

GRAHAM MAVHUDZI
and
MANUEL MAFA
and
COLLEN STEPHEN HUCHU
versus
GOKWE TOWN COUNCIL

HIGH COURT OF ZIMBABWE
MATHONSI J
HARARE, 23 September 2014

Opposed application

J. Mafongoya, for the applicants
R. Wenyevhe, for the respondent

MATHONSI J: The 3 applicants are employees of the respondent who were engaged in a labour dispute with their employer over an alleged non-payment of overtime. The dispute went to arbitration and an award was issued by Masimba Shamu the arbitrator on 13 April 2012 in terms of which the respondent was directed to pay the respondents sums adding up to \$13 587-52.

The respondent did not comply with the award. Instead it lodged an appeal against it in the Labour Court on 9 May 2012. The respondent did not make an application in terms of s92 E (3) of the Labour Act [*Cap28:01*] for the suspension of that award pending appeal. The appeal to the Labour Court therefore did not suspend the award. This is provided for in s92 E (2) of the Act.

It turns out that even the appeal noted by the respondent to the Labour Court was dismissed by that court by judgement dated 26 February 2013. The applicants have now approached this court seeking an order for the registration of the arbitral award for enforcement purposes in terms of s98 (14) of the Act.

The application has been opposed by the respondent on the grounds that the award was appealed against and that it was faulty in that it awarded to the applicants payment in United States dollars when their claims covered the period before multi-currencies were introduced.

Registration or recognition or reinforcement of an arbitral award issued in terms of the Labour Act can only be refused, where there has been an appeal noted to the Labour Court, if the person against whom the award is made has obtained interim relief in terms of s92E (3) of the Act for a stay or suspension of the award in question; *Chaire & Ors v Mt Darwin Bazaar* HH121/13 at p2, *Greenland v Zichire* HH93/13 at p3; *Kukura Kurerwa Bus Co v Mukwena & Ors* HH477/14.

Alternatively, that party must satisfy the court that there exists grounds of refusal set out in Article36 of the Model Law in the Arbitration Act [*Cap 7:15*]

This court cannot be called upon, in an application of this nature, to consider the merits of the award or the appeal because it is not sitting to review the decision of the arbitrator, neither does the court exercise an appeal power. The remedy of registration is merely procedural.

The respondent has not set out any acceptable grounds for refusal of registration. Happily Mr *Wenyevhe* who appeared for the respondent conceded as such.

Accordingly I make the following order, that;

1. The arbitral award dated 13 April 2012 by the Arbitrator M. Shamu be and is hereby registered as an order of this court.
2. The respondent shall pay the applicants the total sum of \$13 587-52.
3. The respondent shall pay costs of suit.

Matsikidze & Muccheche, applicants' legal practitioners
Messrs Warara & Associates, respondent's legal practitioners