MUNANDI ARCDEL & D-TROOP EMPLOYEES
versus
MUNANDI – ARCDEL & D-TROOP

HIGH COURT OF ZIMBABWE
BERE J
HARARE, 12 APRIL 2013

S. Hashiti, for the applicant
T. Mpofu, for the respondent

Opposed Application

BERE J: I am seized with this matter in terms of section 98 (14) and (15) of the Labour Act which requires that an arbitral award be registered either in this court or the Magistrate's court to pave way for its execution.

It is supposed to be a fairly simple application as this court, by operation of provisions of the Labour Act itself has no jurisdiction to be a court of first instance in labour related matters where the labour court has exclusive jurisdiction, and neither does it qualify to be an appeal court.

So much has been thrown in the arguments for and against the registration of the arbitral award granted by the arbitrator in this case on 20 December 2011.

Let me state from the outset that it is not a correct appreciation or exposition of the law that an appeal or an application for review of an arbitral award to the Labour Court suspends the decision of the arbitrator. If such suspension or stay is desired an application for stay of execution of the decision of the arbitrator must be filed in the Labour Court in terms of section 92 E (3) thereof and once that indulgence has been granted by that court, that order from the Labour court must then be produced in the High Court to prevent registration of the arbitral award. The process of suspending execution

generally falls outside the province of the High Court because this court does not enjoy original jurisdiction in labour related matters. See the provisions of section 89 (1) of the Labour Act as amended by the Labour Act 17 of 2002 which created the current section 89 (6) of the Labour Act which ousted the jurisdiction of this court in labour related matters, particularly those where the Labour court has jurisdiction. See also the case of *Thomas Tuso v City of Harare* HH 1-2004 at page 3 and *Martin Sibanda and Godfrey Moyo vs Benson Chinemhute* No. HH 131-2004.

However there are occasions when the High Court may be called upon to set aside an arbitral award. This would arise in those situations contemplated by the Article 34 of the Arbitration Act [7:15]. Other than invoking the provision of Article 34 the High Court may also refuse to recognise or enforce an arbitral award in terms of Article 36 of the Arbitration Act (supra).

Having said this I will now deal with the points *in limine* raised by the respondents in this case.

The point has been made that one Clemence Mudzengerere who deposed to the affidavit in support of the chamber application of the registration for the arbitral award has no *locus standi* to represent the employees concerned.

It is a pity that this issue has had to consume considerable time for the court in argument by both counsels.

It is common knowledge that a party who purports to have the power to represent others in litigation must have his or her authority properly defined.

The court was told among other things that the authority of Mudzengerere was in terms of Rule 2(a) of the High Court Rules, which rule incidentally does not exist. I do not want to read anything beyond a genuine mistake on the party of the Applicant's counsel. I have total faith and trust in all the legal practitioners who appear before me.

In his own papers filed in this Court it is clear that Mudzengerere's employment was terminated by mutual arrangement on 11 August 2011. It was therefore incumbent upon him to produce convincing evidence that despite his mutual termination of employment he remained the chairperson of the workers committees of the three respondent companies.

This could have been done by the presentation of either a special power of attorney or an affidavit of collegiality signed by those whom he purports to represent. No affidavit of collegiality was filed and the nearest the deponent did was to file what was supposed to be a special power of attorney.

The authenticity of the special power of attorney was put into question by the respondent's representatives. In his answering affidavit (not the founding affidavit) Mudzengerere attached an undated document headed "Special Power of Attorney". Not only was the document undated but several employees had not signed that document.

I think it is overstretching the whole issue for applicant's counsel to submit that despite the apparent shortcomings in that document there had been substantial compliance with the law warranting condonation by this court. With due deference to counsel, that is a lazy way out of the predicament he found himself in. I hold a completely different view. There was simply nothing tabled before me to demonstrate that Mudzengerere was duly authorized to represent the applicants in this application.

If Mudzengerere had no authority to represent the applicants, it must logically follow that he was starved of *locus standi* to represent anyone. There is therefore sufficient persuation from the respondent's counsel that there is no application worth considering before me.

My approach would certainly have been different if the applicants in this matter had been properly cited as I detected some insatiable appetite by the respondent's counsel to drag me into what is clearly an appeal in this matter when it is abundantly clear that this court has no such jurisdiction.

On costs, there is need for the court to discourage individuals from indulging in spurious or vexatious litigation.

Mudzengerere had all the opportunity to properly justify his status as a litigant. He has not taken hid of the flashing signs before him and for that he must bear the brand for costs, though on the ordinary scale.

Accordingly the application for registration is dismissed with costs on the ordinary scale.

Kanyenze and Associates, applicant's legal practitioners

Coglan Welsh and Guest, respondent's legal practitioners