

OK ZIMBABWE
versus
CLARIS MADZINGA

HIGH COURT OF ZIMBABWE
UCHENA, MWAYERAJJ
HARARE, 22 July 2014 and 29 January 2015

Civil appeal

Mrs R. Matsika, for the appellant
Respondent in person

MWAYERAJJ: The appellant lodged an appeal against the Magistrates Court decision wherein the court *a quo* registered an arbitral award.

The appellant relied on the following grounds of appeal.

1. That the award was made in the absence of jurisdiction on the part of the arbitrator and that the dispute was therefore not capable of resolution through arbitration.
 - 1.1 The provisions of the Labour Act in s 63 (3) (b) make it clear that a Labour Officer cannot have jurisdiction over a matter with which a Designated Agent is seized. The Labour Officer did not therefore have jurisdiction to entertain the complaint. Resultantly he did not have the jurisdiction to refer the matter to the arbitrator.
 - 1.2 Section 93(7) (b) of the Labour Act stipulates that where a Labour Officer (or designated agent) fails to finalise a dispute within 30days of it being referred to him or her, either of the parties may refer the matter to the labour court. The matter should therefore have been referred to the labour court and not to a labour officer once the 30 day limit was exceeded.
 - 1.3 Section 105 (6) of the Labour Act, on which the arbitrator relied to found jurisdiction, applies not to complainants of unfair labour practices, but to disciplinary proceedings.
2. The court *aquo* accordingly erred in failing to find that by virtue of the fact that the arbitrator had no jurisdiction to hear the matter the dispute was not capable of settlement through arbitration in terms of the laws of Zimbabwe and that the court

was therefore bound by provision of Article 36(1) (b) (1) of the Arbitration Act to decline to register the award.

3. The court *quo* furthermore erred in failing to find that the dispute fell within the ambit of the provisions of Article 36 (1) (b) (ii) of the Arbitration Act which provides that a court should refuse to register an award where the award is against the public policy of Zimbabwe. It was demonstrated to the court that the award is against the public policy of Zimbabwe. It was demonstrated to the court that the award was grossly irrational to the extent that it would be contrary to the public policy of Zimbabwe to register some on the basis that:
 - 3.1 The respondent herein was awarded a salary for the period January to June 2012 when by her own admission she was not performing her duties at all between January and May 2012 and
 - 3.2 Furthermore the award was grossly irrational in that the respondent was awarded a salary for the month of June 2012 when the evidence on record demonstrated that he contract of employment had been terminated on 24 May.
4. The court *quo* furthermore erred in giving judgement without giving any reasons for the decision. A judgement without reasons is a legal nullity.

The brief history of the matter is that the appellant and the respondent were in employer employee relationship. The respondent presented documentation from her doctor wherein it was recommended that she should be given duties which would not entail sitting for long hours. The respondent was employed as a till operator. Following the doctor's recommendations when assigned to till operation by the appellant she could not take up her duties. The discord culminated in none payment of salary and or wages. The respondent then approached a Designated Agent of the National Employment Council with a complaint. The relevant s 63 3 (a) and (b) clearly spells out that where a Designated Agent is authorised to redress any dispute or unfair labour practice in terms of subsection 3(a) no labour officer shall have jurisdiction over the matter.

A reading of the section is clear that a Designated Agent has jurisdiction over a matter to the exclusion of any labour officer only when the matter is still within 30days time from the date of notification. The legislative intention here being *inter alia* to exclude parallel process to encourage exhaustion of domestic remedies but certainly the mention of the time frame is important and worth noting, signifying the matter cannot be indefinitely held in

abeyance before a designated officer. This is fortified in s 101 (6) of the Labour Act [*Cap 28:01*] which is instructive and reads

“If a matter is not determined within thirty days of the date of notification referred to in para (e) at subsection 3, the employee or employer concerned may refer such a matter to a labour officer, who may determine or otherwise dispose the matter in accordance with s 93.1.”

It is in compliance with the law that the matter was referred after certificate of no settlement to the arbitrator. This disposes of the first ground of appeal. A Designated Agent failed to resolve the matter within the 30days statutory requirement and referred the matter to the Labour Officer who issued a certificate of no settlement and referred the matter for arbitration. The arbitrator determined the matter and issued an award. It is that award which the respondent sought to register for enforcement purposes. The magistrate duly registered the award and it is that registration which is subject of this appeal.

It is not in dispute that registration of an award in the magistrate or High Court is for purposes of having the order registered as order of the respective court in order to facilitate enforcement. The appellant in the face of an arbitral award issued after due process did not comply with same and this necessitated the approach to the magistrate court. The Magistrate Court was not sitting as appellate court to determine the labour dispute but the magistrate court sat to register an arbitral award which was granted after following due process. The circumstances of the matter clearly spell out the step by step progression of the matter leading to the registration of the award by the court *aquo*. The matter was referred to a designated agent who issued a certificate of no settlement and in compliance with the Labour and Arbitration Act the matter was referred to an arbitrator. The arbitrator was to determine whether or not the employee was owed outstanding salaries and was to determine the appropriate remedies. The dispute was properly referred to the arbitrator in terms of s 93 (5) (c) of the labour Act.

The award by the arbitrator given the circumstances of the case was simply a determination against unfair labour practise and the jurisdiction of the arbitrator was not excluded by the mere fact that the matter started from a designated officer. In any event the issue of jurisdiction did not fall for determination by the arbitrator and the court *aquo*.

The court *aquo* dealt with registration of the award for purposes of enforcement and the record does not reveal the court *aquo* delved into the merit of the labour disputes. The court *aquo* was not sitting as an appeal court and it rightly registered the arbitral award which

fell within its jurisdiction. Contrary to the appellant's submission that the subject matter of the dispute could not be resolved by arbitration the dispute on unfair labour practise and issue of wages and salary is properly capable of settlement by arbitration under the law of Zimbabwe. There is no merit in holding that the court *aquo* misdirected itself in registering the arbitral award presented before it for registration. The distinction of an arbitral award and determination on merit or appeal against an arbitral award should not be under stated. It appears the appellant's argument is on the substantive appeal against the arbitral award which was not the matter before the court *aquo*.

The court *aquo* was tasked to register the arbitral award wherein the arbitrator had made a determination of unfair labour practise and ordered a remedy in payment of an award to the respondent. It is that award which the court *aquo* presently registered as there were no substantive reasons to justify decline of registration. All the grounds of appeal outlined by the appellant cannot stand given there is nothing that barred the arbitrator from granting the award which was properly registered by the Magistrates Court for enforcement purposes. The last ground of appeal that the magistrate did not give reasons for his judgement also cannot stand as the court *a quo* gave its reasons as reflected on p 6 of the record. The appeal has no merit. It is ordered that

1. The appeal be and is hereby dismissed.
2. The appellant shall pay the respondent costs.

UCHENA J Agrees _____

Wintertons, appellant's legal practitioners