JOHN NYAKAMHA
versus
LOBELS BREAD

HIGH COURT OF ZIMBABWE
MTSHIYA J
HAHARE, 11 February 2014, 3 March 2014 and 12 March 2014

Opposed matter

Applicant in person
A.T. Muza, for the respondent

MTSHIYA J: This is an application for the registration of an order of the Labour Court. The exact relief sought reads as follows:-

"1 . Defendant pay the applicant amount of US$ 187 303-40 (One Hundred and Eighty Seven Thousand dollars and Forty Cents) with interest at prescribed rates.
2. Defendant pay costs of suit."

The above relief is based on an arbitral award granted in favour of the applicant by Arbitrator Chavura which was by consent, quantified by Arbitrator C.H Lucas on 21 January 2008. The arbitral award provided as follows:-

"IT BE AND IS ORDERED

That the Respondent pays to the Claimant the following:

1.	Back pay and increments amounting to	$3,276.070.00
	Plus interest at 35% thereon from 1 October 2003 /May 2005	1,146,624.50
	sub-total	4,422,694.50
2.	Incentive performance bonus amounting to	266,602.50
3.	Value of cell phone amounting to	46,050.00
4.	Value of motor vehicle usage amounting to	500,000,00
5.	Value of mealie meal amounting to	666,400.00
6.	Value of big ben laundry soap amounting to	352,920.00
7.	Leave pay amounting to	768,442.50
8.	Three years pay at current rates as damages	9,785,058.00
	Sub-total	12,358.472.50
	Plus interest thereon @ 30% p.a from 1 October 2003 To may 2005	4,943,388.80
	Sub-total	17,301,861.30
	Grand total	21,724,555.80
	Les paid in May 2005	20000,000.00

Balance due 1,724,555,80

The award thus is that the respondent shall pay to the claimant the sum of $ 1, 724,555.80 with interest thereon at 30% from this date until date of payment.
Each party pay its own costs.
Each party shall pay half the costs of the arbitration."

As can be seen, the above award is in the old Zimbabwe currency.(i.e. before the introduction of multi-currency in February 2009). On a date, not indicated, the applicant, on his own, went on to convert the above award into United States Dollars and then came up with the sum of $187 303-40 reflected in the relief he seeks herein. Upon the respondent having not honoured the award, converted into in US dollars, the applicant approached the labour Court for relief and on 12 July 2011 the Labour Court issued the following Order:-

"**IT IS ORDERED THAT**

1. The application being improperly before this Court, it be and is hereby dismissed."

In declining to entertain the application, for the reason stated in the above order, the Labour Court, in passing, made the following observation:-

> "Mr Chavura's award, upon which this application is based, was by consent referred to and quantified by arbitrator Mr Lucas on the 21st of January 2008 and that award still stands.
> The adage there must be finality to litigation is apt."

It is the above order of the labour Court that the applicant seeks to register.

In the first paragraph of his founding affidavit, the applicant states as follows:-

> "This is an application of registration of a labour Court Order of 08 August 2011 LC/11/240/04 by the senior Labour Court president G. Mhuri which was never opposed by the defendant"

It is important to note that the Labour Court order quoted above was a dismissal of the applicant's application for the reason given in that order. The Labour court did not requantify Mr. Lucas's award. The labour Court did not convert the award into United States dollars

In para(s) 4 and 5 of its opposing affidavit the respondent states that:-

> "4. It is denied that the respondent did not oppose the order that the applicant was seeking under case number LC/H/240/04. I aver that under the foresaid case the applicant applied for his damages to be assessed. The Labour Court President Honourable G. Mhuri held that such an application was improperly before the Court and she accordingly dismissed it. For purposes of bringing finality to the issue of damages that the applicant was claiming the court held

that the arbitral award by Mr Lucas dated 21st January 2008 which quantified the damages was still valid.

5. I aver that the Labour Court judgement under case number LC/H/240/04 that the Applicant seeks to register does not order the Respondent to pay US$187 303-40 that the Applicant is claiming in his draft order for this application. I aver that the order that the applicant is seeking is improper because the applicant is trying to sneak in the case of assessment of damages that was dealt with by the Labour Court under case number LC/H/240/04. The applicant should have sought in his draft order the registration of the said Labour Court judgement and not the quantified damages in the sum of US$187 303-40 which have not been quantified by either an arbitrator or a court of law. The applicant has simply quantified his own damages and he now wants the same to be made into an order of this court. This application should therefore be dismissed with costs on the higher scale of attorney and client."

When the parties first appeared before me on 11 February 2014the respondent was barred for failure to file heads of argument. It applied for the bar to be lifted and I granted the application. I was satisfied that the respondent's failure to file heads was the fact that it anticipated the hearing of its own application for dismissal of this case for want of prosecution. Its case, HC 6783/13 was awaiting a set down date and both parties had already filed heads of argument. Notwithstanding that application, the applicant had proceeded to set this matter down. I therefore found it necessary and reasonable to allow the respondent to file heads of argument in this application and hence the lifting of the bar. The respondent's heads of argument were indeed duly filed on 18 February 2014 and the applicant filed his response on 24 February 2014.

The application for the upliftment of the bar was made and granted in the presence of the applicant. Accordingly the applicant's submission that the respondent is still barred is clearly misplaced.

In its submissions the respondent argued that the amount of money mentioned in the relief sought was never provided for in the Labour Court order or in the arbitral award dated 21 January 2008. It went on to say the award of 21 January 2008 was for a sum of ZW$ 1 724 555-80 and the Labour Court had confirmed same as still binding on the parties. The respondent went further to point out that the sum of US$ 187 303-40, indicated in the relief sought by the applicant, was calculated by the applicant himself and not the Labour Court or arbitrator. That position is confirmed by the applicant's Legal practitioners in a letter dated 26 October 2012 which reads as follows:

"Dear Sirs

RE: JOHN NYAKAMHA-vs-LOBELS BREAD (PVT)LTD: LC/H/240/04

We refer to last Labour Court order dated 12th July 2011 and handed down by Senior President **G. Mhuri.**

In the order she confirms the arbitrator **Lucas'** quantified award still stands. She further urges that there must be finality to litigation. Attached is a copy of that order.

In order to express arbitrator **Lucas**' award in United States Dollars, we obtained a rates confirmation certificate from the Reserve bank of Zimbabwe. Please find attached a copy of same.

Please find also attached the computation of the claim. The total claimed is $187 303-40 using the Reserve Bank of Zimbabwe rates at the relevant time. You will appreciate that Old Mutual and commercial banks had their own rates which were far higher than the Reserve bank of Zimbabwe rates. If our client had applied any of those rates then his claim could have quadrupled. We consider the present claim reasonable, well founded and justifiable.

We have instructions to demand payment within the next seven (7) days from the date of service of this letter failing which we have instructions to approach the Labour Court for any appropriate remedy and the resultant costs shall be to your account. Interests shall also be applied on the unpaid claim until date of full payment.

We trust the above is in order and shall be waiting for your response."

Indeed, the Reserve Bank of Zimbabwe rates were attached to the above letter together with the claim converted into United States Dollars. That claim, having not been endorsed by the quantifying arbitrator or the Labour Court, was never accepted by the respondent.

The respondent correctly submitted that the applicant's relief was not in accordance with the arbitrator's award. The respondent submitted that it would have no objection if the award was to be registered as quantified by C.H. Lucas. It was, however, totally opposed to the registration of the award as converted into US dollars by the applicant himself. It therefore urged the court to dismiss the award with costs on the higher scale of legal practitioner and client.

In response, the applicant, despite being aware of my decision of 11February 2014, persisted that the respondent was still barred. He went on to submit that "the court is being asked to register the award granted by the Labour Court, not the quantum or anything else." He insisted that the award be registered as converted into US dollars by himself.

Let me hasten to point out that the correct position is that, the Labour Court declined to entertain the applicant's application and once it did that, it was estopped from going into

the merits of the matter. The Labour Court did not do that. That being the case, the Senior President's remarks cannot be read as part of her order. Those remarks were *obiter dictum*.

The registration of arbitral awards is provided for in subs(s) 13 and 14 of s 98 of the Labour Court Act [*Cap* 28:01] which provide as follows:-

> "(13) At the conclusion of the arbitration the arbitrator shall submit sufficient certified copies of his arbitral award to each of the parties affected by it.
> (14) Any party to whom an arbitral award relates may submit for registration the copy of it furnished on 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."

Clearly *in casu*, there is no Labour Court order to be registered as prayed for by the applicant. The Labour Court did not hear him on the merits. It merely dismissed his application for being improperly before it.

Even assuming that, apart from the non-existence of a registrable order from the Labour Court, there was an arbitral award to be registered, the uncertified award of C.H. Lucas would not be registrable for failure to comply with sub(s) 13of s 98 quoted above. Under normal circumstances that award, having been properly granted, would have been registrable.

In addition to the foregoing, I want to point out that this court can only register an award in the form it was granted. The applicant, *in casu*, has arbitrarily sought to convert the C.H. Lucas award from its original form where it is denominated in Zimbabwe Dollars, to United States Dollars. Indeed, even if the award were registrable, this court cannot, on its own, convert that award into United States dollars. That would be a different award altogether.

Accordingly, my finding is that there is no registrable court order or arbitral award before the court. The application ought to fail.

Given the unforgivable attitude of the applicant in continuing to pursue the application when it was clear his arbitrary conversion of C.H. Lucas's award into United States Dollars was irregular, not confirmed either by the arbitrator or Labour Court, and was never accepted by the respondent, there is merit in ordering costs on a higher scale.

I therefore order as follows:-

1. The application be and is hereby dismissed; and
2. The applicant shall pay costs on a Legal Practitioner and client scale.

Mawere & Sibanda Legal Practitioners, respondent's legal practitioners