

**DISTRIBUTABLE** (47)

**CENTRAL AFRICAN BATTERIES**  
v  
**JOHN MHANGU**

**SUPREME COURT OF ZIMBABWE**  
**GARWE JA, GOWORA JA & HLATSHWAYO JA**  
**HARARE, JUNE 10, 2013 & AUGUST 25, 2014**

*D Ochieng*, for the appellant

*M Jera*, for the respondent

**GOWORA JA:** On 5 April 2012 the Labour Court granted a judgment in favour of the respondent (applicant in the Labour Court) as follows:

1. The respondent be and is hereby ordered to pay damages to the applicant in the amount of United States Dollars 12 575.78
2. There shall be no order as to costs.

The appellant was aggrieved by the order and has as a consequence appealed to this Court. The background to this dispute is the following.

On 15 March 2011, by consent of the parties, this Court allowed an appeal brought by the appellant under Case No SC 79/10 against a judgment issued by Labour Court in favour of the respondent. Consequent thereto, the court issued an order in the following terms:

“The appeal be and is hereby allowed. The order of the court *a quo* is set aside and substituted with the following:

1. The appellant is to pay the Respondent Z\$692 118.00 to be converted to United States Dollars at a rate to be agreed between the parties failing which any party may make an application to the Court *a quo* for determination of any applicable rate of exchange.
2. Each party is to pay its own costs.”

The parties were unable to agree on an applicable rate of exchange and the respondent as a consequence approached the Labour Court for the determination of an applicable rate of exchange in terms of paragraph 1 of the consent order.

The court *a quo* found that the Supreme Court had determined that the amount of back-pay due to the respondent in local currency amounted to Z\$692 118. The court *a quo* also found that since the Supreme Court had already determined the back-pay in local currency that issue could not be reopened before that court as it was *res judicata*. The Labour Court therefore declined to enquire further into that question. It correctly, in the view of this court, proceeded to determine the only issue that was before it, namely, the rate of exchange applicable in converting the Zimbabwe Dollar to the United States dollar and consequently the amount payable to the respondent in foreign currency.

In order to establish the foreign currency equivalent on the local currency component, the respondent produced to the Labour Court a letter from the Reserve Bank in which it confirmed that in September 2002 the conversion rate of the Zimbabwe dollar against the United States Dollar was 55.035773. The court accordingly applied the specified rate of exchange against the Zimbabwe dollar sum agreed to by the parties and issued an order which is now the subject of this appeal.

The appeal against that decision is on the following grounds:

- “1. That the award induces a sense of shock;
2. The award is contrary to public policy;
3. The Honourable President erred in using what was the official rate as at 9 September 2002 instead of a rate of Exchange applicable at the date of payment.”

It is common cause that, when this Court issued an order on 15 March 2011, such was not accompanied by reasons. Written reasons for the order were subsequently given in *Central Africa Batteries v John Mhangu* SC 53/13. In its judgment, the court made a finding that the Labour Court had erred and misdirected itself in calculating the back-pay due to the respondent premised on a monthly salary of USD 208.76 as that sum did not represent the monthly salary that the respondent would have been entitled to earn at the time that he repudiated his contract of employment.

It was common cause that the respondent had repudiated his contract of employment on 9 September 2002 subsequent to a suspension effected upon him on 5 January 1998. Prior to the suspension and at the time he repudiated his contract the appellant had not been paying its employees' salaries denominated in foreign currency. It was common cause, as found by this Court, that during the period of suspension the respondent would have earned a total sum of Z\$692 118. Based on this factual position this Court found that the formula used by the Labour Court in calculating damages to be paid to the respondent in respect of back pay for the period of suspension prior to his repudiation of the employment contract had no basis at law. The Court accordingly ordered that the matter should be remitted to the Labour Court for a proper assessment by that court of the damage due to the respondent.

Mr *Ochieng* submitted that the Labour Court made an error in fixing a rate of exchange as at the date of accrual of the back-pay instead of the date of payment. He argued further that, in the execution of judgments denominated in foreign currency, it is the date of execution which determines the rate of exchange of such foreign currency into local currency. In general terms I accept that is a correct exposition of the law. In this particular case however, it is pertinent to note that the parties made a number of concessions when they appeared before this court on 15 March 2011. These are captured in the judgment of the Learned Deputy Chief Justice MALABA in the following remarks:

“It is common cause that the respondent was unlawfully suspended from employment on 5 January 1998. On 9 September 2002 he took up employment elsewhere thus repudiating his contract of employment with the appellant. It is common cause that during the period of suspension he would have been entitled to payment of Z\$692 118.00

The appellant through its legal practitioner submitted that the amount payable to the respondent could be converted into another currency such as the United States dollars at the rate prevailing on 9 September 2002. We believe that would meet the justice of the case. This is therefore not a case where the question whether or not the amount owed by the employer to the employee should be quantified in foreign currency or converted into foreign currency which would have to be determined by the Labour Court. The issue has been resolved by the concession made by the respondent.”

Based on the concession by the appellant’s legal practitioner, this court set the date of conversion of the local currency amount to foreign currency as the date of repudiation. This accords with the principle that back-pay must be calculated as at the date that the contract of employment was terminated.

The decision as to the date applicable in relation to the conversion of the local currency into foreign currency was established by the judgment of this Court in the earlier proceedings and was part of the order in terms of which the matter was remitted to the

Labour Court for a proper assessment of back pay due to the respondent. It was not an issue for debate before the Labour Court.

In addition, given the concession made in the earlier appeal it is unacceptable in my view that the appellant would still seek to present argument on the date of conversion of the local amount into foreign currency for purposes of payment.

The order of 15 March 2011 binds this Court. It is not the appellant's prayer that the judgment be revisited. Nor can it be as the judgment was issued with the consent of both parties following upon a concession by the appellant that the total sum due to the respondent as damages was Z\$692,118.00 in local currency.

Relying on the Presidential Powers (Temporary Measures)(Currency Revaluation and Issue of New Currency) Regulations, 2009 (S.I.6 of 2009), ("the Regulations"), the appellant also sought to advance the argument that between 2006 and 2009 successive revaluations of the Zimbabwe dollar removed twenty-one (21) zeros from all monetary values and instituted a new currency system in which Z\$1 in the old system was an unpronounceable fraction of the Z\$1 in the new system. The appellant contended that the award of the Labour Court was contrary to public policy as the court had not taken the provisions of the regulations into account in its assessment of the back pay due to the respondent.

Section 8 of the Regulations reads:

- “(2) Subject to subsection (3), every debt, contract, security and or other legal instrument whatsoever involving any obligation to pay or any right to receive money in terms of the old currency system and which continues to subsist or

be valid on the 28<sup>th</sup> February, 2009, shall, on and after that date, be construed in accordance with the new currency system.

- (3) Debts incurred, contracts entered into or securities created or transferred before the 2<sup>nd</sup> February, 2009, shall be deemed to have been incurred, entered, created or transferred in terms of the old currency system and may be settled, discharged, sold or liquidated in terms of the old or the new currency system on and between the 2<sup>nd</sup> February, 2009, and the 30<sup>th</sup> June, 2009:

Provided that-

- (i) ...
- (ii) on and after 1<sup>st</sup> July, 2009, every debt, contract not referred to in proviso (1) or security shall be settled, discharged sold, or liquidated in terms of the new currency system only”

The learned Judge in the court *a quo* gave a chronology of events in respect of this matter. The order of the Labour Court which was the subject of the appeal in Case No SC 79/10 was granted on 27 November 2009. At that juncture the Regulations were already law having been promulgated on 2 February 2009. The appellant did not find it necessary to bring the Regulations to the attention of the Labour Court judge who presided over the matter on 27 November 2009. An appeal was noted in 2010. In my view this is not an issue that falls for determination. The amount in respect of which the Labour Court considered the back-pay is *res judicata*.

In this appeal the appellant does not argue that the computation by the court *a quo* of the amount of USD12 575.78 was wrong. The appellant does not challenge the rate of exchange utilised in the assessment of the back-pay. What is challenged is the date at which the rate of exchange should apply as against the sum of Z\$692 118.00. Needless to say this is one of the issues determined by this Court on 15 March 2011, when the Court determined the effective date of conversion as 9 September 2002.

Accordingly, in view of the above observations, the issue of base amount in local currency and the applicability of the Regulations to such sum are not matters for

determination in this appeal. These are issues that should have been placed before the court when it considered the appeal under Case No SC 79/10. In my view the respondent has correctly submitted that any issue not concerned with the conversion of Z\$692 118 into foreign currency is *res judicata*.

Although the appellant, in its grounds of appeal complained that the award by the Labour Court induced a sense of shock and was contrary to public policy it did not advance any argument in support of those grounds.

In the result the appeal must fail and it is dismissed with costs.

**GARWE JA:** I agree

**HLATSHWAYO JA:** I agree

*Messrs Coghlan, Welsh & Guest*, appellant's legal practitioners

*C Mpame & Associates*, respondent's legal practitioners