

1. DZOBO PRIMARY SCHOOL
versus
MARIAN MACHAKAIRE

2. DZOBO PRIMARY SCHOOL
versus
JUDITH JAMELA

3. DZOBO PRIMARY SCHOOL
versus
RENA DZOBO

HIGH COURT OF ZIMBABWE
MWAYERA AND MUNANGATI-MANONGWA JJ
HARARE, 17, 26 May 2016 & 10 June 2016

Civil Appeal

T. Mafongoya, for the appellant
1st, 2nd and 3rd respondents in person

MUNANGATI-MANONGWA J: On 17 May 2016 and 26 May 2016 respectively this court upon hearing the above three matters upheld the appeals and granted the following orders which were identical.

1. The application for registration of the arbitration award be and is hereby dismissed.
2. Each party to pay its own costs.

The court stated that the reasons for the order would follow and these are the reasons for that judgment.

These appeals challenge the decision of the Magistrate Court pertaining to the registration of an arbitral award. It is pertinent to state from the onset that the appeal emanates from the consideration of one award which involved three persons who were Early Childhood

Development (ECD) teachers at the appellant school. The award given was contained in one document dated 23 February 2015. The facts being the same, the appellant being the same and appellant duly represented by the same legal practitioner who made exact and similar representations on both appellants, I considered it appropriate to combine these appeals.

The respondents were each employed and working as ECD teachers or child minders at Dzobo Primary School. They all received remuneration in the form of allowances. Upon the introduction of qualified ECD teachers from tertiary colleges, the respondents' contract of employment was terminated on 17 January 2014.

The respondents claimed against the school payment of terminal benefits inclusive of underpayments. On 23 February 2015 an arbitrator a Mr R Charindeguta granted the following arbitration award.

1. The applicants were under the employment of the respondent as ECD teachers.
2. The respondent be and hereby ordered to pay each of the applicants the sum total of US\$6 819.90 as outstanding terminal benefits and underpayment of wages.
3. The respondent be and is hereby ordered to pay applicants as follows:
 - i) US\$6 819.90 by 16 March 2015
 - ii) US\$6 819.90 by 16 April 2015
 - iii) US \$6 819.90 by 16 May 2015

This award was duly registered in the Magistrate Court on 1 July 2015 and the appellant appealed against the registration. The following grounds of appeal were made for the 3 (three) appeals.

1. The Honourable Court *a quo* erred at law by registering an arbitral award against a non-legal persona, the judgment is therefore a nullity.
2. The Honourable Court *a quo* grossly misdirected at law by registering the award piecemeal whereas there was one award which exceeded its jurisdiction.

At the hearing Mr *Mafogoya* for the appellant abandoned the second ground of appeal. He conceded that as the award for each respondent was US\$6 819.90 the argument that the magistrate had no jurisdiction was not sustainable given the Magistrate Court's threshold of US\$10 000.00.

On the first ground of appeal, the appellant's counsel argued that each respondent had wrongly cited appellant when the appellant was not their employer, their employer being the School Development Committee. Most important, the appellant was not a legal *persona* and hence not capable of suing or being sued. In that regard the award was a nullity and could therefore not be registered. The appellant argued that the Magistrate Court misdirected itself by dismissing the legal point raised on the status of the appellant at registration of the award.

Rena Dzobo one of the respondents failed to turn up for the hearing of the appeal where after default judgment was granted. Each of the two respondents argued that, the SDC which employed them operated from Dzobo Primary School and handles all school issues. Indeed the SDC employed each of them but they instituted their claim against the appellant as that is where they rendered services. The respondents further submitted that they did not know that they had to cite the SDC.

The issue of legal capacity being a question of law could be raised at any time and the same cannot be wished away. It is a pertinent issue and has to be decided upon as there may be no party or parties before the court which would make the process of adjudication worthless. The magistrate should not have abrogated that duty when the issue of *locus standi* was raised at the registration of the award.

It is clear from submissions made before this court and from the record that the SDC employed the respondents. The appellant is not a legal entity but the SDC which employed the appellants can be sued as same has legal capacity conferred by Statutory Instrument 187/1992.

As was found in *CT Bolts (Pvt) Ltd v Workers Committee* SC16/2012, where a party has no legal capacity there would be no party before the court. I identify with the finding therein where it was stated that

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

In casu, the award by the arbitrator was a nullity, so is the registration of the award. There was no party or legal entity before the court so an order could not be made against no one. Simply put, you cannot put something on nothing and expect it to hold. There was no competent order in the first place.

This court notes that the respondents were self-actors not very conversant with the niceties of the law, a realization that they had taken the wrong party to court came when it was too late. As they had rendered service to the school they suffered under a mistaken belief that the school had to pay them. Regard being made to that scenario the court did not visit costs upon them and thus ordered each party to pay its own costs.

MWAYERA J agrees

Matsikidze & Mucheche Commercial Law Chambers, appellant's legal practitioners