

SHINE CHIDZIVA & 49 NAMED OTHERS
versus
SERVCOR (PVT) LTD

HIGH COURT OF ZIMBABWE
MAVANGIRA J
HARARE, 2 August 2013

Opposed application

Applicants in person
M. Makore, for the respondent

MAVANGIRA J: This is a chamber application for the registration of an arbitration award as an order of this court for purposes of execution.

A dispute arose between the applicants on the one hand and the respondent on the other. The dispute was referred to arbitration. The arbitrator determined the matter in favour of the applicants. The respondent appealed to the Labour Court. Whilst the appeal was pending the applicants filed an application for quantification before the arbitrator. The arbitrator proceeded to do the quantification of the award in favour of the applicants. On 21 August 2012 this chamber application was filed. On 29 August 2012 a notice of opposition and opposing papers were filed. On 4 September 2012 the Labour Court dismissed the respondent's appeal by reason of the respondent's default. On 21 September 2012 an answering affidavit was filed *in casu*.

In the opposing affidavit the application is opposed on the grounds firstly, that "the order being relied on has been appealed against and an appeal against the decision of the arbitrator suspends the decision being appealed against." Secondly, that "When the arbitrator heard the application for quantification of damages, he had no legal basis to do so as his award had been suspended by the appeal filed to the Labour Court on 24 August 2011."

Section 92E of the Labour Act, [Cap 28:01] provides:

"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.”

In *Brian Muneka and Ors v Manica Bus Company* HH 30/13 MTSHIYA J stated at p 6:

“----- s 98 (9) of the Labour Act gives the Arbitrator the same powers as the Labour Court in determining a Labour dispute. The relevant section provides as follows:-

(9) In hearing and determining any dispute an arbitrator shall have the same powers as the Labour Court.’

Clearly the above provision of the law places an arbitral award obtained in terms of the Labour Act at the same level with an order of the Labour Court.

Like in subs (14) in s 98, subs (3) above does not spell out the procedure to be followed in registering a decision, order or determination of the Labour Court with the High Court or Magistrates Court. The practice in the High Court, however, has always been through application, which application is then served on the other party (the respondent). Respondents have in the majority of cases, opposed applications for the registration of arbitral awards. The general argument put forward is that the award will have been appealed against or is facing a rescission application. I do not believe that in providing for registration for enforcement purposes, the legislature envisaged a procedure where the applicant would be denied the registration of a certified award as we normally witness. My view is that the other party is at liberty to oppose the process of execution or enforcement on any legal or reasonable grounds.

Furthermore, the other party can also seek interim relief in terms of s 92E (3) of the Labour Act which provides as follows:-

‘Pending the determination of an appeal the Labour Court may make such interim determination in the matter as the justice of the case requires.’ ”

He proceeded at p 7:

“The registration of an award in terms of the Labour Act is, in my view, a matter of course as long as the award remains enforceable or unsatisfied.”

I fully agree with and associate myself with MTSHIYA J on the above. It is further noted that in *Vasco Olympio and Ors v Shomet Industrial Development* HH191/12

CHIWESHE JP stated whilst dealing with an application for registration of an arbitral award with this court:

“In an application such as the present this court is not required to look at the merits of the award

It is clear that the respondent wishes to challenge the grant of the award on the merits. What has been lodged is an appeal. The noting of an appeal in the Labour Court does not suspend the decision appealed against

For as long as the arbitral award has not been suspended or set aside on review or appeal in terms of the Labour Act, there is no basis upon which this court may decline its registration

Mr Makore submitted that the correct position regarding whether or not an appeal to the Labour Court has an effect on the decision appealed against is not settled. He cited the cases of *Vasco Olympios (supra)* and *Inter-Agric (Pvt) v Mudavanhu Allen and 12 Others* HH 100/2010 as divergent authorities that exposed this lack of settlement of the law. He submitted that given that state of the law, he would abide by the court’s decision. In my view, s 92E (2) (*supra*) is very clear on this aspect. An appeal in terms of the Labour Act shall not have the effect of suspending the determination or decision appealed against.

On the basis of the authorities and provisions of the Labour Act cited above, it does not appear to me that the respondent has raised any valid legal impediment to the registration by this court of the arbitral award made in favour of the applicants. It is also noted that the respondents appeal to the Labour Court has also been dismissed, albeit on account of its default and not on the merits. But it appears to me that that aspect does not take the matter any further for either party.

It is for the above reasons that on 2 August 2013, I granted the order sought by the applicants.

Applicants in person
Maunga, Maanda & Associates, respondent’s legal practitioners.