

CONFEDERATION OF ZIMBABWE INDUSTRIES
versus
RITA MARQUE MBATHA
and
THE SHERIFF OF ZIMBABWE N.O

HIGH COURT OF ZIMBABWE
MHURI J
HARARE, 6 July and 31 August 2022

Opposed Application

Mr *H Mutasa*, for the applicant
1st respondent in person
No appearance for the 2nd respondent

MHURI J: On 25 November 2019 the Supreme Court issued the following order:

“IT IS ORDERED BY CONSENT THAT:

1. The appeal be and is hereby allowed with no order as to costs.
2. The judgment of the Labour Court in LCH/H/APP/336/2014 be and is hereby set aside and substituted with the following:
 1. The application for quantification of damages partially succeeds and accordingly the respondent shall pay to the applicant the following within thirty (30) days of this court’s order.
 - a. Damages for unfair dismissal at the salary rate of ZW\$1 157 037.00 (1400) from 1 June 2003 to 31 May 2005= US\$36 600.00
 - b. Cash in lieu of notice = US 4 200.00
 - c. Cash in lieu of leave days = US 361.30
 - Total = US\$41 161.30
 - d. Interest on the total sum in a – c at the prescribed rate from the date of the court order to the date of payment in full.
 2. The claim for punitive damages be and is hereby dismissed.
 3. Each party shall bear its costs.
 4. The respondent shall pay the costs of its application for the condonation of late filing of the heads of argument.”

It is noted that paragraph 4 was inserted by a later amendment.

Consequent to this order, a writ of execution against applicant’s movable and immovable property was issued by this court on 8 January 2020 for the payment of the sum ordered by the Supreme Court i.e. US\$41 161.00. As a result, on 13 January 2020 applicant’s movable property was attached and on 14 January 2020 applicant paid a total sum of \$43

485.37 through the Sheriff being judgment debt \$41 161.30, Sheriff's commission \$2 058.07, Sheriff's costs \$276.00.

Later, another writ (the writ) bearing the Sheriff's date stamp dated 7 July 2020 was reissued against applicant's movable and immovable property for the realization of the sum of US\$141 161.30. Acting on this writ, the Sheriff proceeded to attach applicant's immovable property namely Stand No. 1718 Salisbury Township measuring 2 632 square metres held under Deed of transfer No. 1270/19.

It is this writ that gave rise to this application wherein applicant is seeking an order to stop execution of and set aside the writ. The grounds upon which the application is premised are three and these are that:

1. the writ was issued in respect of an unregistered Labour Court Order in contravention of section 92 B(3) of the Labour Act [*Chapter 28:01*].
2. it fails to comply with the then Rule 322 of 1971 High Court Rules.
3. the attachment of applicant's immovable property was effected in respect of a judgment already satisfied.

The application is strongly opposed by first respondent on the basis that applicant is in contempt of court as it has deliberately failed to comply with the Supreme Court order it drafted and consented to, the matter was finalized by the Supreme Court hence the High Court has no jurisdiction to review it, the Supreme Court did not amend the Labour Court order but set it aside. The Supreme Court order was issued in November 20219 hence the Finance Act No. 2 SI 33/2019 and the case of *Zambezi Gas Zimbabwe (Pvt) Ltd vs N R Barber (Pvt) Ltd & Anor* SC 3/20 do not apply. It is competent for judgments sounding in US dollars to be made and that applicant paid the \$43 495.37 using the same writ it wants nullified.

On 28 September 2020, at the conclusion of case management proceedings, CHAREWA J made a ruling in which she suspended the execution of the writ. She ruled:

“Consequently, I find that the reasonable and equitable approach is to suspend the sale in execution pending the decision of the court.”

This ruling disposes of first respondent's point that applicant is in contempt of the Supreme Court order. Further, it is common cause that applicant paid the sum of \$43 495.16 in compliance with the first writ after its movable property had been attached. This also disposes the first respondent's argument that applicant has approached the court with dirty hands.

Applicant's submission was that the writ is a nullity for having been issued under a Supreme Court case number to enforce an unregistered Labour Court judgment.

It is not an issue that the Supreme Court order which gave rise to the writ, came to be, as a result of an appeal against a Labour judgment under LC/H/APP/59/18 of the 15th July 2018. It is also not in issue that the writ was issued under case no. SC 119/19 by the Registrar of the High Court.

Section 24 of the Supreme Court Act [*Chapter 7:13*] provides:

“Effect of judgment of Supreme Court in civil appeals:

Except as otherwise provided in any other law, a judgment of the Supreme Court in any appeal in terms of this Part shall be recorded in the court or tribunal of first instance and such judgment may be enforced in all respects as if it had been given by that court or tribunal.”

The provision is peremptory. The provision is couched in peremptory terms making it mandatory to register the judgment in the court or tribunal of first instance. The Supreme Court order therefore ought to have been recorded in the Labour Court as required BY the above section. For purposes of enforcement such a judgment is deemed to have been given by the court or tribunal in which it has been recorded, i.e. Labour Court.

I did not hear first respondent state that the order was recorded in the Labour Court.

Section 92B of the Labour Act [*Chapter 28:01*], Effective date and enforcement of Labour Court provides under subsections 3 and 4 as follows:

- “(3) Any party to whom a decision, order or determination relates may submit for registration the copy of it furnished to him in terms of subsection (2) to the court of any magistrate which would have had jurisdiction to make the order had the matter been determined by it, or, if the decision, order or determination exceeds the jurisdiction of any magistrates court the High Court.
- (4) Where a decision, order or determination has been registered in terms of subsection (3) it shall have the effect, for purposes of enforcement, of a civil judgment of the appropriate court.”

After compliance with section 24 of the Supreme Court, first respondent's next task was to submit for registration the order furnished to her in terms of section 92B to the High Court. This process was not followed *in casu*.

Applicant's other submission was that the writ is a nullity as it does not comply with Rule 322 form 34 in that the writ does not state the judgment, whether the amount in question relates to a Supreme Court, High Court or Labour Court judgment.

A comparison of the two documents, namely Form 34 referred to and the writ being impugned, my observation and conclusion is that there is no material difference between the

two. Indeed the writ does not state the judgment but states “In the Supreme Court and cites Case No. 119/19” which though wrong is not so fatal as to render the writ a nullity on that basis. There was substantial compliance with the form in all other respects. This ground cannot stand.

The other argument by applicant was that the attachment of applicant’s immovable property was unlawful, it having been premised on a judgment that had already been settled.

In February 2019, SI 33 of 2019, The Presidential Powers (Temporary Measures) Amendment of Reserve Bank of Zimbabwe Act and Issue of Real Time Gross Settlement Electronic Dollars (RTGS\$) Regulations 2019 was promulgated.

Section 4(1)(d) there to provided:

“For accounting and other purposes, all assets and liabilities that were, immediately before the effective date, valued and expressed in United States Dollars (other than assets and liabilities referred to in Section 44C(2) of the Principal Act) shall on and after the effective date be deemed to be values in RTGS\$ at a rate of 1:1 TO US\$.”

In the case *Zambezi Gas Zimbabwe (Pvt) Ltd* (supra) MALABA CJ had the occasion to interpret the provision of SI 33/19. He laid the position thus:

“The phrase “immediately before” means that the liability should have existed at a date before the effective date and that such liability should have valued and expressed in United States dollars. The issue of the time-frame within which the liability arose in relation to the effective date of 22 February 2019 does not matter. What is of importance is the fact that the liability should have been valued before the effective date in United States dollars and was still so valued and expressed.”

On the strength of the provisions of SI 33/19, applicant computed the sum ordered by the Supreme Court and the Sherriff’s fees and converted them into RTGS\$ at a rate of 1:1 and paid the judgment debt. The liability arose before the effective date i.e. February 2019, the amount was expressed in US\$ as per the Labour Court judgment, No. LC/H/305/2018 and the Supreme Court, though it set aside the Labour Court judgment it substituted it with an order equally expressed in US\$ wherein it increased the sum quantified by the Labour Court.

I associate myself with the finding by this Court in judgment HH 180-20 that the liability of C.Z.I (applicant) to applicant (first respondent) pre-dated the effective date i.e. February 2019, it is therefore affected by s 4(1)(d) of SI 33/19 and s 22(1)(d) of the Finance Act, 2019.

RITA MARQUE MBATHA
versus

CONFEDERATION OF ZIMBABWE INDUSTRIES
and
THE SHERIFF OF ZIMBABWE HH 180-20

By complying with the law, in the manner it did, that is making payment in RTGS\$ and at the rate of 1:1, applicant was not reviewing the Supreme Court Order. It was simply following the provisions of the new law. I find therefore that first respondent's argument that applicant has no jurisdiction to review an order of a superior court is misplaced.

The writ in question states the sum to be realized as US\$41 161.00 together with interest thereon. This is despite the fact that applicant had made payment after the attachment of its movable property. The writ gives the picture that at its issuance, applicant had paid nothing which picture is not correct. First respondent persisted with the issuance of a writ when the judgment debt had been satisfied. I therefore find that applicant has established good cause for costs on the higher scale.

Having found that applicant has proved the grounds upon which this application is premised I will grant the application. It is therefore ordered that:

1. The writ of execution against movable and immovable property re-issued and date stamped 7 July 2020 issued by this court under case No. SC 119/19 be and is hereby set aside.
2. The attachment of the applicant's immovable property, namely stand 1718 Salisbury Township held under Deed of Transfer No. 1270 be and is hereby set aside.
3. First respondent bears applicant's costs on the legal practitioner and client scale.

Gill, Godlonton & Gerrans, applicant's legal practitioners