

CHRISTOPHER MIDZI
versus
RCZ MABUKU PRINTING PRESS (PVT) LTD

HIGH COURT OF ZIMBABWE
ZISENGWE J
MASVINGO, 29 January & 8 February 2024

Opposed application

M G Bumhira, for applicant

T Bhunu, for respondent

ZISENGWE J: The applicant seeks an order compelling the respondent to comply with the determination rendered by a designation agent on the 29th of November 2021. In that determination the respondent was ordered to convene disciplinary proceedings against the applicant within seven days and conclude the same within the period stipulated in SI 175/2012.

The Background

Most of the facts in this case are common cause and are as follows. At the material time the applicant was employed by the respondent as print finisher. The respondent is a company in the printing and publishing business. On the 13th of May 2021 the applicant was placed on suspension presumably on allegations of misconduct. However, the respondent failed to conduct disciplinary proceedings within the prescribed time prompting the applicant to approach the Designated Agent of the National Employment Council alleging an unfair Labour practice. Thereafter the NEC Designated Agent wrote to the respondent ordering the respondent to reinstate the applicant, an order which the respondent flatly refused to comply with.

No doubt irked by the respondent's apparent intransigence; the applicant referred the matter to the Designated Agent (whom he identified as Mrs Kudzai Tichazorwa) for conciliation which conciliation efforts failed to resolve the impasse. It was then that the Designated Agent issued the determination referred to in the opening paragraph which determination the respondent has to date flatly ignored.

The applicant therefore seeks an order compelling the respondent to comply with that determination.

The respondents' opposition to the application is predicated on a single issue. It contends that the Designated Agent having failed at its conciliation endeavours could not thereafter purport to issue a determination; it could not have a second bite of the cherry so to speak. According to the respondent the determination was a nullity which it therefore chose to ignore.

In heads of argument filed in support of its position reliance was placed on the principle enunciated in *Isoquant Investments (Pvt) Ltd v Memory Darikwa CCZ 06/2020* where MALABA CJ stated as follows;

"A designated agent may only exercise one power over a dispute. He or she may redress the dispute or attempt to redress it. He or she cannot do both. If he or she chooses to redress the dispute by hearing and determining the issues in dispute, he or she cannot at the same time attempt to redress the disputes. It is clear from the provisions of section 63 (39), as read with section 93 (1) of the Act that, a designated agent can only proceed in terms of section 93 of the Act, if he has not redressed the dispute. He or she would be attempting to settle the dispute. He or she would be attempting to settle the dispute through conciliation."

The applicant insists, however, that should the respondent have been aggrieved by the decision of the designated agent it was not open to it to flagrantly disregard that determination, it could either seek a review of that decision or appeal against it. It did neither.

The sole issue that falls for determination is whether a party is at liberty to ignore or disregard an extant order of the court ostensibly on the basis that the order granted is wrong or void. The simple answer is that no such luxury accrues to a party aggrieved by an order or decision of the court.

Authorities abound which serve to reinforce the time-honoured principle that a court order, unless sooner set aside on appeal or review must be obeyed. In *Magauzi & Anor v Jekera* SC 54/22 the following was said:

"When a court grants an order, all subsequent acts affecting the dispute between the parties rely on the courts order and not the reason or facts the court based its judgment on. Execution of the judgment is based on court orders and not the reason for which the court order was granted. Therefore, a party or the parties cannot disregard a court order as they are bound by it. In the case of *Chiwenga v Chiwenga* SC 2/14, it was stated that: The law is clear that an extant order of this Court must be obeyed or given effect to unless it has been varied or set aside by this court and not even by consent can parties vary or depart therefrom. See also *CFU v Mhuriro & Ors* 2000 (2) ZRL 405 (S). "

In *Mauritius & Anor v Versapark Holdings (Private) Limited & Anor* SC 2/2022 the following was said in the regard:

"It is trite that once a court has made an order it binds all and sundry concerned. Everyone bound by the court order has a been lawfully altered or discharged by a court of competent jurisdiction or statute. "

It matters not whether a party perceives the judgment to be wrong or even void, he or she is still bound by the decision as he has the avenues of review or appeal to redress the perceived error or irregularity complained of. In this regard the following was said in *Hadkinson v Hadkinson* [1952] All ER 567 (CA), the following was said:

"It is the plain and unqualified obligation of every person against or in respect of whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of the obligation is shown by the fact that it even extends to where the person affected believes it to be irregular or even void."

Finally, in *Chiangwa & Ors v Apostolic Faith Mission in Zimbabwe & Ors* SC 67/21 the following was stated:

"It is trite that extant court orders must be obeyed. This principle was affirmed by this Court in *Econet Wireless (Pvt) Ltd v Minister of the Public Service, Labour and Social Welfare & Ors* SC 31/16 at p 6, where BHUNU JA aptly remarked that:

"The doctrine of obedience of the law until its lawful invalidation was graphically put across by Lord Radcliffe in *Smith v East Elloe Rural district Council* [1956] AC 736 at 769 when he observed that:

"An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of illegality on its forehead. Unless the necessary procedures are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders." If it were not so, and every litigant challenging the validity of any law was excused from obeying the law pending determination of its validity, there would be absolute chaos and confusion rendering the application of the rule of law virtually impossible. This is because anyone could challenge the

validity of any law just to throw spanners into the works to defeat or evade compliance with the law.”

In the present matter there is convergence as between the parties that the decision rendered by the designated agent was for all intent and purposes a judicial decision with the force of law. Further, the parties are also agreed that the respondent had the option to pursue either an appeal or a review of that decision but that it did not do either. By dwelling therefore on the alleged erroneous nature of the Designated Agents decision, counsel for the respondent missed the essence of the application.

The present dispute cannot purport to be an inquiry into the correctness or otherwise of the decision rendered by the Designated Agent, it is simply one meant to establish whether at law the respondent lawfully ignore or disregard, as it did an extant order of the Designated Agent.

In the final analysis therefore, the respondent has no legal basis for disregarding the extant order of the designated agent. The corollary, of course being that there is merit in the application.

Accordingly, the application is hereby granted in the terms set out hereunder.

1. The respondent is hereby ordered to comply with the determination rendered by the Designated Agent dated 29 November 2021 within 14 days of the granting of this order
2. The Respondent to meet applicant’s costs of suit.

Mutindi, Bumhira Legal Practitioners, Applicants’ legal practitioners

Bhuni & Associates, Respondents’ legal practitioners.