

RUMBIDZAI KUSANO
versus
INNSCOR AFRICA LIMITED

HIGH COURT OF ZIMBABWE
MAFUSIRE J
HARARE, 13 October 2015 & 29 March 2016

Opposed application

S. Zvinavakobvu, for the applicant
T.F. Mataba, for the respondent

MAFUSIRE J: On 13 October 2015 I granted applicant's application for the registration of an arbitral award. She had been awarded \$29 312-50 against the respondent, allegedly her former employer. She said the respondent was not paying. So she was submitting the arbitral award to this court for registration in terms of s 98[14] of the Labour Act [*Cap 28: 01*]. This legislative provision says that any party with an arbitral award in their favour may submit it for registration to the court of the magistrate, or, if the amount exceeds the jurisdiction of those courts, to this court. Once registered, the arbitral award becomes an order of this court. It can now be enforced just like any other order. The applicant's matter was a routine, run-of-the-mill application.

The application was opposed. The grounds of objection were the same old, tired defences that this court has routinely dismissed.

The first was that the applicant had adopted the wrong procedure. She had filed a chamber application. It was argued that the registration of awards in terms of s 98[14] of the Labour Act has to be by way of court applications, not by way of chamber applications.

I am at a loss as to where this type of argument emanates from. Section 98[14] of the Labour Act does not say that. It says:

“Any party to whom an arbitral award relates may submit for registration the copy of it furnished to him in terms of subsection [13] to the court of any magistrate which would have had jurisdiction to make an order corresponding to the award had the matter been determined

by it, or, if the arbitral award exceeds the jurisdiction of any magistrates court, the High Court.”

In *Dhomo-Bhala v Lowveld Rhino Trust*¹ I dismissed that argument. So did MUREMBA J in *ANZ Ltd v Nyarota*². Plainly, s 98[14] of the Labour Act is not concerned with the form of proceedings that may ensue in the High Court once a party with an arbitral award in their favour submits it for registration. The section is concerned with the forum to which such awards may be submitted for registration. The form of proceedings in the appropriate forum is the function of the Rules for that forum. In the case of this court, the Rules permit one to apply to court, that is, by making a court application. Or one may apply to a judge, that is, by making a chamber application. However, that one may make the one type of application instead of the other is not fatal. The respondent argued that it is. But that was wrong. Rule 229C unequivocally states that in the absence of some prejudice which may not be cured by directions relating to the service of the application, accompanied by an appropriate order of costs, the fact that an applicant has instituted a court application instead of a chamber application, or a chamber application instead of a court application, shall not be a ground for dismissing the application.

At any rate, even though *in casu* the application commenced as a chamber application, it was subsequently referred to the opposed motion court where full argument was presented. The respondent did not mention, let alone show, any prejudice. Thus, this ground of objection was just opportunistic.

The respondent’s second ground of objection was meaningless. It was that the chamber application did not meet the requirements for such applications as prescribed by the Rules of Court. The argument was never developed. As such, it did not merit any further attention.

The respondent’s third ground of objection was that it *would be* challenging the award in the Labour Court by way of review proceedings. As a matter of fact such proceedings had not been instituted. But even if they had been pending, that would not have precluded the registration of the award. In terms of s 92E of the Act, the Labour Court may exercise a review jurisdiction when an appeal has been made to it. But the section says plainly that such an appeal does not suspend the decision appealed against. I addressed this point extensively

¹ 2013 [2] ZLR 179 [H]

² HH 591/15

in the *Dhomo-Bhala* case above. I also did in *Makarudze & Anor v Bungu & Ors*³ and in *Nyaguse & Ors v Zimbabwe Revenue Authority*⁴. See also *Samudzimu v Dairibord Holdings Ltd*⁵; *DHL International Ltd v Madzikanda*⁶ and *Baudi v Kenmark Builders [Private] Ltd*⁷.

The respondent's last ground of objection was an attempt to re-argue the merits of the dispute. It was said that there was no contractual relationship between the applicant and the respondent. It was said that the applicant had been employed by someone else other than the respondent. Quantum was also placed in issue. The arbitrator was accused of having computed the damages incorrectly.

But such arguments were misplaced. This was not the correct forum for them. In an application for the registration of an arbitral award, this court is not concerned with the merits of the dispute. It does not exercise an appellate jurisdiction: see *Zimbabwe Electricity Supply Authority v Maposa*⁸. This point has also been dealt with in several other cases before. In *Matthews v Craster International [Private] Limited*⁹ I said:

"[I]n my considered view, an application for the registration of an arbitral award is largely an administrative process. Whilst in such an application the court is not really being called upon to rubber stamp the decision of an arbitrator, nonetheless, it is largely giving that decision the badge of authority to enable it to be enforceable. If the court is satisfied that the award is regular on the face of it, and that it is not deficient in any of the ways contemplated by articles 34 and 36 of the Arbitration Act, then the court will register it."

Essentially the same point was made by MATHONSI J in *Wei Wei Properties [Pvt] Ltd v S & T Export and Import [Pvt] Ltd*¹⁰ and in *Ndlovu v Higher Learning Centre*¹¹. In the latter case the learned judge put it this way [also quoted with approval by MTSHIYA J in *Muronzerei v Petrol Trade Ltd*¹²]:

"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.

³ HH8/15

⁴ HH 453/15

⁵ 2010 [1] ZLR 357 [H]

⁶ 2010 [1] ZLR 201 [H]

⁷ HH 4/12

⁸ 1999 [2] ZLR 452 [S], at 466E – G

⁹ HH707/15

¹⁰ HH 336/13 [CHECK OFFICIAL CITATION]

¹¹ HB 86/10

¹² HH 95/14

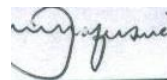
Registration of an award is only done for enforcement purposes because the labour structures have no enforcement mechanism.”

Recycling stale arguments that the courts would have rejected drove me to lament as follows in *Marick Trading [Private] Ltd v Old Mutual Life Assurance Company of Zimbabwe [Private] Ltd*¹³:

“Legal practitioners should keep abreast with, and heed pronouncements from the courts. It is a duty.”

In casu, I lament further. Legal practitioners should desist from taking up dead causes and act as hired guns, especially in matters where the law is settled. It is an abuse of the court process. In this matter, there was no basis for resisting the registration of the award. That is why I summarily granted the order sought.

28 March 2016



Zvinavakobvu Law Chambers, applicant’s legal practitioners
Wintertons, respondent’s legal practitioners

¹³ HH 667/15