

BULISANI NCUBE

Versus

ZIMBABWE NATIONAL CHAMBER OF COMMERCE

IN THE HIGH COURT OF ZIMBABWE
TAKUVA J
BULAWAYO 2 JUNE & 1 DECEMBER 2016

Opposed Application

Applicant in person
P. Mukono for the respondent

TAKUVA J: This is an application for registration of an arbitral award in terms of s 98 (14) of the Labour Act Chapter 28:01 (the Act) as read with section 6 (5) (6) of SI 217 of 2003.

The award was granted on 3 August 2015 in favour of the applicant who is a former employee of the respondent.

The application is opposed by the respondent on the following two grounds:

- “4.1 The respondent has appealed to the Labour Court against the arbitral award under case number LC/MT/150/15 and the matter is still pending as will be noted from the respondent’s heads of argument annexed hereto marked “A1 – A5”.
- 4.2 The respondent has applied for the suspension of the arbitral award under case number LC/MT/APP/217/15 and the matter is still pending before the Labour Court as will be noted from the respondent’s heads of argument, a copy of which is attached hereto marked “B1-B3”.”

The relevant provisions relating to registration of arbitral awards are sections 98 (13) and 98 (14) of the Act. Section 98 (13) provides:

“At the conclusion of the arbitration, the arbitrator shall submit sufficient certified copies of his arbitral award to each of the parties affected by it”.

While section 98 (14) states:

“Any party to whom an arbitral award relates may submit for registration the copy of it furnished to him in terms of subsection (13) to the court of any magistrate which would have had jurisdiction to make an order corresponding to the award had the matter been determined by it, if the arbitral award exceeds the jurisdiction of any Magistrates’ Court, the High Court.”

The effect of registering an award in terms of subsection (14) is to enable it to have the effect for purposes of enforcement of a civil judgment of the appropriate court.

What is revealed by the common cause facts are the following developments:

1. The respondent appealed against the award under case number LC/MT/150/15.
2. Meanwhile after filing the above appeal, respondent filed an application for an interim relief in terms of section 92E 3 of the Act which states:

“92E Appeals to the Labour Court generally

- (1) An appeal in terms of this Act may address the merits of the determination or decision appealed against.
- (2) An appeal in terms of subsection (1) shall not have the effect of suspending the determination or decision appealed against.
- (3) Pending the determination of an appeal the Labour Court may make such interim determination in the matter as the justice of the case requires.” (emphasis added)
3. The appeal was dismissed for want of prosecution on 26 October 2015 under case number LC/MT/141/15 (LC/MT/APP/236/15). The application for an interim relief was filed under case number LC/MT/APP 217/15.
4. Respondent applied for the rescission of the Labour Court order under case number LC/MT/APP 236/15. The application for rescission was filed under case number LC/MT/APP 252/15.

What is crystal clear from the above exposition is that, currently there is no appeal pending before the Labour Court. Further, the application for an interim relief has fallen by the way side as it can only be made pending the determination of an appeal. Where there is no appeal pending such an application becomes defective and irregular.

As regards the appeal against an arbitral award, the law is settled that it does not suspend the decision appealed against – see section 92E 1 *supra*. I take the view that it is not against

public policy to register the award in casu in that once it is found that there is no pending appeal, if it follows that there is no valid application for “suspension of the arbitral award.” What is pending is an application for rescission of a default judgment. I must point out that, that application has been pending in the Labour Court for more than 12 months. It boggles the mind why the respondent has not exercised its rights by seeking an urgent hearing of this application in the Labour Court. The respondent appears content with the *status quo* while the applicant continues to suffer financial prejudice.

For these reasons, I find that the grounds advanced by the respondent in opposing the registration of the arbitral award are without merit.

Accordingly, it is ordered that:

- (1) The arbitral award granted in favour of the applicant on 3 August 2015 be and is hereby registered as an order of his court.
- (2) The respondent pays the applicant a total of US\$10 213,90.
- (3) The respondent pays applicant costs of suit.

Danziger & Partners Legal Practitioners, respondent’s legal practitioners