SHEILA GREENLAND
versus
ZIMBABWE COMMUNITY HEALTH
INTERVENTION RESEARCH PROJECT
(ZICHIRE)

HIGH COURT OF ZIMBABWE
MATHONSI J
HARARE, 27 March and 3 April 2013

*L Tandi*, for the applicant
*C W Gumiro*, for the respondent

MATHONSI J: Litigants in this country are fast developing this unacceptable and indeed detestful habit of trifling with courts of law and in the process succeeding in bringing the courts to disrepute. There is no other way of describing the opposition to this application for registration of an arbitral award made against the respondent by D Mudzengi, an arbitrator, on 7 June 2011 than to say that it is trifling with the court in a regrettable manner.

The applicant was employed by the respondent, and from the papers before, me she is still so employed, as a project co-ordinator/manager. The respondent is a non-governmental organisation running two health related projects from two different premises namely, 28 Van Praagh Avenue and 35 Van Praagh Avenue in Milton Park Harare.

A labour dispute arose between the parties when the respondent purported to suspend the applicant from employment. The dispute was eventually referred to arbitration but the respondent did not attend the arbitration proceedings. The arbitrator made an award in favour of the applicant after observing that the respondent had been "contemptuous by not attending conciliation and arbitration proceedings despite being notified and having acknowledged receipt of such notification to attend same", to wit:

> "7.1 The respondent is ordered to pay the applicant US$261 448-14 being arrear salary and benefits arising from the date of unlawful suspension to present day. Payment should be made within 14 days of this award.
>
> 7.2 The respondent is ordered to reinstate the applicant unconditionally upon receipt of this award. Alternatively, if reinstatement is no longer an option, the applicant should be paid damages in lieu of reinstatement to be agreed

> between the parties within 14 days of this order, failure which either party can approach the arbitrator for quantification."

The applicant launched this application in terms of Article 35 of the First Schedule to the Abritration Act [*Cap 7*:*15*] for registration of the arbitral award as an order of the High Court for enforcement purposes. Where upon the respondent filed opposition stating in the opposing affidavit of Pesanai Chatikobo, the project co-ordinator, that there are two distinct projects run by the respondent and that the respondent based at 28 van Praagh was not part of the arbitration proceedings. The respondent relied on the fact that the arbitral award was addressed to 35 van Praagh, an address housing a different project of the respondent and that the address given at p 1 of the application for registration is also 35 van Praagh and not 28 van Praagh. Significantly, in the founding affidavit of the applicant, the respondent's address is given as 28 van Praagh.

The respondent prayed that the draft order should be amended to reflect that it is against the respondent based at 35 van Praagh Avenue and not 28 van Praagh Avenue Milton Park, Harare.

In my view, it is an unacceptable splitting of heirs to separate the respondent on the basis of its 2 addresses. What is clear is that the respondent is piloting 2 projects from 2 different addresses. All the correspondence between the parties including the employment contract record the applicant's employer as Zichire of 28 van Praagh Avenue Milton Park Harare. Not a single document bears number 35 van Praagh Avenue, Milton Park, Harare.

For the respondent to then contest the application for registration of the award merely on the basis that the arbitrator captures the respondent's address as 35 van Praagh and the application also did the same, is a trifle and a complete waste of the court's time. Indeed it is the height of turpitude which clearly attracts punitive costs as a seal of the court's displeasure at such abuse of process.

The respondent has not given any sustainable reason why the award should not be registered. The award remains extant and it is not for this court to question its propriety. *Ndlovu* v *Higher Learning Centre* HB 86/10 at p 2. The purported review application made by the respondent to the Labour Court, which strangely remains unresolved almost two years after it was filed, cannot be used as an instrument to block the registration of the award. In any event, the respondent has not argued that it should.

I take the view that even if the respondent had sought to rely on the review application filed in the Labour Court, which it has not done, the applicant would still be entitled to have

the award registered because it remains effectual and in force. It has not been set aside or suspended pending the hearing of the review application. In enacting s 92E (2) of the Labour Act [*Cap 28:01*], which provides that an arbitral award shall not be suspended by the noting of an appeal, the legislature intended that beneficiaries of such awards should be able to enforce them regardless of an appeal. I agree with the sentiments of MAKARAU JP (as she then was) in *DHL International* (*Pvt*) *Ltd* v *Madzikanda* 2010 (1) ZLR 201 (H) 206 E where she stated:

> "In my view, the amendment to the law in 2005 to provide that appeals to the Labour Court would not suspend the decision appealed against was clearly meant to vary the common law position that was prevailing prior to the amendment."

While the Act is silent on the effect of a review application, it would be absurd to formulate a construction that would allow litigants to circumvent the provisions of s 92E (2) by couching their challenge of an arbitral award to the Labour Court as a review instead of an appeal. Clearly such a review application would not suspend the award.

A party which finds itself faced with an arbitral award it is challenging should take advantage of the provisions of s 92E (3) which empowers the Labour Court to make any interim determination for the stay or suspension of an arbitral award. Where the award has not been stayed or suspended in terms of s 92 E (3) and remains extant, this court will, as a matter of principle, register the award for enforcement unless there are grounds for not doing so as provided for in Article 36 of the model law contained in the Arbitration Act [*Cap 7:15*].

In *casu*, none of the grounds for refusing recognition or enforcement of the award exist. It must therefore be registered.

I have already stated that grounds exist in this matter in light of the nature of the opposition for an award of punitive costs against the respondent. A message must be sent to litigants who elect to remain rooted in kindergarten that the courts will not allow themselves to be drawn back to that domain.

In the result it is ordered that:

1. The arbitral award of Hon D Mudzengi dated 7 June 2011 in the matter between the applicant and the respondent be and is hereby registered as an order of this court.
2. The respondent is hereby ordered to pay the applicant the sum of US$261 448-14 being salary and benefits arrears.

3. The respondent shall bear the costs of this application on a legal practitioners and client scale.

*Kantor & Immerman*, applicant's legal practitioners
*Ngarava, Moyo Chikono*, respondent's legal practitioners