

TSN MARKETING (PRIVATE) LIMITED
versus
BRITAMAC DISTRIBUTION (PRIVATE) LIMITED

HIGH COURT OF ZIMBABWE
MATANDA-MOYO J
HARARE, 29 June 2017 & 4 October 2017

Opposed Matter

IEG Musimbe, for the applicant
A. *Chizikani*, for the respondent

MATANDA-MOYO J: This is an application for registration of an arbitral award. The applicant who was the legal owner of a commercial stand namely stand 11745 Harare Township entered into a joint venture agreement with the respondent for the construction of a commercial building which would be put up for rentals for ten years, with the parties equally sharing the rental proceeds. The respondent was providing funds for the constructions. After 10 years the applicant would get 100% rentals from the property. Later on parties agreed on additional constructions. They agreed to extend the period of sharing rentals upon satisfactory completion of the additional buildings. The applicant alleged breach of the terms of the joint venture agreement by the respondent in particular that the respondent had failed to complete the construction work as agreed, poor workmanship in the construction of the buildings, failure to get an occupation certificate for the building from Harare City Council, demolition of boundary wall between the stand in question and the adjoining one without agreement with the applicant, duration of joint venture and non-payment of utility bills.

The applicant took the matter for arbitration and on 21 October 2016 the applicant obtained an arbitral award in its favour against the respondent in the following:

1. That the respondent to attend to satisfactory completion of the construction of the buildings in the complex and rectification of poor workmanship in the construction of the buildings and obtain a certificate of occupation from the City of Harare.

2. That the duration in which the respondent is entitled to receive rent in respect of the main building in the complex is reduced from 10 years to 7 years 4 months.
3. That the period respondent is entitled to receive rent of the outbuilding in the complex is reduced from 15 years to 9 years and 3 months.
4. That the respondent is to pay to the applicant the sum of \$1 650-00 for the cost of the reconstruction of the demolished boundary wall - and
5. That the parties are directed to enter into a property management mandate with a new property management agency, appointed by the President of the Real Institute of Zimbabwe, to manage the complex. The agent to assume his duties no later than 1 December 2016. The appointed agent to be mandated to reconcile the amounts outstanding for the utilities including determining the level of each party's indebtedness and also to arrange with the authorities on a programmed settlement of the debts.

The applicant submitted that the respondent has to date failed to pay the \$1 650-00 for the reconstruction of the boundary wall. The applicant therefore sought registration of that award in particular that the respondent be ordered to pay \$1 650-00. The applicant also sought costs on a higher scale.

The respondent opposed the registration of the arbitral award on the grounds that the respondent had filed an application for review before this court – HC 12257/16 refers. The respondent argued that registration could not be done before the determination of the review application. At the date of hearing the court was advised that the review application had already been set down before FOROMA J on 17 July 2017. The parties agreed that after the determination of the review application I could proceed to determine this particular application on papers filed. I have now been informed that the review application was struck off the roll on 17 July 2017. I have been requested to now determine the matter on papers filed.

Registration of an arbitral award may only be refused on the basis of the grounds set out in Article 36 of the United Nations Commission of International Trade Law (UNICTRAL) Model Law (Schedule 2) of the Arbitration Act [*Chapter 7:15*]. These include incapacitation, failure to be given proper notice of the appointment of the arbitrator, failure to be given an opportunity to present own side of case before the arbitrator, award dealing with issues outside those referred for arbitration etc.

The language used under Article 36 suggests that the court should be inclined to register an award which is regular on the face of it and is not deficient in any way provided for under

Article 34 and Article 36. Registration is more of an administration issue derived from the fact that arbitration tribunals have no powers to enforce their own decisions. Such registration is mainly for enforcement purposes see *ZESA v Maposa* 1999 (2) ZLR 452 (S) *Wei Wei Properties (Pvt) Ltd v S and T Export and Import (Pvt) Ltd* HH 336/13 and *Richard Matthews v Craster International (Pvt) Ltd* HH 705/15.

The respondent herein has not meaningfully challenged registration. His argument was simply that registration must only be done upon finalisation of the review application before FOROMA J. Such application was struck off the roll and is no longer on the roll of Justice FOROMA. It follows therefore that there is no impediment to -such registration.

Accordingly I order as follows:

1. The arbitral award, awarded by the Honourable Arbitrator Mr A.G Mazarire on the 21st day of October 2016 be and is hereby registered as follows:
 - (a) That the respondent pays to the applicant the sum of US\$1 650-00.
2. The respondent pays costs of this application on a legal practitioner and client scale.

A.R Chizikani Legal Practitioners, applicant's legal practitioners
IEG Musimbe and Partners, respondent's legal practitioners