

ANDREW MACHAYA
versus
CFI HOLDINGS LIMITED T/A FARM AND CITY CENTRE

HIGH COURT OF ZIMBABWE
CHIRAWU-MUGOMBA J
HARARE, 11 June 2021

K. Gama, for the applicant
S.M Hashiti, for the respondent

Opposed Application

CHIRAWU-MUGOMBA J: This matter is an application for the registration of a Labour Court judgment in terms of section 92B(3) of the Labour Court Act [*Chapter 28:01*]. That court in LC/H/2020 awarded the applicant the sum of US\$177 408 on the 25th of September 2020. The applicant now seeks registration of that judgment which sounds in money. In opposing the application, the respondent makes the following averments. The judgment is unenforceable and cannot be registered. It is in conflict with the law or it is *contra bonos mores*. The judgment purports to revive a matter that has prescribed. It orders payment of a sum in United States Dollars for a debt or obligation that arose prior to 2019. At the time of the judgment, the law had changed and now deemed such obligations to be at 1:1 with the RTGS dollar. Therefore the judgment cannot be registered to sound in United States dollars. The judgment is in any event subject to an appeals process. The respondent has sought leave to appeal and such application is pending in the Labour Court.

At the hearing, no submissions were made by the respondent regarding prescription and rightly so. See *Karonga v Zimbabwe Leaf Tobacco Company (Pvt) Ltd & Anor*, HH -64-16 Mr *Hashiti* submitted that the role of the High Court in such matters is not just to rubber stamp an award but to look at whether it is capable of enforcement. The Constitutional Court had occasion to deal with this issue in *Biltrans (Pvt) Ltd v Minister of Public Service, labour and Social Welfare & Ors*, CCZ 16-2016. It was stated as follows:-

‘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.

This in my view applies with equal force to Labour Court awards made in terms of s92B(3).

Further the court stated as follows:-

The High Court and the Magistrates Court would be exercising a judicial function in carrying out the inquiry before registering the award. The inquiry the Court has to undertake and the factors it has to consider are meant to define the content and scope of the right to equal protection of the law. They guarantee the right to equal protection of the law through judicial process. As counsel for the second to the sixth respondents correctly submitted, registration is not a foregone conclusion and a party against whom the award is made can successfully oppose the registration of an arbitral award if it does not comply with the requirements for registration. The right to oppose the application means that the parties are equal before the law. The situation would be different if the losing party was prohibited by the law from opposing registration of the arbitral award.

In *casu*, the applicant has met all the requirements for registration.

In *Chimango & Anor v I.CRC*, MTSHIYA J had this to say,

“As correctly pointed out by the applicants, “this court is not sitting as an appeal court or review court”. In terms of s 92 F of the Act, the respondent can appeal to the Supreme Court against a decision of the Labour Court. The section provides as follows:
“92F Appeals against decisions of Labour Court

- (1) An appeal on a question of law only shall lie to the Supreme Court from any decision of the Labour Court.
- (2) Any party wishing to appeal from any decision of the Labour Court on a question of law in terms of subsection (1) shall seek from the President who made the decision or, in his or her absence, from any other President leave to appeal that decision.
- (3) If the President refuses leave to appeal in terms of subsection (2), the party may seek from the judge of the Supreme Court to appeal.”

Indeed, if the respondent, as submitted in the heads of argument, felt that the decision of the Labour Court offended public policy, it had all the right to take advantage of the above provision in our law. It would therefore be totally irregular for this court to assume appeal powers over Labour Court decisions. To that end, the second point of opposition cannot be entertained.”

In *Mudyavanhu v Cairns Foods Limited*, HH-298-21, DUBE J had this to say,

“These sentiments apply with equal force to registration of Labour Court judgments. The power of this court under S92 B(3) of the Labour Court does not extend to setting the judgment or order sought to be registered aside for whatever reason. The court has no mandate to delve into the merits of the matter. It merely performs administrative functions without an entitlement to look into the correctness or otherwise of the judgment or order it seeks to register. Its role remains that of simply recognising that the judgment exists for the purposes of enforcement. Were the court to deal with challenges to the jurisdiction of the Labour Court, it would amount to it sitting as an appeal court”

The issue of the currency is one that is a question of law. It can only be entertained by the Supreme Court in terms of s92F of the Labour Court Act. It is telling that the respondent in its draft founding affidavit for an intended application for leave to appeal raised the same issue relating to S.I 33/19 as read with the Finance Act (No.2 of 2019). The same was raised in the draft notice of appeal. The respondent clearly realised that this court cannot purport to review the order of the Labour Court or treat it as an appeal. It is ironic that the respondent persisted with this issue at the hearing when clearly it had no merit. The judgment of the Labour Court is based on quantification of an amount that was in Zimbabwean dollars. It can be contrasted with the situation pertaining in *Madyavanhu v Cairns Foods Limited*, in which the award sought to be registered was expressed in the Zimbabwean dollar prior to 2010. The court in that matter made reference to *Samanyau and Ors v Fleximail (Pvt) Ltd* LC/H/776/14, in which it was held that the Labour Court has an entitlement in the exercise of its equitable jurisdiction to order payment of damages into an operational and realisable currency. In *casu*, this is exactly what the Labour Court did when it quantified salaries and benefits for the period 1 April 2003 to 31 December 2008 which were denominated in Zimbabwean dollars. This was before the multicurrency regime. The court had faced no issues with the salaries and benefits from 2009 to 2012, a period when the multicurrency regime was operational.

The respondent cannot also seek to rely on an intended appeal as a ground for opposing the registration of the award. In any event, an appeal does not suspend the decision appealed against hence the registration as well. See *Baudi v Kenmark Builders (Pvt) Ltd*, HH-4-12 and *Nyaguse & Ors v ZIMRA*, HH-453-15. In *Lowveld Rhino Trust v Dhlomo-Bhala*, SC 34-20, the Supreme Court draw an important distinction between registration and enforceability and stated that,

‘It is important to point out that s92(3) E of the act does not give the Labour Court the power to suspend registration of the arbitral award. It gives the Labour Court the power to order suspension of the execution of the arbitral award. Registration is distinct from execution’.

I do not perceive any public policy infringements as contended by the respondent.

The respondent has persisted in clearly legally unsustainable arguments against registration of the arbitral award. Accordingly it is only proper that the respondent pays costs of suit.

DISPOSITION

It is ordered that:-

1. The application for registration of Labour Court judgment number LC/H/203/2020 in terms of section 92B (3) of the Labour Act [*Chapter 28:01*] be and is hereby granted.
2. The Registrar of the High Court be and is hereby directed to register Labour court judgment number LC/H/203/2020 as a judgment of the High Court.
3. The respondent shall pay costs.

Gama and partners, applicant’s Legal practitioners
Nyawo and Ruzive, respondent’s legal practitioners