

CHARLES HWANDI
versus
ZESA HOLDING (PVT) LTD

HIGH COURT OF ZIMBABWE
BERE J
HARARE, 9 OCTOBER 2013 & 25 OCTOBER 2017

Opposed Matter

J. Dondo, for the applicant
Maguchu, for the respondent

BERE J: This is a simple application for the registration of an arbitral award in terms of section 98 (14) of the Labour Act [Chapter 28:01]. The applicant was employed by Respondent as General Manager – Transport Division and following a decision by the Labour Court dated 1st April 2011, an arbitrary award was made in favour of the applicant.

On the 11th of June 2012, with the consent of both parties the Arbitrator did an award in respect of Quantification of Damages.

The applicant has alleged in his founding affidavit that this quantified award has remained unsatisfied hence this application for the registration of the award to pave way for execution.

The respondent, in its opposing affidavit, opposed the application filed by the applicant mainly on the basis that it had filed an appeal which is pending in the Labour Court.

More importantly, the Respondent has opposed the application on the basis that in earlier correspondence between counsels, the applicant's counsel had specifically stated that the quantification for damages done was not going to be used for purposes of enforcement but merely for the arbitrator to complete his mandate.

In the answering affidavit filed by the applicant, the applicant argued that it was his intention from the beginning to have quantification that would be followed by execution.

Applicant's submissions

In his submissions in court *Mr Dondo*, for the applicant pushed the argument that the respondent had not appealed against the arbitration award in respect quantification notwithstanding that section 92 (E) (3) of the Labour Act empowers the Labour Court to make an interim determination in appropriate circumstances to stay or suspend execution pending the determination of the appeal.

Counsel further argued that the common law grounds for refusing registration and enforcement of Arbitral Awards under Article 36 of the Model Law as codified in the schedule to the Arbitration Act [Chapter 7:15] have not been met by the Respondent hence it had not made a good case to deflate the applicant's application.

Counsel then referred the Court to two decided cases for guidance, *viz*, *Walen Holdings (Pvt) Ltd vs Lloyd and Another* 1996 (2) ZLR 383 at 398 C – E and *Gaylord Bhaudhi vs Kenmark Builders (Pvt) Ltd* HH-4-12.

Respondent's submissions

Mr Maguchu who appeared for the respondent argued that an appeal against the payment of the award has in fact been filed in the Labour Court and that on the authority of *Gaylord Bhaudhi vs Kenmark Builders (Pvt) Ltd* HH-4-12 and *Heritage School vs Seka and Ors* HC-191-12, such an appeal has the effect of suspending an Arbitration Award so appealed against.

Respondent further harped on the argument stated by the applicant in its letter that quantification was never meant to pave way for execution, and that this being an issue of fact, ought to be determined in favour of the respondent. I was referred to the case of *Ndlovu vs Ndlovu and Ors* HC 50/08 as authority for the proposition made.

It was also contended on behalf of the Respondent that if the court determined that the dispute on the alleged agreement between the parties could not be determined on the papers, the court could consider to refer the matter for trial.

Finally, counsel urged the court to specifically make a finding that the parties had agreed that execution would be suspended pending the outcome of the application for leave to appeal which had been filed and was awaiting determination.

Assessment of the submissions

What I can decipher without difficulty from the letter of 19 March 2012 from the applicant's legal practitioners is that in anticipation of an appeal the parties had agreed that the execution would not be effected pending the outcome of that appeal.

But the truth of the matter as at the time this matter was argued for purposes of registration was that no "appeal" had been filed but what the respondent had done was to file an application for leave to be allowed to file the appeal in the Labour Court. It is quite clear from *Mr Maguchu's* heads of argument (paragraphs 8 and 9 (d)).

Until such time that leave to appeal is granted by the Labour Court for respondent to file its appeal in the Supreme Court, there is really no appeal to talk about. At the time this matter was argued, there was no appeal pending in the Supreme Court because permission was still being sought to do so in the Labour Court.

The applicant's counsel was therefore quite correct when he submitted that on the papers the respondent had not filed an appeal and therefore reliance on the much talked about letter as the basis of the agreement was not sustainable as the letter was predicated upon an anticipated substantive appeal.

I do not think it is arguable that the Arbitration Act is subservient to the Principal Act, the Labour Act which lays in greater detail the recognized procedure which must be followed for the purposes of registering an arbitral award. See *Yobe Wells & 66 Others vs Dunstan Transport (Pvt) Ltd*¹ per BHUNU J (as he then was).

¹HH 787/15

The view that I take is that once there is full compliance in the registration process of an award as dictated by the Labour Act, registration of the award cannot be denied.

I am more inclined to conclude this judgment by borrowing the wise words of BHUNU J (as he then was) when he remarked as follows in the case of *Yobe Wells supra*;

“Justice, fairness and equity demands that a worker who has expended his labour and proved his claim in a Court of Law or Tribunal be paid his dues without any further ado because his livelihood and those dependent on him depends on it”².

Disposition

It is for these reasons that I make the following order:

1. That the Arbitral Award made by Godfrey Hariye Muzondo dated 11th June 2012 in the matter between Charles Hwandi and ZESA Holdings (Pvt) Ltd ordering the respondent to pay the applicant as arrear salaries, allowances and benefits in the net amount of US\$121 849,44 (One Hundred and Twenty One Thousand Eight Hundred and Forty Nine dollars and Forty Four cents) be and is hereby registered as an order of this honourable court.
2. That the respondent pays costs of this application.

Messrs Dondo and Partners, applicant’s legal practitioners
Messrs Dube, Manikai and Hwacha, respondent’s legal practitioners

² *Yobe Wells and 66 Ors (supra)*