

SERVIOUS KUFANDADA
and
ANTHONY GONGA
and
VICTOR MASIMBA
and
GEORGE CHIVI
and
ISHMAEL MUKWASI
and
COURAGE NYAMAJIWA
and
BESTEN MATOPE
and
SONENI CHAVIZHA
and
ADAMU WELEMU
and
MATHEW SITHOLE
And
ISAAC TAKAWIRA
and
ANTHONY MAHWAMBA
and
CHARLES CHARUMA
and
CHARLES SEPE
And
ARTWELL MPOFU
And
LOVEMORE FINDI
and
PATRICKMADIYE
and
GEORGE MURWISI
and
ESNATHKATSAMBA
and
AUGUSTINE MAHWANA
and
ROCKIE EMMANUEL MUTUNAMI
and
TERRENCE KURWAKUMIRE
and
OLIVER MUZHINGI
and
FORBES FARAI MUPOTSA
and

WELLIE RUFARO CEPHAS KUNYENDA
and
FRANCIS CHUMA
versus
ZIMBABWE ANTI-CORRUPTION COMMISSION

HIGH COURT OF ZIMBABWE
ZHOU J
HARARE, 30 July & 17 October 2013

Opposed Application

V Mazhetese, for the applicants
Ms R Hove, for the respondent

ZHOU J: The applicants are employees of the respondent. A dispute arose between the applicants and the respondent which was referred to arbitration in terms of the Labour Act (*Chapter 28:01*). The arbitrator R Matsikidze rendered an award in favour of the applicants which was quantified on 20 March 2013. The applicants approached this court for the registration of the award in terms of s 98(14) of the Labour Act. The application for the registration of the award was opposed by the respondent on the ground that the respondent had noted an appeal to the Labour Court against the arbitral award which the applicants sought to register for enforcement.

On 17 October 2013 I granted the applicants the relief which they were seeking. The respondent has since noted an appeal against the order for the registration of the award. The respondent requires to be furnished with the full reasons for the order granted. These are the reasons.

The respondent's contention is that its appeal to the Labour Court has the effect of suspending the arbitral award appealed against. This matter depends upon whether s 92E of the Labour Act applies to an appeal against an arbitral award filed in terms of s 98(10) of the same Act. Section 92E provides as follows:

- “(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.”

The question to be decided is whether an appeal to the Labour Court in terms of s 98(10) of the Labour Act against an arbitral award made in terms of s 98 falls within the ambit of s 92E.

In the case of *Dhlokhlo v Deputy Sheriff, Marondera & Ors* 2011 (1) ZLR 416(H) the court came to the conclusion that s 92E did not apply to appeals made in terms of s 98(10) of the Labour Act. See pp 426B - 427C; also see *Mvududu v Agricultural & Rural Development Authority* 2011 (2) ZLR 440 (H) at 453 C-D. A different conclusion was reached in the case of *Kingdom Bank Workers' Committee v Kingdom Bank Financial Holdings* 2012 (1) ZLR 93(H) at 99 E-F in which the Court concluded that an appeal against an arbitral award under s 98(10) is an appeal in terms of the Act within the meaning of s 92E and, therefore, does not have the effect of suspending the award appealed against.

Where there are conflicting positions in the judgments the court follows not necessarily the later judgment but one which it considers to reflect the correct approach. Section 92 E(1) does not, in my view, present any ambiguity. It applies to appeals made in terms of the Labour Act. The only Act which makes provision for an appeal to the Labour Court against an arbitral award made in terms of the Labour Act is that Act. If the legislature had intended to limit the application of s 92E to appeals made in terms of sections other than s 98 or to exclude from its application appeals made in terms of s 98 then the legislature would have expressly provided for that. The reference in s 92E to appeals made “in terms of this Act” means that the section is intended to apply to appeals made in terms of the Act. The application of s 92E has not been made subject to the provisions of s 98. Further, the two sections are not inconsistent with one another and must be read together to give effect to the expressed intention of the legislature which is clearly to ensure that an appeal made to the Labour Court does not suspend the operation of an arbitral award or a determination which is appealed against. Subsection (3) gives the Labour Court the power to grant interim relief in a matter in respect of which an appeal is pending before it. Thus any party who intends their appeal to suspend the operation of an award which is the subject of the appeal would be entitled to make an application in terms of that subsection and satisfy the requirement that the

justice of the case requires that the execution of the award be suspended pending determination of the appeal. See *Kingdom Bank Workers' Committee v Kingdom Bank Financial Holdings*, (*supra*), p 101 C-D. The respondent did not make an application in terms of s 92 E(3) for interim relief suspending the operation of the award pending determination of their appeal. Accordingly, the award could be enforced.

For the reasons set out above I granted relief in terms of the draft order for the registration of the arbitral award.

J Mambara & Partners, applicants' legal practitioners
Attorney-General's Office, Civil Division, respondent's legal practitioners