GODFREY ZIYAMBI
versus
LARYSCOPE HEALTHCARE (PVT) LTD

HIGH COURT OF ZIMBABWE
MUZOFA J
HARARE, 14 May 2018 & 6 June 2018

Opposed Matter

O. D Mawadze, for the applicant
Matsanhura, for the respondent

MUZOFA J: This chamber application is made in terms of r 236 (4) (b) of the High Court Rules, 1971 for registration of an arbitral award.

The application is opposed on two fronts. Firstly that r 236 (4) (b) does not envisage an application such as the one before the court. Secondly that the initial award giving rise to the quantified award was rescinded therefore there is nothing to register.

I agree with Mr *Matsanhura* for the respondent, r 236 provides

> "236 set down of applications.
> (4) where the applicant has filed an answering affidavit in response to the respondent's opposing affidavit but has not, within a month thereafter, set the matter down for hearing, the respondent, on notice to the applicant, may either–
> (b) make a chamber application to dismiss the matter for want of prosecution, and the judge may order the matter to be dismissed with costs or make such order on such terms as he thinks fit."

The rule deals with a situation where an applicant fails to set the matter down within thirty days of filing an answering affidavit. The respondent is empowered to take charge of the litigation with a view to finalise the matter by either setting the matter down or applying for discharge for

want of prosecution. See *The Permanent Secretary & Anor* v *College Lecturers Association of Zimbabwe and 18 Others* HH 628/15.

Clearly the purported application for registration in terms of r 236 (4) (b) is a blatant error. Registration of an arbitral ward by an arbitrator can only be done by the court in terms of s 98 (14) of the Labour Act "the Act."

The application does not relate to the rule that applicant approaches the court under. Applicant did not fail to set down the matter, he actually set the matter down.

The respondent having raised the procedural irregularity, the applicant did not address the issue either in an answering affidavit or in the heads of argument. It is trite that where an allegation is not specifically controverted it is taken to have been admitted see *Fawcett Security Operations (Pvt) Ltd* v *Director of Customs & Excise and Others* 1993 (2) ZLR 121 SC where the court said:

> "The simple rule of law is that what is not denied in affidavits must be taken to be admitted. Therefore Customs have in effect conceded that they were asked by Fawcett whether all was well and they advised that it was. It does not seem to me that Fawcett could reasonably be expected to do more."

In *casu* the procedural irregularity is fatal and respondent did not seek to do anything about it. The application does not represent what it says to be.

On that basis alone the application cannot succeed.

There is no purpose to address the merits of the application, when the application is improperly before the court.

Accordingly the following order is made.

1. The application for registration of an arbitral award dated 20 April 2016 by Honourable E Maganyani be and is hereby dismissed with costs.

Messrs Mawadze & Mujaya, applicant's legal practitioners
Madzivanzira & Associates, respondent's legal practitioners