

N. MARANDU AND 103 OTHERS

Versus

MARVO STATIONERY & PAPER HOUSE (PVT) LTD

IN THE HIGH COURT OF ZIMBABWE
TAKUVAJ
BULAWAYO4 & 12 JUNE 2014

G. Sengweni for applicant

S. Chamunorwa for the respondent

Opposed Court Application

TAKUVAJ: This is an application for the registration of an arbitral award in terms of section 98 (14) of the Labour Act [Chapter 28:01]. The section reads:-

“(14) Any party to whom an arbitral award relates may submit for registration the copy of it furnished to him in terms of subsection (13) to the court of any magistrate which would have jurisdiction to make an order corresponding to the award had the matter been determined by it, or if the arbitral award exceeds the jurisdiction of any magistrates’ court, the High Court.”

The facts of this matter are that the applicants work for the respondent in various departments. Respondent failed to discharge its basic duty of paying salaries and allowances timeously resulting in applicants filing a complaint of unfair labour practice. The matter was eventually referred to an arbitrator who on 1 July 2013 issued the following award:-

“It is ordered that respondent should pay claimants (including executors of the estate of the deceased employees) as follows:

1. Accrued balances from February 2013 to April 2013 totaling US\$73 095,00 no later than 31 July 2013 as per schedule attached marked 2.
2. Payments of accrued salaries from 2009 to 2012 to be staggered in 2 instalments i.e. end of August 2013 not less than 50% of owings being US\$ 123 615,97 and the balance of US\$123 615,97 by 20 September 2013 as per schedule marked 1.

I so award.”

The award itself is marked “Annexure A” and attached to it are the following documents:

- (i) Form L.R.7
- (ii) Form L.R.9
- (iii) Annexure B with a list of all the affected employees. It also shows how much each employee is owed by the respondent.

The amounts due were never in dispute at any point. After the award was issued the

applicants wrote a letter demanding compliance but non was forthcoming. The applicants have submitted that since the award was granted three of their members have died. The respondent has to date not complied with the award.

The application for registration of the award is opposed on the following grounds:

- (i) The relief sought by the applicants is incompetent in that it does not sound in money;
- (ii) That the noting of an appeal suspends the award;
- (iii) That “N. Marandu and 103 others” is not a legal entity capable of being sued and suing and for that reason each applicant ought to have been sufficiently identified.

During the hearing counsel for the respondent abandoned the first two grounds leaving the third ground as the only basis for the opposition. The gist of the argument in respect of the third ground is that since annexure B is not part of the award, the claimants are therefore not sufficiently identified in the award. This, it was argued is prejudicial to the respondent in that it makes the award vague and uncertain to the extent that it is rendered unregistrable.

Mr *Sengweni* for the applicants submitted that Annexure B is part of the proceedings before the arbitrator and respondent will not suffer any prejudice if the award is registered in that each claimant is individually named and his or her claim is separately quantified.

This Court is aware of the conflicting judgments surrounding the registration of arbitral awards generally and the effect of an appeal to the Labour Court specifically – see for example (1) *DHL International Ltd v Clive Madzikanda* HH-51-2000; (2) *Gaylord Baudi vs Kenmark Builders (Pvt) Ltd* HH-4-12; (3) *Dhlodhlo vs Deputy Sheriff of Marondera & Ors* HH-76-11.

My view is that section 92E (2) altered the common law position by providing that an appeal in terms of the Labour Act Chapter 28:01 shall not have the effect of suspending the determination or decision appealed against.

In casu the issue for determination is whether the arbitral award is registrable in terms of the law. While it is accepted that the duty of this court in such applications is not to simply rubber stamp the decision of the arbitrator, it is also true that this court does not sit as an appellate or reviewing court. Its duty is simply to ensure that the award accords with basic requirements of the law.

In my view the award has been properly quantified. The beneficiaries are specifically mentioned. The amount due to each and every employee has been indicated in Annexure B which in my view is part of the award. To exclude Annexure B from Annexure A (the award) would render the award incomplete and meaningless. Respondent has not challenged the findings relating to quantum. This is not surprising because during the proceedings before the arbitrator respondent conceded that it was common cause that the company had been unable to pay outstanding salaries. In fact, respondent participated in the compilation of Annexure B.

In my view an award which simply calls upon an employer to comply with the law cannot be contrary to public policy. Consequently I find that the argument by the respondent has no merit.

Accordingly, it is ordered that:

- (a) the arbitration award issued by Mrs G. Mpemba on 1 July 2013 together with the quantification thereof be and are hereby registered as orders of this court.
- (b) the respondent be and is hereby ordered to pay applicants' costs.

T. Hara & Partners, applicants' legal practitioners

Calderwood, Bryce Hendrie & Partners, respondent's legal practitioners