

TAPFUMANEYI MUDZENGGERERE

and

MICHAEL MUVHU

and

WENGANAI CHIMHAU

and

FIDROS SAVANHU

and

RAYMOND CHINYERERE

and

OWEN SANGAISO

and

ALABI ISA

and

GEORGE MAPHOSA

and

JAMES MOYO

and

CHARLES MADZINGA

and

STEPHEN TAKAIDZA

and

RAYMOND CHIHWANDA

and

ISHMAEL DEBWE

and

PHILLIP T INAAPI NDUDZO

and

RAMECK SIMBI

and

SYDNEY STEWART

and

FARAYI MBINGWANA

and

COLLET MANGENA

and

LOVEMORE MAJEKWANA

and

TOBBI MUNA

and

NELSON NUNURAI MUZURU

and

LOVEMORE FAMBIRAYI

and

MATHIAS MATHIBA

and
MEMORY SIYANATA
and
SORODZAI GWARADA
and
GLADYS TARIRO SIBINGANI
and
MUTOFORI MUTEVEDZI
and
ALBERT CHINOMONA
and
FARAI MUZHINGI
and
LOVEMORE CHIPATO
and
RICHARD FRANK PETERSON
and
DICKSON MUDZENGI
and
DESMOND MASHANU
and
LANGTON KADZIMWE
and
FREDDY NDARASIKA
and
KUNDISHORA TANDI
and
MARTIN MANYEPA
and
JONAH CHIWARA
and
WILSON MARUNGAMISE
and
EDSON D. CHIRIMA
and
FAVOUR CHIMANGA
and
ANDREW V. MAWOTSA
and
TATENDA KUDYARAWANZA
and
REGIS CHIMINYA
and
RADWICK DEERANYIKA
and
STANLEY MVEMVE

and
MICHAEL CHONJA
and
JOHN PHILIP MABHERA
and
EDWIN DZUDZO
and
JONAH MUPANDASEKWA
and
FORGIVE MUTIRORI
and
NHLANHLA ZIKHALI
and
EVISON MUCHUCHU
and
BRIGHTON MABUSHA
and
CHARLES SEKURE
and
MANFRED MAHACHI
and
ISRAEL KAMWENJE
and
CLIFFORD KUMADIRO
and
MDUDUSI MAKHALISA
and
ENERST MPOFU
and
PHILLIP MBERI
and
ANTONY NDLOVU
and
EDMOND GOMO
and
MASWELL ZINYENGERE
and
TONDERAI MUSERUKA
and
CHAMUNORWA DUBE
and
TINASHE MUREFU
and
SHIPHERD MASHONGAYIKA
and
BLESSING NYAMUDEZA

and
DAVID MAKORONI
and
GODFREY VHUREPI
and
BOAS JAKARA
and
ERISON MAKORORE
and
BHII SITHOLE
and
GODFREY PASIPAMIRE
and
ELIAS BAPIRO
and
WILLARD MUCHINGAMI
and
ENOCK C. MUKOSI
and
PAUL MASVIKENI
and
RONALD CHIMEDZA
and
WEBSTER MAHOHOMA
and
CUTHBERT SEKETE
and
ALFRED FUNGAI KAHLAMBA
and
LIBERTY KOZANAI
and
ALBERT MUZHANJE
and
WELLINGTON RUNGANGA
and
CASTEN MUSINGWINI
and
KRAIBO MUTEMATSAKA
and
PRICHARD CHAKAUYA
and
JOIN SIBANDA
and
SHADRECK MUSHA
and
ENOCK NYAMUTAKA

and
ARTHER CHAKAZHAMBA
and
CLEVER MUNODA
and
TALENT MAFUVA
and
HAMANDAWANA MIDZI
and
JAMES MLALAZI
and
J. KANONHUWA RUPAPA
and
JOSHUA MASWELA
and
MICHEL CHIRUME
and
MUCHANETA MWAKUTUKUSA
and
ALFONCE ZVINOWANDA
and
TERRENCE KUMIRE
and
HLAHLA SIWAWA
and
TALKS MADZIMA
and
ELPHAS TAAKANYI
and
THOMAS MUTANDIRO
and
DANIEL CHINYANGA
and
JOSEPH MUFUNDISI
and
TAPIWA MUTESVA
and
CHARLES CHIRIMA
and
GILBERT JENARA
and
MOSES MADIYE
and
ABRAHAM MUREYANI
and
TERERAI MANDINYENYA

and
GOTOZA ABSOLOM
and
BOB CHIRUHWENI
and
PHILLIP CHARAKUPA
and
REWARD MAGOBOLA
and
GEORGE MUSHAYAVANHU
and
RAVA ZHOU
versus
CIVIL AVIATION AUTHORITY OF ZIMBABWE

HIGH COURT OF ZIMBABAWA
MUREMBA J
HARARE, 20 January 2015 & 11 March 2015

OPPOSED APPLICATION

C Mucheche, for applicants
O T Gasva, for respondent

MUREMBA J: The applicants were granted an Arbitral Award by Arbitrator P Bvumbe in their favour on 28 August 2013. On 12 February 2014 the arbitral award was quantified. This is an application to have the arbitral award registered as an order of this court in terms of s 98 (14) of the Labour Act [*Chapter 28:01*] for the purposes of enforcing the order.

The respondent raised a point in *limine* to the effect that the application should be dismissed for the reason that the founding affidavit was deposed to by Mr *Caleb H. Mucheche* who is a legal practitioner on behalf of the applicants, his clients.

In the answering affidavit Mr *Mucheche* argued that there was nothing irregular about a legal practitioner deposing to an affidavit in a matter where he is

conversant with the facts. He said in the present case he is the one who was representing the applicants during arbitration proceedings leading to the present application, so he is conversant with the facts.

He went on to cite the case of *Zimbabwe Banking Corporation Limited v Trust Finance limited and Another* HH130/06 where the court took into account the history of the case and accepted the applicant's affidavit which had been deposed to by the applicant's legal practitioner. The same legal practitioner had acted for the applicant in the proceedings which subsequently led to the taxation case which sought to be reviewed by the court. The court said that the deponent was duly authorised by the applicant as he averred in the affidavit. Mr *Mucheche* also referred to the case of *Air Zimbabwe corporation & Others v The Zimbabwe Revenue Authority* HH-96-03. In that case the court held that the deponent to the applicant's affidavit had authority to act for and on behalf of the applicants after taking into account the prior dealings between the parties. Mr *Mucheche* further argued that it is not always a requirement that there has to be proof of authority to represent the principal. It was submitted that in any case this court is only faced with the application for the registration of the Arbitral Award and nothing else. It does not have to enquire into the merits of the case.

In support of the point in *limine* Mr *Gasva*, for the respondent made reference to the case of *Mandaza v Mzilikazi Investments (PVT) Ltd* 2007 (1) ZLR (H) wherein Ndou J said, "Generally, a Legal Practitioner should not depose to a founding affidavit on behalf of a client. However, he may do so if the facts of the case are within his personal knowledge. Even in such exceptional case the practice should be exercised sparingly." Mr *Gasva* argued that in the present case there is no explanation why the applicants could not depose to the affidavit themselves.

Taking into account the history of the case that it is Mr *Mucheche* who was representing the applicants during the arbitration proceedings leading to the present application, I would not say that it is doubtful that he was authorised by the applicants to represent them. What he deposed to is within his personal knowledge. I find the cases that were cited by Mr *Mucheche* relevant. Even the case that was cited by the respondent's counsel is also relevant and it supports the applicant's argument that in a case where a legal practitioner has personal knowledge he can depose to an affidavit. Even r 227 (4) (a) of the High Court Rules, 1971 states that **an affidavit that accompanies a written application shall be made by the applicant or respondent, as the case maybe, or by a person who can swear to the facts or averments set out therein.**

In *Bubye Minerals (PVT) Ltd & Another v Rani International Ltd* 2007 (1) 22 (S) Cheda JA (as he then was) stated that a founding affidavit must be based on personal knowledge and not on hearsay. That being the case in the present matter that Mr *Mucheche's* affidavit is not based on hearsay I am not persuaded by the respondent's argument. In the case of *TFS Management Company (PVT) Ltd v Graspak Investments (PVT) Ltd & Another* 2005 (1) 333 (H) it was stated that an affidavit accompanying an application may be made by a legal practitioner who can depose to facts within his personal knowledge. In that case that is what happened and the court went on to say that the legal practitioner did not require special authority to depose to the affidavit. His authority to depose to the affidavit in the application for further particulars could not be disputed because the respondents had not impugned his authority to act for the applicant in the main action.

In the present case if Mr *Mucheche* was representing the applicant in the arbitration proceedings the respondent has no basis to challenge his authority in deposing to the founding affidavit.

For the above reasons I will dismiss the point in *limine*.

THE MERITS

Mr *Mucheche* argued that there being nothing suspending the arbitral award in terms of s 92E of the Labour Act [*Chapter 28:01*] there is no impediment to its registration.

In opposing the application the respondent stated that it is opposed to the registration of the Arbitral Award for the reason that it has since appealed against the granting of the award in the Labour Court and that appeal is still pending.

Further to that there was also an application for an interim relief in terms of s 92E (2) of the Labour Act [*Chapter 28:01*] which was made to the Labour Court, which application again was still pending. The interim relief being sought was the stay of the award pending the determination of the appeal by the Labour Court. The respondent argued that it was therefore premature for the applicants to try to enforce the award.

On the date of the hearing the applicant's counsel brought to the attention of the court that the interim relief that the respondent was seeking in the Labour Court for the stay of the award pending the determination of the appeal had subsequently been dismissed on 23 May

2014, after the parties had already filed their heads of argument. This court was furnished with a copy of the court order under case number LC/H/ORD/23/2014.

In terms of s 92E (2) of the Labour Act an appeal does not have the effect of suspending the determination or decision appealed against. S 92E (3) empowers the Labour Court to stay or suspend an award pending determination of an appeal. I am in total agreement with the words of Patel J (as he then was) in the case of *Gaylord Baudi v Kenmark Builders (PVT) Ltd* HH 4-12 which the applicant's counsel referred me to. He said,

“As I have already stated, section 92E (2) of the Labour Act expressly provides that an appeal against an award in terms of section 98(10) shall not operate to suspend the award. Section 92E (3) enables the Labour Court to suspend or stay an award upon application by the aggrieved party. Where no such application is made or where it is dismissed, subsections (14) and (15) of section 98 entitle the successful party to apply for the registration and enforcement of the award. Parliament has obviously applied its mind to the delays inherent in the appeal process and considered the policy implications of the general common law rule which automatically suspends a decision that is appealed against. It has consciously and deliberately decided that arbitral awards in the realm of labour relations should be enforced, despite any pending appeal and notwithstanding any inconvenience that such enforcement might entail. In this context, it would be very difficult to hold that what is specifically provided for and allowed by statute should be regarded as being contrary to public policy. Any such approach would simply operate to frustrate and defeat the clear intention of Parliament.”

See also the case of *Benson Samudzimu v Dairiboard Holdings Ltd* HH 204/10.

In *casu* the arbitral award which seeks to be registered has not been set aside on review or on appeal nor has it been suspended. There is therefore no basis for this court to decline to register the arbitral award.

Costs

Mr *Mucheche* argued for costs on the higher scale of legal practitioner and client on the basis that the respondent had not raised any serious objection to the application. I am not inclined to award such costs for the reason that when the respondent opposed this application it had already filed an appeal against the award in the Labour Court. It had also filed an application for interim relief in the Labour Court for the suspension of the award in terms of s 92E (3) of the Labour Act. Both applications were still pending. In opposing this application, the respondent was therefore banking on both or either of the applications succeeding.

The application for the registration of the arbitral award is granted as per the draft order filed of record. The respondent shall pay costs of suit on the ordinary scale.

Matsikidze and Mucheche, applicant's legal practitioners
Chirimuuta and Associates, respondent's legal practitioners