ABISHAI BONDA

And

DANIEL MAHOZA

Versus

JR GODDARD CONTRACTING (PVT) LTD

IN THE HIGH COURT OF ZIMBABWE
MOYO J
BULAWAYO 28 MARCH AND 21 JULY 2022

Opposed Application

N. Mazibuko, for the applicants
P. Madzivire, for the respondent

MOYO J: This is a court application for a declaratur seeking an order as follows:-

1) The respective mutual separation agreements signed on 10 July 2020 by the applicants on the one side and the respondent on the other side, be and are hereby declared null and void and unenforceable.

2. That 1st and 2nd applicants be and are hereby reinstated into the employment of the respondent forthwith with full benefits and without any loss of benefits and or any other emoluments and entitlements otherwise due to them had their employment not been terminated on 10 July 2020.

3) That respondent pays costs on the legal practitioner and client scale.

There was also alternative relief which was disposed of at the preliminary stage. The respondent had raised 2 preliminary points the 1st being that the applicants want a quantification of damages which could not be sought via a declaratur. I upheld that preliminary point in a previous judgment hence the alternative relief fell away. Again, the respondent had raised another preliminary point to the effect that the allegations of duress and undue influence could also not be dealt with via an application, I upheld that one too and therefore the

allegations of duress and undue influence also fell away at the preliminary stage and will not be dealt with herein.

I held that the only point remaining for determination would be whether the mutual separation agreements are illegal and therefore null and void for want of compliance with the Labour Act. That is what I need to determine on the merits. In paragraph 12.4 of the Founding Affidavit, 1st applicant avers that the agreement they signed contained conditions that are less favourable than those provided for in the Act and that therefore it is unenforceable and illegal. The respondent opposes that.

The only issue for this court to determine therefore at this stage is whether the mutual separation agreement can be declared unlawful and consequently null and void due to non-compliance with Labour Act? The problem is that the applicants based the nullity and the non-compliance on the duress and undue influence, lack of adequate notice, failure to explain rights fully and improper quantification of the remuneration due. These are all issues that this court has already held as being inappropriate to be dealt with via a declaratur for the obvious reasons of material disputes of fact as well as that in a declaratur this court cannot quantify damages.

Applicants have not shown how the mutual separation agreements flout the Labour Act outside what this court has already upheld in its points *in limine*. When I upheld the points *in limine* but referred the matter for further argument on the illegality and unenforceability of the mutual separation agreement *vis a vis* compliance with the Labour Act, I was of the view that the applicants would present an argument *vis a vis* the law which would be divorced from the issues already held to be improper when I rendered the judgment on the preliminary issues. Unfortunately it appears, the illegality and unenforceability of the mutual separation agreements borrows from the same arguments already dismissed at the preliminary stage. I say so for applicants attack the non-compliance using the circumstances obtaining prior and during the signing of the agreements which are in themselves fraught with material disputes of fact that cannot be resolved in such an application. The examples are, lack of adequate notice the position of and involvement of one Jelot Mabikwa, and the wrong computation of the figures due which I have already held to be impossible to be resolved in an application for a declaratur.

It is clear and in my view that the applicants' contention on the non-compliance with the Labour Act still hinges on the same facts as already held to be impossible to resolve on such a fora. It is for these reasons that I will find that:

1) the material disputes of fact extend to the applicants' argument on compliance or non-compliance with both the Labour Act and the CBA (Collective Bargaining Agreement).

2. that the issue of quantification of remuneration having been found not to be an issue for resolution via an application for a declaratur, still cannot be held to be an issue for the determination of non-compliance with the Labour Act as this court is not in a position to quantify what was supposedly due. That job is for the Labour Court and the National Employment Council. It cannot be a remedy sought via a declaratur in my view.

It is for these reasons, that I find that this application fails on the merits as the applicants have approached the wrong court on a wrong platform *vis a vis* the relief they seek.

I accordingly dismiss the application with costs.

Calderwood, Bryce Hendrie and Partners, applicants' legal practitioners
Joel Pincus, Konson & Wolhuter, respondent's legal practitioners