

GODFREY FORE
versus
METALLON GOLD ZIMBABWE PRIVATE LIMITED

HIGH COURT OF ZIMBABWE
MTSHIYA J
HARARE, 9 May 2016

Opposed Matter

F. Piki, for the applicant
T. Zhuwarara, for the respondent

MTSHIYA J: On 8 December 2015, the applicant filed this application seeking the registration of the following arbitral award as an order of this court.

“1. That the Respondent be and is hereby ordered to pay Claimant the following:

(i)	Salary Arrears	-	\$ 48 590.39 Net
(ii)	Leave days	-	\$ 17 426.70
(iii)	Leave Bonus	-	\$ 17 039.44
(iv)	Pension enhancement	-	\$158 109.12
(v)	Pension not remitted to MIPF	-	\$ 73 208.70
(vi)	School fees - \$34 300 of which \$11 433.33 is taxable balance is net		\$22 867.00
(vii)	Travel Allowance	-	\$41 333.32

2. The Claimant is entitled to purchase the motor vehicle which he is using in terms of the Motor Vehicle policy.”

On 9 May 2016, I registered the award as an order of this court. Through a letter dated 13 May 2016 and addressed to the Registrar, the respondent has requested for my reasons for registering the award. These are they.

It is common cause that the award arose from a labour dispute between the applicant and the respondent – a former employer of the applicant. I reproduce here below the arbitrator’s narration on the background of the case that was before him:

“The background to the matter is common cause. Claimant was employed as Mine Finance Manager in 2004. Respondent reneged on paying a number of contractual benefits with some dating as far back as 2006. Claimant at the time of arbitration had resigned and was serving notice. Having failed to get Respondent to pay him outstanding benefits the dispute was referred to conciliation on 6 June 2015 but remained unresolved on 13 August 2015. The matter was then referred to me for compulsory arbitration”.

The arbitrator then granted the above award.

The registration of the award was, according to the respondent, opposed mainly because:

“2. AD PARAGRAPH 3

..... The respondent appealed against the award to the Labour Court. The respondent also applied to the Labour Court for an order staying execution of the award. Both the appeal and the application are pending before the Labour Court. Applicant must wait until the matters have been determined before he applies to register the award” .

On the hearing date, both parties confirmed that the application for stay had been dismissed by the Labour Court on 2 March 2016. The fate of the appeal in the Labour Court was not disclosed. The appeal would, however, not suspend execution.

Although still opposed to the registration of the award, the respondent took note of previous judgments wherein this court has expressed the view that unless an award, lawfully granted and sounding in money, is complied with, set aside or successfully appealed against, there is no reason for this court to refuse registration. This is so because in registering the award this court is not clothed with review or appeal powers.

In *Joseph Tapera and 17 Ors v Field Spark Investments Private Limited* HH 102/13 Mathonsi J, reinforced this position of the court by saying:

“I find myself having to repeat what I stated in *Greenland v Zimbabwe Community Health Intervention Research Project (Zichre)* HH 93/13 at p 3, that:

‘A party which finds itself faced with an arbitral award it is challenging should take advantage of the provisions of s 92 E (3) of the Labour Act [*Chapter 28:01*] which empowers the Labour Court to make an interim determination for the stay or suspension of an arbitral award. Where the award has not been stayed or suspended in terms of s 92 E (3) and remains extant, this court will, as a matter of principle register the award for enforcement unless there are grounds for not doing so as provided for in Article 36 of the model law contained in the Arbitration Act”’.

The award *in casu* has not been stayed by the Labour Court.

In view of the above, I did not think there was any justification for refusing to register the award since it is competent and extant.

The foregoing explains why I registered the award.

IEG Musimbe and Partners, applicant’s legal practitioners
Scanlen and Holderness, respondent’s legal practitioners