DAVID JOHN CARROLL
versus
STEELBASE ZIMBABWE (PRIVATE)LIMITED

HIGH COURT OF ZIMBABWE
MAFUSIRE J
HARARE, 14 & 19 January 2015

**Opposed application**

*T. Nyamasoka,* for applicant
*Z. Macharaga,* for respondent

MAFUSIRE J: This was a chamber application for the registration of an arbitral award. Because it was opposed it was referred to the opposed motion court. The matter had a chequered history. It had started more than eight years ago. Below are the facts as summarised.

In August 2007 an arbitrator, one N. A. Mutongoreni ("***Mutongoreni***") made an award in favour of the applicant (hereafter referred to as "***Carroll***"). Mr Mutongoreni determined that the termination of Carroll's employment with the respondent (hereafter referred to as "***Steelbase***") had been unfair. He awarded damages. However, these were not quantified.

In September 2007 Steelbase appealed to the Labour Court against Mutongoreni's award. Simultaneously, it applied to that court for an order to stay the award pending the determination of the appeal.

It seems in 2011 Carroll went back to arbitration for the quantification of Mutongoreni's award. On 16 September 2011 another arbitrator, one G Fereshi (hereafter referred to as "***Fereshi***"), quantified Mutongoreni's award in the sum of US$112 520. Twelve days later, i.e. on 28 September 2011, the Labour Court granted a stay of Mutongoreni's award. That was more than five years after the appeal had been filed. The Labour Court said nothing about Fereshi's quantification.

On 12 October 2011 Steelbase appealed to the Labour Court against Fereshi's quantification. Before me Mr *Nyamasoka*, for Carroll, advised that an application for a stay of Fereshi's quantification had also been lodged with the Labour Court. He also advised that

Steelbase's appeals against Mutongoreni's award and Fereshi's quantification had eventually been dismissed. Therefore, there was nothing pending at the Labour Court.

Much energy was spent on technical issues. Mr *Macharaga*, of the law firm *Mugiya & Macharaga Law Chambers*, who appeared for Steelbase, initially wanted a postponement. He had just assumed agency but had not done so formally. He said he had had no time to study the matter. All along Steelbase had been represented by another law firm called *Gill, Godlonton & Gerrans* (hereafter referred to as "***GGG***"). However, GGG had renounced agency. The actual legal practitioner of record was said to have been out of the country. So one of the technical issues was whether or not Mr *Macharaga* had a right of audience and whether he could properly move for a postponement, given that Steelbase had automatically been barred for having filed its heads of argument out of time.

Another issue was whether Steelbase was aware, or whether it ought to be deemed to have been aware, of the set down of the matter. This issue arose because the notice of set down had been served by the Sheriff on GGG. In their notice of renunciation of agency GGG had given as Steelbase's last known address, the name of some road in the heavy industrial sites of Harare. The area seemed outside five kilometres of the radius of the court. So the issue was: given that GGG had renounced agency and yet the notice of set down had still been served on them, had that been proper service?

After a brief adjournment during which I urged them to consider the provisions of Order 2 r 6(2)(c), as read with Order 7 r 48(c) the parties came back agreed that the service of the notice of set down upon GGG had been proper service. Rule 6 provides for the renunciation of agency by a legal practitioner. The notice of renunciation must be served on the client, the court and all the other parties to the proceedings. Among other things, if the retiring attorney does not specify the client's new address for service, or an address at which post may be delivered, then service of process at the retiring attorney's address is valid service.

Mr *Nyamasoka* was not amenable to a postponement. The hearing was on a Wednesday. He said on the preceding Monday of that week, Mr *Macharaga* had contacted him indicating that he (Mr *Macharaga*) had been informed by Steelbase about the pending case; that he was unlikely to assume agency in the matter but that he wanted to have sight of all the pleadings. Mr *Nyamasoka* said he had referred him to GGG.

Related to the issue of the postponement was that of the automatic bar operating

against Steelbase by virtue of its heads of argument having been filed out of time. They had been filed by counsel who had been instructed by GGG. Mr *Macharaga* submitted that he wanted the matter postponed so that he could file a formal application for the upliftment of that bar. He said if the court was not amenable to a postponement then he would simply ask that the matter should proceed on the merits in terms of those heads. His request was that the bar be uplifted and those heads be admitted.

Mr *Macharaga's* stance necessitated that I glimpsed at the prospects of success of the whole defence mounted by the respondent. It was common cause that both the main award by Mutongoreni and the quantification by Fereshi were *extant*. The appeals against them had been dismissed by the Labour Court. But even if they had not been dismissed, by virtue of the provisions of s 98(10) of the Labour Act, (*Cap 28:01*), an appeal against the decision of an arbitrator lies to the Labour Court. In terms of s 92E(2) of that Act, such an appeal does not suspend the decision appealed against. Therefore, there was nothing standing in the way of registration of the awards: see *Gaylord Baudi* v *Kenmark Builders (Private) Limited*[1]; *DHL International Ltd* v *Madzikanda*[2]; *Samudzimu* v *Dairibord Holdings Ltd*[3]; and *Senele Dhlomo-Bhala* v *Lowveld Rhino Trust*[4].

Mr *Macharaga* readily conceded the point. He withdrew all opposition to the matter proceeding. An order in terms of the draft was then granted as follows:

"IT IS ORDERED THAT;

1. The arbitral award issued by Ms G. Fereshi on 16th September 2011 be and is hereby registered as an order of this Honourable Court in terms of section 98 (14) of the Labour Act (Chapter 28:01).

2. Respondent shall pay to the Applicant the sum of USD 112 52.00 together with interest *a temporae more* from [the] date of application to [the] date of final payment.

3. Respondent to pay costs of suit."

19 January 2015

*Matsikidze & Mucheche,* applicant's legal practitioners
*Muvingi & Mugadza*, respondent's legal practitioners