

HB 04/17
HC 2516/16
X REF HC 184/16; HB 212/16
LC/APP/MT/197/15

NIMROD NCUBE

Versus

**SUNUE ENTERPRISES (PVT) LTD t/a
MAIN PROTECTIVE CLOTHES**

And

**ZIMBABWE REPUBLIC POLICE
THE OFFICER IN CHARGE
BULAWAYO CENTRAL POLICE STATION N.O**

IN THE HIGH COURT OF ZIMBABWE
BERE J
BULAWAYO 24 NOVEMBER 2016 & 12 JANUARY 2017

Unopposed Application

BERE J: On the 24th day of November 2016 and after hearing submissions from the applicant who was appearing in person, I dismissed his application in the motion court. I did indicate then that my reasons would follow. Here they are:

This matter was brought as a contempt of court application by the applicant who alleged that the 1st respondent had deliberately refused to act in terms of the arbitral award made in favour of the applicant by an independent arbitrator, one M. C. Sibanda.

It is true that an arbitral award was made in favour of the applicant on 14 July 2015 and that to date it has not been complied with.

It will be noted that the arbitral award was quite specific on what the applicant had to do in the event of the 1st respondent failing to reinstate the applicant. The order granted read as follows:

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- “(a) Respondent to reinstate complainant without loss of salary and benefits from the date of termination or non-renewal of contract.
- (b) If reinstatement is not acceptable to the respondent parties shall negotiate exit package in place of reinstatement.
- (c) Should agreement not be reached for exit package refer the case to this arbitrator for quantification of damages.”¹

When the applicant filed an application for registration of the award in this case my brother judge MATHONSI J hinted to the applicant that there were inherent challenges in the applicant’s attempt to execute the arbitrary award in its current form. Fully appreciating that it is trite that an employer cannot be compelled to reinstate a dismissed employee the learned Judge gave the applicant free legal advice as follows:

“The biggest challenge is that the applicant has proceeded rough shod over the rights of the respondent to be heard taking advantage of a slip up by the respondent wherein it refused to appear before the arbitrator and is clinging onto an arbitral award which is not sounding in money while shuttling out the respondent from contesting the award. In his wisdom, but certainly in his lack of it, the applicant has forced the arbitrator to recuse himself even before quantifying his damages in lieu of reinstatement, it being trite that the employer cannot be compelled to reinstate a dismissed employee.

It is not the province of this court to decide what the applicant has to do with the award in its present form but merely to register it. The difficulty he will face thereafter is pretty obvious. He does not have an arbitrator to quantify his damages and may be unable to enforce the registration (sic) order in its present form. The only way out may be to start all over again.”²

It is clear from the position taken by my brother MATHONSI J that the learned Judge had seen the flashing signs of the difficulties staring at the applicant in his effort to execute the arbitral order granted in his favour. It is for another day’s debate whether or not there is any wisdom in the court acceding to the registration of an order which is incapable of being executed upon.

1. See record page 28

2. *Nimrod Main Protective Clothes (Pvt) Ltd* HB 212/16 at p 5

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Back to this case, it is quite apparent that until such time that the arbitral award which the applicant has has been quantified as specified in the arbitral order itself it would be premature to start talking about contempt. In any event “a corporate can only comply with a court order through its officers and can thus only be guilty of contempt if the officers for whose conduct it can in law be held liable have refused or failed to comply with such a court order.”

The order which the applicant has in its current form has not been refined to attract contempt because the applicant has himself not taken steps to breathe life into it.

It was for these reasons that I dismiss the application.