TRANSLOAD ENTERPRISES

versus

TAWANDA KUNAKA

HIGH COURT OF ZIMBABWE

CHIWESHE JP

HARARE, 30 July 2010

Mr *Hwenhira,* for the applicant

Respondent in person

CHIWESHE JP: The applicant company is a wholly owned subsidiary of the Reserve Bank of Zimbabwe. The respondent is an erstwhile employee of the applicant. The respondent was duly dismissed from his employ after a disciplinary inquiry. Aggrieved by this turn of events, the respondent took the matter to the Labour Office alleging an unfair labour practice. The matter was referred to arbitration. The arbitrator found in favour of the respondent and directed the parties to negotiate the quantum of damages for breach of contract. According to the applicant, the negotiations broke down and nothing was said of the matter thereafter until the applicant was served with an order of this court wherein an arbitral award had been registered.

The respondent however avers that the application to register the arbitral award was served on the applicant but for reasons known to themselves, the applicant chose not to file any opposing papers. I believe the respondent in this regard as the record shows that that application was served on the applicant’s legal practitioners on 31 March 2010, a day after it had been filed with this court. In addition, the record also shows that on 4 February 2010, the respondent wrote to the arbitrator adverting to the fact that the seven day period in which the parties had been directed to pursue and conclude negotiations regarding quantification and payment of terminal benefits, cash in lieu of leave and damages for breach of contract had lapsed and that the applicant had not even acknowledged the respondent’s attempts to finalise the matter as directed. Under cover of that letter, the respondent sent his proposal as to the amounts payable to him for the arbitrator’s attention. Again the record shows that this letter was received by the applicant’s legal practitioners on 5 February 2010. The applicant’s argument that they were kept in the dark is clearly untenable.

The applicant only awoke from its slumber after it received the order registering the award (having failed again despite notice to attend to the process of quantification before the arbitrator) and after the dreaded visit by the Deputy Sheriff who attached its property including heavy machinery. The applicant hastily purported to file an appeal in the Labour Court which appeal was filed well out of time. It also filed the present application under a certificate of urgency seeking to have the order registering the award suspended pending appeal.

From the above it can be said that the applicant’s negligence and disregard of court process is the proximate cause of its predicament. I would ordinarily have dismissed this application on that basis alone.

I however granted the application because it was then brought to my attention that in terms of the Presidential Powers (Temporary Regulations) SI 115/2010, in force since18 June 2010, the Reserve Bank now enjoys the same protection given State departments under the State Liabilities Act [*Cap 8:14*]

It was for these reasons that I granted the application in terms of the final draft order as amended.

Accordingly it was ordered as follows:

1. Pending the hearing of the application for suspension of the operation of the arbitral award, and the appeal before the Labour Court, execution of the judgment of this honourable court in case no. 1986/10 is hereby stayed.
2. Respondent to pay the costs of this application.

*Chinogwenya & Zhangazha*, applicant’s legal practitioners