the matter. Consequently, the matter was set down for that date and argued on the set date. It is therefore, the interim relief application, which is the subject of this judgment.

After listening to the oral submissions, it became clear that, the matter presented two major issues for decision.

Firstly, the issue was the merits of the stay application given the prospects or otherwise of the main appeal.

Secondly, there was the question of whether this Court could still hear and rule on the stay application taking into account the fact that, as at the date of hearing, the order being appealed against was now effectively an order of the High Court it having been registered by that Court. It is however, unfortunate that, when the parties presented before the Court they did not advise the Court of the development on registration at the outset.

The issue therefore, did not come up as a preliminary point but rather, in reaction to the Applicant's submissions on the merits of the application. The Court had the benefit of going through the extensive heads of argument by either party on the application for interim relief.

In a nutshell, the Applicant's argument was that the order has to be stayed because it has good prospects of success on appeal and that the balance of convenience favours the granting of the interim relief.

Of particular note, the Applicant, argued that, the figure involved in the case which is +\$40 000-00 which is a high figure and which if the Court allows the appeal; the Respondent employee would have serious difficulty repaying. In that respect there was need to have the award stayed, to minimise the loss which could be incurred by the Applicant in the event of a successful appeal.

The Applicant argued further that, given the Labour Court's first term 2014 diary, it is reliably informed that, the main appeal can be heard soon that is around or just after 11 February 2014. To that extent, very little would be lost if

the award is stayed pending the conclusion of the appeal on the merits.

On the other hand, the Respondent argued that, since the Applicant did not oppose the registration of the award in the High Court, it meant that it acquiesced with it and could not be heard to persist in its interim relief prayer. In essence, his argument is that, were it not for the execution of the award, the Applicant would not have been rocked into the action of seeking an urgent hearing.

The facts of the case, raise the fundamental problem facing labour matters where there is an element of pararell jurisdiction between the High Court and the Labour Court.

The Applicant relied heavily on the case of **Benson Samudzimu vs Dairiboard Holdings HC/H/204/10** to demonstrate the fact that, even though the arbitral award has become a High Court order by virtue of its registration, the fact that, the main case is a Labour matter, it means that the Labour Court's jurisdiction has not been ousted in favour of the High Court.

It even went on to argue that, if the Court were to refuse relief on the basis of jurisdiction, in this case it means that, it would also follow that the Court could also not legitimately entertain the appeal in such circumstances as it would be argued that, the order was now a High Court order.

The Applicant therefore, maintained that, since the High Court on registering the award did not deal with the merits of the award, the Labour Court still remained at large to deal with the interim relief application and the attendant appeal in the main.

Whilst, the Respondent did not cite authority on the ouster of the Labour Court's jurisdiction based on the registration argument, it is pertinent to observe that, to date, there are two High Court decisions with conflicting views as to whether the Labour Court can effectively grant an order for stay in a case where the Applicant has also applied for registration of the award at the High Court. See **Sibangilizwe Dhlodhlo vs Deputy Sherriff Marondera and Watershed College HC/H/76/11** and **Kingdom Bank Workers Committee vs Kingdom Bank Holdings HC/H/302/11**

What is apparent from both cases and from what Counsels for both parties agreed upon is the fact that it is settled law that the Labour Court has no powers to stay an order made by the High Court. However, what remains murky/unclear is whether by the same token, it can be said that, since the arbitral award has now been "transformed" into a High Court order therefore anything else attendant to it like appeals against it cannot be entertained by the Labour Court on a jurisdictional basis.

Whilst the **Samudzimu** case (*supra*) makes it clear that, jurisdiction in relation to the other components of the award like the appeal component remains solely a labour issue to be determined by the Labour Court it remains questionable, whether the same can be said in relation to interim relief.

What is apparent from the facts of the instant case is that, the interim relief application in the Labour Court was made way back before the registration of the award. In fact, if the matter had been set down earlier than has now happened, chances are that, the registration would not have overtaken it.

It would not be proper therefore, to suggest as was done by the Respondent that, the instant application was in

reaction to the registration. It is the urgent hearing request which can be said to have been prompted by the proposed attachment.

Being that as it is, the Court has not been put into the confidence of why, given the pending application for interim relief in the Labour Court, the registration of the award had not been opposed by the Applicant on that basis.

Further to that, as already indicated, it is now apparent that, the order is now a High Court order and stay of same can only be requested from the Court under whose jurisdiction it now stands. From a jurisdiction perspective, the Court is satisfied that the application is now out of its hands and it cannot stand.

Having concluded that the application is now not properly before this Court, it becomes unnecessary to rule on the rest of the submissions made on the main merits of the application.

IT IS ORDERED THAT:

Application for interim relief being improperly before the Court for want of jurisdiction it be and is hereby dismissed.

Each party to bear its own costs.

L KUDYA
JUDGE- LABOUR COURT

Dube, Manikai & Hwacha, Applicant's Legal Practitioners

Chambati and Mataka Attorneys, Respondent's Legal Practitioners