THOMAS MEDA
versus
INNSCOR AFRICA BREAD COMPANY (PVT) LTD

HIGH COURT OF ZIMBABWE
MANYANGADZE J
HARARE, 8 February & 8 June 2022

Opposed Matter

Mr D Mukanga, for the applicant
Mr A Dracos, for the respondent

MANYANGADZE J: This is an application for the registration of a Labour Court judgment. It has been filed in terms of s 92B of the Labour Act [*Chapter 28:01*] (the Act), which provides for the registration of a decision, order or determination made by the Labour Court for enforcement purposes, with a court with the requisite jurisdiction.

The application is pursuant to a judgment handed down by the Labour Court on 3 July 2020, being Judgment Number LC/H/145/2020. The record shows that the Labour Court first handed down judgment on 8 February 2019, in terms of which the respondent was ordered to reinstate the applicant to his former employment position or pay him damages *in lieu* of reinstatement. That judgment did not quantify the damages payable. There were quantified in the subsequent judgment of 3 July 2020, in the total amount of US$10 328.

It is necessary to specify, from the outset, the role or mandate of this court in applications of this nature. That mandate is conferred by s 92B(3)(4) of the Act, which reads:-

> "(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 subsection (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, the High Court.
> (4) Where a decision, order or determination has been registered in terms of subsection (3) it shall have effect, for purposes of enforcement, of a civil judgment of the appropriate court".

From the cited provision, it can be seen that what the legislature conferred is no more than an administrative or procedural function. It is the registration of the Labour Court order or determination for execution purposes. This is so because the Labour Court or arbitral tribunal, in the case of an arbitral award, does not have enforcement mechanisms in the event that the determination it issues is not complied with. The legislature has not catered for that aspect. Litigants have to approach either the Magistrates' Court or the High Court for execution of their orders, through the office of the Sheriff of the High Court.

It is not clear why litigants have to incur the extra burden and cost of filing an application in the High Court or Magistrates' Court to have their orders enforced. There is a *lacuna* in the law, which can only be redressed by the legislature. In my view, legislative intervention is necessary and I think long overdue, to rectify this anomaly. The current position is untenable, as it increases the cost of litigation and also the workload of the High Court.

For now, the cumbersome procedure of registration has to be adhered to. That is the law at the moment. As already indicated, the High Court is restricted to a procedural or administrative role. This position was clarified by MATHONSI J (as he then was) in *Elvis Ndlovu* v *Higher Learning Centre* HB 86/10, in the following terms:-

> "None of the reasons for opposing the application for registration are sustainable. It is common cause that there is an arbitral award in existence, which award was made in terms of the law. That award has not been set aside……The respondent cannot seek to challenge an arbitral award in opposing papers filed in an application for registration of the award. In an application of this nature, this court does not inquire into the merits or otherwise of an arbitral award. This is the province of the Labour Court upon an application or appeal being made to that court. Registration of an award is only done for enforcement purposes because the labour structures have no enforcement mechanism. Upon registration the arbitral award has an effect of a civil judgment of the appropriate court. This is in terms of s 98(15) of the Labour Act". (emphasis added)

After citing the above remarks, and other cases, MTSHIYA J adopted the same approach. He pointed out that the registration of an award in terms of the Labour Act is a matter of course as long as the award remains unsatisfied. See *Fungai Muronzeri* v *Petro Trade (Pvt) Ltd* HH 95/11.

The law having thus been clarified, I find that most, if not all, the arguments raised by the respondent have been made redundant.

To begin with, the respondent raises a preliminary point to the effect that it was improperly cited. It contends that the improper citation constitutes a fatal irregularity which vitiates the

application. The issue of improper citation, as correctly submitted by the applicant, was dealt with by the Labour Court. It disposed of the issue after hearing argument from both sides. It disposed of the issue in its judgment of 3 July 2020, and went on to deal with the merits of the quantification application.

For the respondent to take the same point *in limine*, is to invite this court to review the decision of the Labour Court on that aspect. This is not the purpose of an application for registration of an award. This court is not sitting in an appellate or review capacity over the proceedings of the Labour Court. I have already dealt with the scope of an application of this nature.

The respondent contends, in paragraphs 15 to 17 of its heads of argument, that the long held position that the High Court does not concern itself with the merits of a case brought for registration purposes has been changed by the Supreme Court. For this proposition, it relies on the case of *Lowveld Rhino Trust* v *Senele Dhlomo-Bala* SC 34/20. In that case, the court stated, at page 11 of the cyclostyled judgement:

> "Although, strictly speaking, the High Court would be within its powers to register an arbitral award in the face of an order by the Labour Court suspending execution of the award, doing so in the circumstances would be improper. Registration of an arbitral award should not be done when it is known that execution will not take place or will be stayed".

I do not see how the above cited remarks are changing the position that registration of an award is not concerned with the merits of the matters which should have been dealt with by the Labour Court. These remarks relate to the enforceability of an arbitral award whose execution would have been suspended by the Labour Court. Obviously, an award whose execution has been suspended by a lawful order of court cannot be enforced. Such suspension would normally have been ordered pending an appeal. So, in the application for registration of the award, the respondent can validly contend that the award sought to be enforced has been suspended pending appeal or review. He must of course produce the necessary evidence, such as the court order suspending execution of the award. This is not the same as arguing the merits. These would be argued at the hearing of the appeal or review. The registration proceedings do not constitute an appeal or review hearing.

The other argument raised by the respondent, in paragraphs 21 – 25 of its heads of argument, is that its liability to pay the applicant is in the amount of ZWL$10 328 and not

USD$10 328. The basis for its contention is s 4(1)(d) of the Presidential Powers (Temporary Measures) Amendment of Reserve Bank of Zimbabwe Act and issue of Real Time Gross Settlement Electronic Dollars (RTGS Dollars) Regulations, Statutory Instrument 33 of 2019. This expressly provides that assets and liabilities, including judgment debts, denominated in United States Dollars immediately before the effective date of 22 February 2019 shall on or after that date, be valued in RTGS Dollars on a one-to-one rate. This position was endorsed by the Supreme Court in the case of *Zambezi Gas (Pvt) Ltd* v *NR Baber (Pvt) Ltd & Anor* SC 3/20.

The respondent avers that its liability to pay the applicant damages was established on 8 February 2019. This is the date when the first Labour Court judgment was handed down, which found that applicant's dismissal from employment was unlawful and ordered his reinstatement or payment of damages *in lieu* of reinstatement. According to the respondent, that places its liability to a date prior to 22 February 2019, the effective date for purposes of the applicability of S.I. 133/19.

In countering this averment, the applicant contends that the applicable date is 3 July 2020. This is the date when liability for the debt, specified in the amount of USD$10 328, was incurred. The judgment of 8 February 2019 merely pronounced the right of the parties, without specifying the amount of debt owed. That debt became due and payable on 3 July 2020, when the damages were quantified, thus creating an enforceable debt sounding in money.

I am in full agreement with the applicant's submissions on that aspect. The judgment of 8 February 2019 did not sound in money. It was not enforceable. The debt, which obviously is in the form of a judgment debt, was incurred on 3 July 2020, when the judgment specifying the debt was issued. If one looks at the applicable legislation i.e. S.I. 133/19 it refers to assets and liabilities –

"valued and expressed in United States Dollars".

Even in the *Zambezi Gas* v *NR Barber* case, *supra*, referred to by the respondent, the Supreme Court made it clear it was dealing with a –

"judgment debt owed to the first respondent, denominated in United States Dollars"

In the judgment of 8 February 2019, nothing was "*valued and expressed in United States Dollars*". There was no amount specified as a judgment debt, "*denominated in United States Dollars*". That value was expressed in the judgment of 3 July 2020, and was denominated in

United States Dollars as USD$10 328. That, in my view, is the date of the judgment debt. That is when the obligation to pay that specific amount arose. It was well after the effective date. That renders the parity rate of one-to-one inapplicable. It places the debt outside the scope of S.I. 133/19. Consequently, the argument by the respondent that it has extinguished its liability to the applicant, cannot be upheld.

Finally, I deal with the submission by the respondent that this application be stayed pending the outcome of an application for leave to appeal the Labour Court judgment of 3 July 2020. A similar application in respect of the earlier judgment of 8 February 2020 was dismissed, leading to the application for quantification of damages.

The application for leave to appeal which was made before the Labour Court, has no effect of suspending execution of the judgment in question. I note that this point was not argued during oral submissions. As already indicated earlier in this judgment, what may validly prevent registration of an award is an order suspending its execution. An application for leave to appeal is not the same as an order suspending execution.

In the circumstance, it is my considered view that the merits of the application, and the demerits of the opposition thereto, are beyond question. It must, and is accordingly upheld as prayed for.

In the result, it is ordered that:-

1. The Labour Court judgment handed down on 3 July 2020 under case number LC/H/APP/189/19, judgment number LC/H/145/20 by the Honourable Justice BS CHIDZIVA J be and is hereby registered as an order of this Honourable Court.
2. The respondent pays the applicant damages *in lieu* of reinstatement in the sum of US$10 171.22 (ten thousand one hundred and seventy one dollars and twenty-two cents).
3. The respondent bears the applicant's costs.

Bothwell Ndlovu Attorney at Law, applicant's legal practitioners
Honey & Blanckenberg, respondent's legal practitioners