

NELSON MAUREDE AND 16 OTHERS  
versus  
TREGER PRODUCTS (PVT) LTD

HIGH COURT OF ZIMBABWE  
MANGOTA J  
HARARE 19 February 2018 & 6 July 2018

### **Opposed Application**

*B Makururu*, for the applicants  
*J Samukange*, for the respondent

MANGOTA J: I dealt with this application on 19 February, 2018. I delivered an *ex tempore* judgment in which I dismissed it with costs.

On 8 May, 2018 the applicant addressed a letter to the High Court Registrar. It did so through its current legal practitioners. It requested for reasons for my decision. These are they:

The applicant and the respondent appeared before the arbitrator one C Mesikano on 21 February, 2013. He issued an arbitral award in favour of the applicant. He ordered the respondent to pay to the applicant the sum of \$256 317.00.

The arbitral award gave birth to the current application. The applicant moved the court to register the same for purposes of enforcement. It advanced four reasons for the motion which it placed before the Court. These were that:

- a) the award was sounding in money;
- b) the amount awarded was within the monetary jurisdiction of the court;
- c) the award was certified in terms of Form LR 9; – and
- d) the applicants were a party to the arbitration award.

The respondent opposed the application. It raised two preliminary matters after which it dealt with the substance of the application. Its two *in limine* matters were that:

- i) HC 3359/13 which the applicant filed on 3 May, 2013 was pending at court; and
- ii) the cases of Ngonidzaishe Moliba and Julius Demo who were managerial workers were dealt with separately from that of Nelson Maurede and 16 others.

It stated, on the merits, that the parties did not agree on the *quantum* which the applicant sought to register. It submitted that the applicant misled the arbitrator on the mentioned issue. It said it registered its objection to the same and it urged the arbitrator to exercise his powers and correct the *quantum* so that it remained in *sync* with what it said was the correct position of the matter. It submitted that it successfully applied for stay of execution of the arbitral award. It stated, in its heads, that only Nelson Maurede withdrew his application for registration of the arbitral award under HC 3359/13. It insisted that the other applicants did not. It said only fourteen (14) applicants were before the court. It averred that Kelvin Makuva and Jonis Nyadzuwa who passed on were not before the court. It stated that there was no substitution of the dead persons. It said the court has not been told the amount which related to the two deceased persons. It insisted that the arbitral award which did not identify the sixteen (16) others was invalid. It said there was no legal *persona* which answered to the name “*Nelson Maurede and sixteen (16) others.*” It submitted that the only person to whom the award related was Nelson Maurede. It averred that the award which was made against a non-existent entity was a nullity. It moved the court to dismiss the application with costs.

Annexures D and E which the respondent attached to its notice of opposition are relevant. The annexures are letters which it addressed to the learned arbitrator on 22 February 2013 and 20 March, 2013. They state in clear and unequivocal terms that the respondent disagreed with the *quantum* which the applicant seeks to register.

The respondent did not hide its disagreement with the figure of \$256 317. It copied the annexures to the applicant. The annexures state in an undiluted manner that what the arbitrator endorsed was the applicant’s unilateral statement. One of the annexures urged the arbitrator to exercise his powers in terms of s 98 (2) of the Labour Act as read with s 33 of the Arbitration Act and correct the figure of \$256 317 which was, and is, the subject – matter of the parties dispute.

The applicant states, in response, that the respondent should refer the above mentioned matter to the arbitrator. It submits that it is not within the jurisdiction of the court to review the award.

Whilst the position which the applicant takes reflects the correct position of the law, it is not, at the same time, suggesting that the court which is faced with such a matter as the respondent raised should turn a blind eye to the same. It is not, in other words, moving the court to simply rubber stamp what it placed before it notwithstanding the unsatisfactory circumstances of the same.

Where, as *in casu*, parties are at cross purposes on the issue of the *quantum* which is sought to be registered and there is no evidence that their disagreement on the same was resolved, it is, in my view, ill-advised for the applicant to insist on registering the wrong *quantum* for purposes of enforcement. The applicant knows as much as I do that, once registered, the order ceases to be that of the court *a quo*. It assumes the status of the order of this court. Its knowledge of that fact notwithstanding, it insists that the order should be registered in its uncorrected form. That, with respect, increases litigation which clogs the court's roster unnecessarily. It is, at any rate, not the function of the court to aid and abet disputes which parties place before it. Its sole function is to resolve such in the interests of justice.

It is, therefore, in the interests of justice that I took note of the parties' serious disagreement as to the issue of *quantum* which is sought to be registered and allowed them to resolve the same so that the agreed sum is placed before the court for registration. The fact that the disputed *quantum* was adversely affected by the death of one Kelvin Makuva and one Jonis Nyadzuwa whose estates remain unjoined to the application adds another dimension to an already confused matter.

It is, in my view, pertinent for the parties to resolve their dispute at the appropriate forum before the applicant moves the court to register an arbitral award which is under such a serious challenge as the present award is. *A fortiori* when evidence filed of record points in the direction that the challenge which the respondent raised two years prior to the filing of the application remains unaddressed todate.

The applicant relied on the remarks which BHUNU J (as he then was) made in *Ericson Myududu v Agricultural & Development Authority*, HH 286/11 wherein he spelt out three requirements which an applicant for registration of an arbitral award must satisfy for the award to be registered. The learned judge said:

“In order to qualify for registration all what an applicant has to do is to satisfy the court that:

- (i) he is a party to the arbitral proceedings;
- (ii) the award relates to him;
- (iii) the copy he is presenting for registration has been duly certified by the arbitrator in terms of subs (13)”.

The applicant’s statement is that it satisfies the abovementioned three requirements. It insists that the same must, therefore, be registered.

The award which is sought to be registered appears at p 20 of the record. It makes mention of Nelson Maurede only. It does not mention any other person apart from him. Those who are suing together with him are collectively described as “16 others”. The names of the sixteen (16) remain unknown.

The absence of their names from the arbitral award disenables them from being parties to the arbitration proceedings. The award cannot relate to unknown and unnamed persons.

Certainty is the hallmark of any judicial work. No judicial proceedings can validly be conducted by, or against, unknown or unidentified persons. The applicant does not, therefore, satisfy para(s) (a) and (b) of the above cited judgment upon which it places its reliance.

Apart from Nelson Maurede whose name is specifically mentioned in the award, none of the other persons who sued together with him can show the registering court that:

- (i) he or she is a party to the arbitration proceedings; or
- (ii) the award relates to him or her.

The application is, to the above stated extent, fatally defective.

The respondent states, and in my view correctly so, that there is no legal *persona* which answers to the name “*Nelson. Maurede and 16 others*”. It insists, and I agree, that when proceedings are instituted by a non-existent entity, the court cannot relate to the same. The case of *CT Bolts (Pvt) Ltd v Workers Committee* 2012 (1) ZLR 363 (S) which it cited in its Heads aptly describes the circumstances of the applicant. I, in the mentioned regard, associate myself with the remarks which GARWE JA was pleased to make in the same when he said:

“The respondent not being a legal *persona* is not properly before the court. The proceedings before the Labour Court and prior to that, the arbitrator, were similarly void.”

That the proceedings which brought about the award which is the subject of this application are a nullity requires little, if any, debate. It stands to good logic and reason that a nullity cannot form the basis of any registration.

The current application cites Treger Products (Pvt) Ltd as the respondent. The award which the learned arbitrator granted cites Treger Ltd as the applicant's employer.

There is a world of difference between the two cited names. This application relates to a private company. The applicant's employer, on the hand, is a public company. It remains unclear if registration is sought against Treger Products (Pvt) Ltd or against Treger Ltd. The applicant did not explain the anomaly. Nor did it explain how that anomaly it came about. The *onus* rests on it to state the correct position of the matter. The court cannot.

What the court can tell, however, is that it is impossible for the applicant to enforce an award against a non-existent entity. As the respondent correctly states, Treger Products (Pvt) Ltd was not a party to the proceedings which the learned arbitrator conducted. The award cannot, therefore, be registered against it.

The above described matter was succinctly clarified in *Gariya Safaris (Pvt) Ltd v Van Wyk*, 1996 (2) ZLR 246 (H) which stated:

“A summons has legal force and effect when it is issued by the plaintiff against an existing legal or natural person. If there is no legal or natural person answering to the names written in the summons as being those of the defendant, the summons is null and void *ab initio*.”

Nelson Maurede is the deponent to the founding affidavit. The citation reads Nelson Maurede and 16 others. Thirteen (13), and not sixteen (16), persons filed affidavits in support of the application. The position of the remaining three (3) persons remains unknown as well as unexplained.

The applicant did not amend its papers to reflect the correct position of the matter. The award relates to seventeen (17) persons. It should be proportionately reduced in terms of its *quantum* by the non-appearance of the three unnamed and unknown persons.

The abovementioned matters pointed at a number of unsatisfactory features of the award which the applicant seeks to register. I cannot, under the circumstances, proceed to register an award which is fraught with invalidity as well as other matters which disenable its registration.

The application is, in the premise, dismissed with costs.

*Makururu & Partners*, applicant's legal practitioners  
*Venturas & Samukange*, respondent's legal practitioners