

DENZIL TRACE PALMER

And

HAZEL ANN PALMER

Versus

AFRICA CENTRE FOR HOLISTIC MANAGEMENT

IN THE HIGH COURT OF ZIMBABWE

DUBE-BANDA J

BULAWAYO 29 SEPTEMBER 2021 & 7 OCTOBER 2021

Application for registration of a Labour Court judgment

L. Mpofu, for the applicants

L. Nkomo, for the respondent

DUBE-BANDA J: This is an application for the registration of a Labour Court judgment in terms of section 92B (3) and (4) of the Labour Act [Chapter 28:01]. The judgment sought to be registered was handed down on the 24 July 2020, and its operative part is couched as follows:

1. The ruling by the applicant be and is hereby confirmed.
2. Africa Centre for Holistic Management Zimbabwe is to pay Denzil Trace Palmer and Hazel Ann Palmer USD 44 000.00 within 30 days of this order.
3. Africa Centre for Holistic Management is to pay costs of suit.

The application is opposed. In its opposing affidavit, respondent attacked the application on points *in limine* and the merits of the matter. The respondent was represented by Counsel when the matter was argued before court and these flimsy points *in limine* were thankfully no longer pursued.

Factual background

This application will be better understood against the background that follows. The applicants had a labour dispute with respondent, their employer. They claimed payment of salaries, cash in *lieu* of leave days and commission. The amount claimed was USD\$ 44 000.00. The parties appeared before Labour Officer for conciliation. On the 11 April 2019, a certificate

of no settlement was issued. The Labour Officer proceeded to determine the matter in terms of section 93 of the Labour Court Act [Chapter 28:01] as amended. On the 26 July 2019, the Labour Officer made a draft ruling in favour of the applicants. She ordered payment in the sum of USD\$ 44 000.00. At the hearing of the application for confirmation before Labour Court Judge Hon. MOYA-MATSHANGA J, respondents raised two points *in limine*. The first was that the award was incapable of enforcement as it is awarded in United States dollars in violation of S.I. 33/19 and S.I. 142/19. The second was that the Labour Officer had no jurisdiction to deal with a dispute of right as an arbitrator. Regarding the first point, the Labour Court in its judgment number. LC/MT/107/19 said there is no need to belabour the argument concerning that point, because the applicants had conceded that they will accept payment in RTGS dollars at the interbank rate. The second point *in limine* was dismissed and it was ordered that the confirmation be heard on the merits. The application for confirmation on the merits was set-down before Labour Court Judge MAXWELL J. In judgment No. LC/MT/50/20 the Labour Court confirmed the draft ruling of the Labour Officer. The Court made an order which is subject of these proceedings. It is against this background that applicant has launched this application seeking the relief mentioned above.

Submissions by the parties

Mr *Mpofu*, counsel for the applicant submitted that respondent has not raised a recognisable ground for opposing the registration of a Labour Court judgment. It is contended that there is no basis at law upon which this court may decline to register the judgment as sought by the applicant. The judgment is extant and has not been set aside on appeal or review.

Adv. *Nkomo* argued that the judgment of the Labour Court is incompetent and violates the principle of legality. The argument is anchored on the fact that the Labour Court ordered payment to the applicants in United States dollars. It is argued that registration of a judgment sounding in United States dollars would be in contravention of the law. The point was made that this court cannot allow an order that contravenes the law to pass under its hand and be registered for the purposes of enforcement.

The net effect of the argument is that the Labour Court had committed an illegality in denominating the payment in United States dollars in light of the provisions of section 4(1) (d) of S.I 33 of 2019 which provides that all assets and liabilities that were valued and expressed in United States dollars immediately before the effective date are deemed to be values in RTGS

dollars at a rate of one-to-one to the United States dollar; S.I. 142/2019 which declared the local currency as the sole legal tender in all domestic transactions and the provisions of section 20 -24 Finance (No. 2) Act, 2019.

In terms of S.I. 33/2019 the effective date is 22 February 2019. The judgment covers salaries allegedly owed prior the effective date. It is contended that in light of the prevailing legal position denomination of the judgment in United States dollars was in contravention of the law. It is said that it is the settled position of the law that anything done in direct conflict with a statute is a nullity. For this proposition reliance is made on the Supreme Court judgment in *Zizhou v Taxing Officer & Another SC 7/202*. It is argued that this court is not compelled to take a “mechanical approach” and just register a judgment that contravenes the law. Again, it is contended that this court has jurisdiction and competence to decline to register a judgment violates the principle of legality. Again, it is argued that section 24 (1) of the Civil Evidence Act [Chapter 8:01] which permits a court to take judicial notice of the law of Zimbabwe; and decisions of the High Court or the Supreme Court anchors the argument that this court should not allow an illegality to pass under its hand. This court was urged to find that the Labour Court committed an error, and decline to act as a “rubber stamp” and dismiss this application.

Furthermore, it is argued that there are two conflicting judgments of the Labour Court, i.e. Judgment No. LC/MT/50/20 and Judgment No. LC/MT/50/20 on the issue between the litigants before court. In LC/MT/107/19 the Labour Court said that applicants herein had conceded that they will accept payment in RTGS value of the amount owed converted at the interbank rate. In effect this last point can summarily be disposed of by simply saying that applicants are seeking to register the Judgment No. LC/MT/50/20, and not Judgment LC/MT/107/19. There is no substance in this point. In my view it is a point which does not even merit a comment.

The law and the facts

In *Biltrans Services (Pvt) Ltd v The Minister of Public Service, Labour & Social Welfare & 6 Ors CCZ 16 / 2016* the Constitutional Court said:

In registering an arbitral award the High Court and the Magistrates Court are not carrying out a mere clerical function. While the registering Court may not go into the merits of the award, since its duty is to provide an enforcement mechanism and not to

usurp the powers of the Labour Court, it must be satisfied before registering an award that all the necessary formalities have been complied with. In *Vasco Olympio & 4 Ors v Shomet Industrial Development* HH-191-12, CHIWESHE JP at p1 of the cyclostyled judgment, outlining the requirements for registering an arbitral award, stated:

The purpose of registration is merely to facilitate the enforcement of such an order through the mechanism availed to the High Court or the magistrate court, namely the office of the Deputy Sheriff or the messenger of court, respectively... In an application such as the present one, this court is not required to look at the merits of the award. All that is required of this court is that it must satisfy itself that the award was granted by a competent arbitrator, that the award sounds in money, that the award is still extant and has not been set aside on review or appeal and that the litigants are the parties, the subject of the arbitral award. There must also be furnished, a certificate given under the hand of arbitrator.

The requirements that must be satisfied before the High Court or the Magistrates Court grants an application for registration of an award are:

- a. The award must have been granted by a competent arbitrator.
- b. The award must sound in money.
- c. The award is still extant and has not been set aside on review or appeal.
- d. The litigants are the parties to the award.
- e. The award must be certified as an award of the arbitrator.

Applicants argue that respondent cannot seek to challenge the judgment of the Labour Court, *via* a notice of opposition in an application for registration of the judgment. It is contended that in such an application this court does not inquire into the merits of the judgment sought to be registered. I agree. This court cannot decline to register the judgment on the basis that it thinks it is wrong on the merits. This court has no such jurisdiction. To make a finding that the judgment of the Labour Court is wrong would be incompetent and I think it would be treading on the prerogative of the Supreme Court. The arguments about the alleged violation of S.I 33/19, S.I. 142/2019 and the provisions of sections 20 -24 Finance (No. 2) Act, 2019 are totally irrelevant in this matter.

Applicants contend that the grounds upon which registration of arbitral award may be opposed are the same as those on which the registration of a Labour Court judgment may be opposed. I agree. None of the reasons for opposing the application for registration of the Labour Court judgment are sustainable. It is common cause that there is a Labour Court judgment, it

is still extant and has not been set aside on appeal or review. There is no basis at law upon which this court may decline the registration of this Labour Court judgment.

Disposition

For as long as the judgement of the Labour Court has not been set aside on review or appeal, and remains extant there is no basis upon which this court may decline its registration. For this reason, the application must succeed. There is no reason why costs should not follow the result.

In the result, I make the following order:

1. The judgment of the Labour Court under cover of case No. LC/HW/RA/173/19 being judgment No. LC/MT/50/20 be and hereby registered in terms of section 92B (3) and (4) of the Labour Act [Chapter 28:01], as a judgment of this Court.
2. The respondent be and is hereby ordered to pay applicants the sum of USD\$ 44 000.00.
3. Respondent to pay the costs of this application.

It is so ordered.

Joel Pincus, Konson & Wolhuter, applicant's legal practitioners
Ncube Attorneys, respondent's legal practitioners