

HERBERT SAURAMBA
and
113 OTHERS
versus
MITCHELLS BAKERY MUTARE

HIGH COURT OF ZIMBABWE
CHIWESHE JP
Harare, 24 June 2010.

C. Mawunga, for the applicants
N. Bvekwa, for the respondent

CHIWESHE JP: In this matter the applicants all employees of the respondent company had a grievance concerning non payment of wages. The parties went for arbitration and an award was made in favour of the applicants on 14 November 2010.

The applicants now seek to register the award with this court. The arbitral award reads as follows:-

“6. Award

Wherefore after hearing this case I make the following order.

1. That the employer had partially fulfilled what was arrived, and agreed at the conciliation stage at the Ministry of Labour, which culminated in a certificate of settlement.
2. That respondent pays all outstanding salaries by end of February 2010, in the event that respondent fails to pay by that date, that it pays with interest at the prevailing bank rates.

That both parties share the cost of this arbitration.”

This application is made in terms of s 98 (14) of the Labour Act [*Cap 28:01*] which provides as follows:

“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, or, if the arbitral award exceeds the jurisdiction of any magistrates court, the High Court.”

I am inclined to decline the application for the reason that the award sought to be registered does not sound in money. I am referred to the judgment of my learned sister MAKARAU JP (as she then was) in *Thandiwe Mandiringa vs National Social Security Authority* and five other similar applications dealt with together for purposes of convenience - HH 98-2005.

I am in entire agreement with the reasoning in that judgment. As correctly observed in that judgment, the purpose of registering arbitral awards is to enable the applicant to execute upon the awards by the issue of writs out of the magistrate court or the High Court. In terms of Rules 322 and 323 of the High Court Rules 1971, a writ may be issued in execution of a judgment in terms of which an order in respect of the payment of money, the delivery up of goods or premises or for ejection. It follows that any order or judgment falling outside the above categories cannot be executed upon by the issuance of a writ. It has been argued that the award under present consideration is that kind of award which although not sounding in money itself, by its terms and wording gives rise to a formula by which its monetary value can be calculated. Indeed the applicants have calculated what is due to them in terms of their contracts of employment. However, that calculation was not part of the award itself.

The resultant figure has been computed by one party to the dispute and has not been subjected to the determination of an impartial arbitrator, nor has it been shown to have been agreed to by the respondents. The figure to all intents and purposes remains a mere claim until such time as it has been adjudicated upon and made part of the arbitral award.

For these reasons the application is dismissed with costs.

Maunga Maanda & Associates, applicants' legal practitioners
Bvekwa Legal Practice, respondent's legal practitioners