KADOMA CITY COUNCIL
versus
KADOMA CITY COUNCIL EMPLOYES
and
THE DEPUTY SHERIFF – KADOMA N.O

HIGHCOURT OF ZIMBABWE
MANGOTA J
HARARE, 16 May 2014 and 23 May 2014

Urgent chamber application

Advocate *T. Magwaliba*, for the applicant
J Burombo, for the respondent

MANGOTA J: The applicant, Kadoma City Council, and the first respondent, employees of the Council, were, and are still, embroiled in labour dispute. The dispute which is wages/salaries – related remained in existence from 2011 todate.

The parties engaged each other through the facilitation of an arbitrator on not less than three occasions. Their aim and object were to have the dispute which existed, and still exists, between them resolved in an as amicable a manner as was possible.

The arbitrators who deliberated over the parties' dispute issued three arbitral awards. These are:-

(1) the award which arbitrator Honourable A. NANI issued on 20 January, 2012
(2) the award which arbitrator Honourable A. NANI issued on 30 January, 2012- and
(3) the award which arbitrator Honourable S. ZIMUTO issued in March, 2014. It is date-stamped 18 March, 2014.

The above mentioned awards appear at pp 47, 27 and 31 of the record of these proceedings respectively. The last two of the three awards favoured the position of the first respondent namely the non-managerial staff of the applicant. The first award, that of 20 January 2012, was more of a directive to the parties than it was otherwise. It directed Kadoma

Municipality Workers Council which comprised employers and employees to draft and adopt a payment plan for the year 2012 upon or before February 2012.

Dissatisfied with the pace at which the resolution of the parties dispute was proceeding, the first respondent made up its mind to registrar one of the arbitral awards with this court for purposes of compelling the applicant to pay to it what was or is due to it. The first respondent, accordingly, acted in terms of s 92 B (3) of the Labour Act [*Cap* 28:01] and did, on 12 March 2014, have the arbitral award which is dated 20 January 2012 registered with this court.

The arbitral award which the first respondent registered in terms of the above mentioned section bears the stamp of the registrar of this court. It is date-stamped 27 March, 2014. The applicant, the papers show, did file with this court an application for rescission of the judgement which related to the registered arbitral award. The application bears the stamp of the registrar of this court. It, like the registered arbitral award, is date-stamped 27 March, 2014. The matter which pertains to the rescission of judgment application is pending before this court.

Whilst the parties' minds remained focused on the rescission of judgement application which the applicant mounted, the second respondent did, on 2 May 2014, attended at the offices of the applicant armed with a writ of execution. He was acting under the instruction of the first respondent, the applicant claimed. The second respondent, it said, attached the applicant's property and advised the latter that the property was scheduled for removal on 12 May, 2014. It stated that the conduct of the second respondent prompted it to file the present application on an urgent basis. It prayed the court to interdict the respondents from removing its property from its possession pending finalisation of its application for rescission of the registered arbitral award of 20 June, 2012.

The applicant attached to its application annexuresA1and A2. The annexures respectively refer to the Writ of Execution and the Notice of Seizure and Attachment. It stated that the property which the second respondent attached was worth $1 445 447-28. It argued that the first respondent was/were not entitled to claim the stated sum of money from it. It continued and stated that the arbitral award did not state that the sum of$1 376194-56 which appeared in the abovementioned two annexures was due and payable to the first respondent. It averred that the court order through which the arbitral award was registered was a court order which was not sounding in money and was, therefore, not executable. The sum of $1 376 194-56, the applicant claimed, was not due and payable to the first respondent.

The above stated and many other matters which remain unstated in this part of the judgement constitute the applicant's reasons for having filed an application with the court on the basis of urgency. It implored the court not to be oblivious to the fact that, if the execution were allowed to proceed, it would be greatly prejudiced and its rescission application would be more of an academic exercise than it would serve any meaningful purpose. It remained of the view that the *status quo* should be allowed to prevail pending finalisation of the rescission application with which this court is seized. The removal of its property by the second respondent would cause the applicant to face serious challenges in implementing its statutory mandate of providing services to residents who fall under its administration, it said. The first respondent, it claimed, could not allege that they would suffer more harm if the property is not removed than the hardship that would be suffered by thousands of service users who are within the applicant's jurisdiction of service provision. It stated that it stood to lose more as it, together with unsuspecting service users, would be adversely affected by the attachment and the subsequent removal of its property by the second respondent.

The first respondent put up a spirited argument in its opposition to the application. It raised one preliminary matter and other issues in an effort to move the court to dismiss the application. The court takes this opportunity to commend counsel for the first respondent who, in an effort to persuade the court to look at the application from his client's perspective, enriched the court's mind on disputes which are related to labour law, contracts of employment in particular. The case authorities which he cited as read together with pertinent statutory provisions of the Labour Court Act [*Cap* 28:01] were, indeed, of very great value to this and other court(s) which may have an occasion to deal with applications or actions of the present nature in future.

The matters which the first respondent raised in its opposition to the application were that:

(a) the application is before a wrong forum (raised as a preliminary matter);
(b) this matter is not urgent;
(c) it is not in the best interests of the first respondent for the urgent relief to be granted
(d) the balance of convenience favours that the urgent relief not be granted – and
(e) continued prejudice will be occasioned on the first respondent should this application be granted resulting in the first respondent suffering injustice.

During the hearing of this application, the issue of this court not having any jurisdiction in regard to labour related matters occupied centre stage. It, if a comparison may be favoured, constituted the gravamen of the first respondent's argument. The court would in this instance, do no better than to quote the text of the argument as framed by the first respondent who said:

"IN LIMINE: Exclusive Jurisdiction of Labour Court in Labour Matters"

4. It is submitted that this application is defective as it seeks this Honourable Court to stay the execution of an order in a Labour matter when this Honourable Court lacks jurisdiction to do so. (Emphasis added)

5. It is submitted that, in terms of the Labour Act [*Cap* 28:01], the Labour Court has got inherent and exclusive jurisdiction over all labour matters. It is further submitted that, in terms of the Labour Act, only the Labour Court is empowered to suspend or stay an award in a labour matter upon application by the aggrieved party.

6. Section 89 of the Labour Act, which outlines the functions, powers and jurisdiction of the Labour Court, provides as follows in subsection (1) (a);

'*The Labour Court shall exercise the following functions –*
(a) Hearing and determining applications and appeals in terms of this Act or any other enactment.'

7. Section 89 of the Labour Act further provides as follows:

No court, other than the Labour Court, shall have jurisdiction in the first instance to hear and determine any application appealed or matter referred to in subsection (1)."

The first respondent submitted that the above cited provisions made it clear that the Labour Act granted to the Labour Court inherent and exclusive powers to deal with cases which fell, or fall, under its purview. It developed its argument in this regard and stated that, because the present application was or is a labour matter, the application should exclusively be dealt with by the Labour Court and not this, or any other, court.

The first respondent's argument is, in the court's view, correct to the extent that a matter which is labour – related cannot be commenced, let alone be proceeded with, in any court other than the Labour Court. Such commencement of, or proceeding with, a matter would be in clear violation of the law which the legislature enunciated when it went about its onerous task of establishing the Labour Court and clothing it with not only inherent but also exclusive powers to deal with labour-related matters. It follows, therefore, that if, say, A has

a dispute which is labour-related with B, for instance, A's choice of the forum to which he takes his case for adjudication becomes of paramount importance. A cannot, under those circumstances, take his case to the magistrates' court or to the High Court without infringing the above cited provisions of the Labour Act. Those provisions are clear and unambiguous and they compel A to take his case to no court other than to the Labour Court.

The Labour Court does have inherent and exclusive jurisdiction to hear and determine all labour-related cases. The Labour Court does not, however, have any jurisdiction to enforce its judgements, orders, decisions and/or determinations. The legislature, in its wisdom, parcelled those jurisdictional powers to the magistrate court and/or the High Court. Section 92 B(3) at the Act is pertinent to this issue. It reads:

> "Effective date and enforcement of decisions of Labour Court
>
> (1) …
> (2) …
> (3) Any party to whom a decision, order or determination relates may submit for registration the copy of it furnished to him in terms of ss (2) to the court of any magistrate which would have had jurisdiction to make the order had the matter been determined by it, or if the decision, order or determination exceeds the jurisdiction of any magistrates' court, or the High Court".

It goes without saying that an order which has been registered with the magistrates court or the High Court automatically ceases to be an order of the Labour Court from the moment of its registration. That order becomes an order of the court in which it is registered. Any party who is aggrieved with the manner in which the order was registered cannot, in law or in logic, take his grievance to the Labour Court but to the court which registered the order or to a court which is superior to that court. That will be so notwithstanding the fact that the grievance which is being complained of does have its origin in a labour related dispute which labour officials of the Ministry of Labour or arbitrators who are appointed in terms of, and operate under, the provisions of the Arbitration Act [*Cap* 7:15] or the Labour Court may have dealt with. All those officials and authorities do, in terms of the Labour Act, have the requisite inherent and exclusive jurisdiction to hear and determine all labour related cases up to the enforcement stage of the same. Their jurisdiction does not, in the court's view, extend beyond that stage unless the grievance which is being complained of relates to the substance

of the order and not to the manner in which the order was registered for enforcement purposes (emphasis added).

The grievance which the applicant is complaining of in this case centres on the manner in which the first respondent did have the arbitral award which the arbitrator is said to have made in their favour was registered with this court. The applicant is not, in the case which it filed for rescission of judgment, attacking the substance of the arbitral award. It is complaining against the procedure which the court which registered the award adopted when it proceeded to grant to the first respondent the order which the later had prayed for. This court, therefore, does have the jurisdiction to hear and determine issues which relate to the registration, as well as the enforcement, of that order.

The first respondent's submissions on the matter at hand was, accordingly, sound but, unfortunately, misdirected. The case authorities which it cited, were, or are, relevant to the case in the sense which the court was able to explain for the benefit of the parties and not in the sense that the first respondent sought to portray. The applicant's submissions on the point were most unhelpful as it could not proceed any further than simply stating that :

> "In terms of the labour court [Cap 28:01], once an arbitral award has been registered with this Honourable court, it becomes, for purposes of enforcement process of the High Court of Zimbabwe." (emphasis added).

One would have been happier than otherwise if the applicant had advanced cogent and convincing reasons which supported the view which it held of the matter. Be that as it may, however, the court remains satisfied that the explanation which it gave of the matter in the foregoing paragraphs settles the issue which the first respondent raised to a point which requires little, if any, debate. The court states, for the avoidance of doubt, that, whilst the first position which the first respondent took is a correct one in the instances which the court made reference to in some paragraph(s) of this judgment, the position which the court has taken on the matter which the first respondent raised is correct.

In for far as the issue of the urgency, or otherwise, of this application is concerned , the court mentions in passing that the attachment of the property of applicant was conducted on 2 May, 2014 and the date of removal of the same was scheduled for 12 May, 2014. The applicant filed its application on 6 May, 2014 and it cannot, therefore, be said not to have treated the threat which the second respondent had caused it to be apprehended of with the

urgency which the matter deserved. It acted in serious haste in an effort to arrest the untenable situation which threatened its interest in a very adverse manner.

The last three matters which the first respondent raised are adequately addressed by the observation which the court made of the application as a whole. The observation is that, in seeking to enforce its rights in terms of the law, the first respondent registered an arbitral award of 20 January, 2012. That award, the court observed, is not an order sounding in money and it is, therefore, not executable. The award was more of a directive to the employers and employees of Kadoma Municipality to draft and adopt a payment plan for the year 2012 upon or before 21 February 2012. It reads:

> " AWARD
>
> It is hereby ordered that:-
>
> (1) The collective job action cannot be sustained in terms of the law.
>
> (2) Kadoma Municipality Works Council to draft and adopt a salaries payment plan/schedule for the year 2012 by February, 2012.
>
> Date of award: 20 January, 2012."

The first respondent registered the abovementioned arbitral award with this court on 12 March, 2014. Its aim and object, when it so registered it, was to have it enforced against the applicant. The error which the first respondent made in this set of circumstances is not only regrettable but it is also unfortunate. It is unfortunate in the sense that it is unenforceable in the manner that the respondents contemplated.

The court has considered all the circumstances of this case. It remains of the considered view that the applicant proved its case, on a balance of probabilities, to the satisfaction of the court. The application, accordingly, succeeds with costs.

Mawere and Sibanda, applicant's legal practitioners
Messrs Maja and Associates, first respondent's legal practitioners