JUDDY CHIMANGO
and
PATRICIA CHIRESHE
versus
INTERNATIONAL COMMITTEE OF THE RED CROSS

HIGH COURT OF ZIMBABWE
MTSHIYA J
HARARE, 18 January 2016 & 3 February 2016

Opposed Matter

A. Chambati, for the applicant
A.K Maguchu, for the respondent

MTSHIYA J: This is an opposed application for the registration of a Labour Court Order in terms of subpara(s) 3 and 4 of s 92 B of the Labour Act [*Chapter 28:01*] ("the Act") which provide as follows:-

> "(3) Any party to whom a decision, order or determination relates may submit for registration the copy of it furnished to him in terms of subsection (2) to the court of any magistrate which would have had jurisdiction to make the order had the matter been determined by it, or, if the decision, order of determination exceeds the jurisdiction of any magistrates court, the High Court.
>
> (4) Where a decision, order or determination has been registered in terms of subsection (3) it shall have the effect, for purposes of enforcement, of a civil judgement of the appropriate court."

Subparagraph 3 above does not lay out the procedure on how submission for the registration of the decision, order or determination of the Labour Court, to either the magistrate court or High Court, is to be made. Invariably, however, litigants have approached this court through chamber applications, which chamber applications, as a matter of practice, this court has always directed that they be served on the other party affected by the relief sought. That being the case, litigants have generally adopted the chamber application procedure with notice to the other party. This is the procedure that was adopted *in casu.*

The applicants served a chamber application on the respondent on 9 October 2015 and on 16 October 2015 the respondent filed its opposing affidavit.

In the application filed on notice to the respondent on 9 October 2015, the applicants seek the following relief:

"IT IS ORDERED THAT:-

1. The Labour Court Judgement Number LC/H/593/15 under case number LC/H/APP/453/15 dated 21 August 2015 attached hereto be and is hereby registered as an order of this honourable court.

2. The respondent be and is hereby ordered to pay the applicants' USD $28 155.78 (Twenty Eight Thousand One Hundred and Fifty Five Dollars and Seventy Eight cents only).

3. Respondent shall pay costs of this application at a higher scale if it opposes the application but if it does oppose the application each part to bear its own costs."

The relief sought above is a result of the resolution of a labour dispute by an arbitrator and the Labour Court in favour of the applicants. Initially an arbitrator ordered the reinstatement of the applicants without the alternative of damages as is required by law. The Labour Court, upon being approached on appeal by the applicants, corrected the arbitrator's award by the inclusion of damages. The Labour Court granted the following quantified order of damages in favour of the applicants:

"I would therefore make the following awards.

FIRST APPLICANT

BACK PAY 14 MONTHS x $648.97	=	$8 085.58
CASH IN LIEU OF LEAVE 27 DAYS x $22.00	=	$ 594.00
THIRTEEN CHEQUE 2014	=	$ 648.97
DAMAGES FOR LOSS OF EMPLOYMENT $648.97 x 6 months	=	$3 894.02
TOTAL		$13 222.57

SECOND APPLICANT

BACK PAY 14 Months x $682.01	=	$9 548.14
CASH IN LIEU OF LEAVE 27 Days x $23	=	$611.00
THIRTEEN CHEQUE 2014	=	$682.01

DAMAGES FOR LOSS OF EMPLOYMENT
$682.01 x 6 months = $4092.06

TOTAL $14 933.21"

As can be gleaned from the relief sought, it is the above order that the applicants seek to register as an order of this court.

The respondent opposes registration of the order mainly on the following grounds:

"4. Applicant ought to have used Form 29 with appropriate modifications as required by Rule 241 (2) of the High Court Rules of 1971. This is so because; the respondent, as an interested party, should be served and be informed of its rights to oppose within a specific time. The respondent did not give applicant any of these rights as appears from the fact of the application it made under Case No. HC 9732/15.

5. I am advised by respondent's legal practitioner that failure to use the appropriate Court Form is fatal to an application. The rights accorded to a respondent in terms of Form 29 are not illusory but are substantive rights which cannot be derogated from without leave of court.

9. The Labour Court found that there was no evidence of what the two had done to mitigate. Without evidence from an employment agency or some statistical body on chanced of re-employment, the Labour Court concluded on its own that six months would suffice as damages. There was and is no basis for arriving at that figure. Ordering payment of a figure that has no support in evidence gives the impression that the Court arrived at the thump suck sum. Courts cannot operate on that basis without hurting the public's expectation that all decisions be justifiable on evidence."

In what I regard as correct responses to the above, the applicant, in an answering affidavit had this to say:

"AD PARAGRAPH 4-6

2. This is denied. The point on want of form is without merit as Rule 106 of the High Court Rules, 1971 states that the want of form shall not be the basis for objecting to a pleading. The Rule states as follows:-

> "No technical objection shall be raised to any pleading on the ground of any alleged want of form."

3. Therefore the technical objection raised by the respondent on the alleged want of form is not appropriate and the argument that the application should be dismissed for a purported want of form is baseless and without merit. The respondent has also been served with the application and filed its response to the same and therefore suffered no prejudice whatsoever.

4. The point raised herein is therefore merely a desperate and frivolous point merely meant to delay the inevitable.

AD PARAGRAPHS 7-11

5. The contents of these paragraphs are all denied. The present application is merely for the registration of a Labour Court decision for purposes of enforcement. This court is not sitting as an appeal court of review court regards the decision of the labour Court placed before it for registration that was never the intention of the legislature in providing for section 92 B (3) of the Labour Act [*Chapter 28:01*]. As long as the decision remains extant and has not been suspended or set aside on appeal by the Supreme Court or rescission at the Labour Court, this honourable court has no option but to register the decision."

Agreeing that the applicants are properly before the court, contrary to the point *in limine* raised by the respondent, I want to quickly dismiss the second ground proffered against the registration of the Labour Court's order.

As correctly pointed out by the applicants, "this court is not sitting as an appeal court or review court". In terms of s 92 F of the Act, the respondent can appeal to the Supreme Court against a decision of the Labour Court. The section provides as follows:

"92F Appeals against decisions of Labour Court

(1) An appeal on a question of law only shall lie to the Supreme Court from any decision of the Labour Court.

(2) Any party wishing to appeal from any decision of the Labour Court on a question of law in terms of subsection (1) shall seek from the President who made the decision or, in his or her absence, from any other President leave to appeal that decision.

(3) If the President refuses leave to appeal in terms of subsection (2), the party may seek from the judge of the Supreme Court to appeal."

Indeed, if the respondent, as submitted in the heads of argument, felt that the decision of the Labour Court offended public policy, it had all the right to take advantage of the above provision in our law. It would therefore be totally irregular for this court to assume appeal powers over Labour Court decisions. To that end, the second point of opposition cannot be entertained.

I shall now come to the point *in limine* and explain why I say the applicants are properly before the court.

Rules 4 C and 4 D of the High Court Rules 1971 ("the rules") provide as follows:

"4C. Departure from rules and directions as to procedure

The court or a judge may, in relation to any particular case before it or him, as the case may be-

(a) direct, authorize or condone a departure from any provision of these rules, including an extension of any period specified therein, where it or he, as the case may be, is satisfied that the departure is required in the interest of justice;
(b) give such directions as to produce in respect of any matter not expressly provided for in these rules as appear to it or him, as the case may be, to be just and expedient.

4D. Certain proceedings to be way of application

Where in any law reference is made to proceedings in the High Court by way of petition, notice of motion or application, such proceedings shall be taken by way of application in terms of Order 32."

In addition to r 106 cited by the applicants, r 229 C of the rules also provides:

"229 C. Adoption of incorrect form of application

Without derogation from r 4C buts subject to any other enactment, the fact that an applicant had instituted-
(a) a court application when he should have proceeded by way of a chamber application; or
(b) a chamber application when he should have proceeded by way of a court application;
shall not in itself be a ground for dismissing the application unless the court or judge, as the case may be, considers that-
(i) some interested party has or may have been prejudiced by the applicant's failure to institute the application in proper form; and
(ii) such prejudice cannot be remedied by directions for the service of the application on that party with or without an appropriate order of costs."

I have at p 1 of this judgment indicated that the law enabling registration of the order/ award of the Labour Court does not prescribe a procedure as one finds in r 4 D quoted above. It merely says "submit" to the magistrate court or High Court. However, in view of the provision in r 229 C, also quoted above, this court's practice is generally that if a litigant approaches it through a chamber application for the registration of an award, such application ought to be served on the other party.

True, rules of court ought to be strictly adhered to but such adherence should never be allowed to stand in the way of justice. This is why the rules allow for flexibility (i.e. rules 4C and 229C above). To that end, I firmly believe that this court should be able to manage and control its own processes.

In *Stanley Machote* v *Zimbabwe Manpower Development Fund,* Tsanga J, had this to say:

"Jurisdiction of a court essentially refers to the authority that a court has to hear and determine a dispute that is brought before it. This is in distinction to the court's *"inherent power*" to do something as dealt with by s 176 of our Constitution. In terms of this section, the Constitutional Court, the Supreme Court and the High Court all have *inherent powers* "to protect and regulate their own process and to develop the common law or customary taking into account the interests of justice and the provisions of this Constitution". Such *inherent*

powers can thus be inherent procedural powers or inherent substantive powers and are exercised on the premise that the court in question already has jurisdiction in the first place. Thus regulation of process as exhorted by s 176 would be largely an exercise of inherent procedural powers while development of common law and customary law as per s 176 would be largely an exercise of inherent substantive powers. Respondent's argument was founded on the *jurisdictional authority* of the High Court in terms of s 171 (a) to hear and determine a civil matter, in this instance a labour dispute".

The actual Constitutional Provision, s 176, referred to above, provides as follows:

"176 Inherent powers of Constitutional Court, Supreme Court and High Court

The Constitutional Court, the Supreme Court and the High Court have inherent power to protect and regulate their own process and to develop the common law of the customary law, taking into account the interest of justice and the provisions of this Constitution."

In agreeing with Tsanga J, I want to place emphasis on the fact that, constitutionally and in order to deliver justice to the citizenry, this court can "protect and regulate its own processes". It is therefore not surprising that where necessary the strict provisions of its rules are relaxed (i.e rr 4 C and 229 C quoted herein). See also *Geoffrey Nyarota* v *Associated Newspapers of Zimbabwe (Pvt) Ltd* HH 591/15. The relaxation of the rules, however, should, in all cases, only be resorted to in terms of the law. In *casu* the invocation of r 229 C is in the interests of justice.

I must point out that the case of *Base Minerals Zimbabwe (Private) Limited* v *Peter Valentine & Ors* HH 559/14, which the respondent cited, does not assist *in casu.* This is so because in that case there was neither a chamber or court application. The basis upon which the litigant had approached the court was not identifiable. There was therefore no basis upon which rules 229 C and 4C could have been invoked.

We have *in casu*, a situation where the respondent was served with an acceptable court process and responded thereto timeously. No prejudice was suffered. In the circumstances I find no valid reason for refusing to register an extant and legally obtained order of the Labour Court. The applicants are entitled to the relief they seek.

I therefore order as follows:-

1. The Labour Court Judgement Number LC/H/593/15, under case number LC/H/APP/453/15 dated 21 August 2015, be and is hereby registered as an order of this court; and

2. The respondent shall pay costs of this application at the legal practitioner and client scale.

Chambati Mataka & Makonese, applicants' legal practitioners
Dube, Manikai & Hwacha, respondents' legal practitioners