RITA MARQUE MBATHA
versus
CONFEDERATION OF ZIMBABWE INDUSTRIES

HIGH COURT OF ZIMBABWE
MHURI J
HARARE, 16 October 2023 & 16 January 2024

Opposed Application

Applicant in person
Mr *H Mutasa*, for the respondent

MHURI J: This is an application for the registration of an award in terms s 92B of the Labour Act [*Chapter 28:01*] (THE ACT).In her founding affidavit, applicant averred that this court's mandate to register the award is conferred by s 92B (3) and (4) of the Act which provide as follows:

> "(3) any party to whom a decision, order or determination relates may submit for registration the copy of it furnished to him in terms of subsection (2) to the court of any magistrate which would have had jurisdiction to make the order had the matter been determined by it, or, if the decision, order or determination exceeds the jurisdiction of any magistrates court, the High Court.
> (4) where a decision, order or determination has been registered in terms of subsection (3) it shall have the effect , for purposes of enforcement, of a civil judgment of the appropriate court"

The application is pursuant to an Order of the Supreme Court under SC 119/19 handed down on 25 November 2019. The order reads as follows:

> "The appeal be and is hereby allowed with no order as to costs.
> The judgment of the Labour Court in LC/H/APP/336/2014 be and is hereby set aside and substituted with the following:
> 1. "The application for qualification of damages partially succeeds and accordingly the Respondent shall pay to the applicant the following within 30 days of this Court's Order.
> (a) Damages for unfair dismissal at the salary rate of ZWL 11 57 037.00 (1400) from 1 June 2003 to 31 May 2005 = US$36 600.
> (b) Cash in lieu of notice = US$4 200.
> (c) Cash in lieu of leave days = US$361-30
> Total = US$41 161-30
> (d) interest on the total sum in a- c at the prescribed rate from the date of the court order to the date of payment in full.

2. The claim for punitive damages be and is hereby dismissed
3. Each party shall bear its costs."

Pursuant to an appeal against this court's decision, the Supreme Court under case number SC 437/22 issued an order to his effect:

"1. the appeal partially succeeds with costs.

2. the judgment of the Supreme Court in case number SC 119/19 is still extant and has not been satisfied.

3. the appeal against paragraph 1 and 3 of the judgment in case number HC 4380/20 be and is hereby dismissed with costs.

4. the order of the court *a quo* in paragraph 3 of the court *a quo's* order be and is hereby set aside and substituted with the following;

"Each party is to bear its own costs."

It was applicant's averment that respondent has not complied with the Supreme Court order issued under SC 119/19. The amount inclusive of interest now stands at US$47 850-01. She submitted that the award is capable of registration on the reasons that:

a) the award was granted by a competent court.
b) it sounds in money.
c) it is within the monetary jurisdiction of the High Court.
d) it is still extant and has not been set aside on review or appeal.
e) the litigants are the parties to the award.
f) the award must be certified as an award of the arbitrator.

I believe by using the word 'award' applicant meant order.

She prayed that the order be registered as an order of this court and an order for costs be granted.

To this application, respondent filed a notice of opposition and in its opposing affidavit deposed to by one Amen Magwai, the Finance and Administration Manager, it raised 3 points *in limine* one of which (urgency) is no longer relevant as such I will not dwell on it.

The other 2 points *in limine* raised were:

a) that applicant used a wrong form
b) the relief being sought is incompetent.

I directed that the parties also make submissions on the merits so that if the points *in limine* are not upheld, I would proceed to determine the matter on the merits without having to have the matter reset for a hearing on the merits.

Respondent's second point was that applicant used a wrong form in violation of the provision of Rule 59(1) of this Court's Rule's SI 202/ 2021.No explanation was given by applicant for using the incorrect form. It was respondent's other submission that the applicant's circumstances are aggravated by the fact that the application incorrectly states that it is being made for the registration for an arbitral award and yet no arbitral award is being sought to be registered.

As regards the other point, it was submitted that the relief being sought by applicant is incompetent in two respects in that:

1. there is no provision in the Labour Act in terms of which a judgment of the Supreme Court can be registered as a judgment of this court;
   and
2. that the powers that are conferred by s 92B(3) of the Labour Act do not go beyond registration of a Labour Court judgment and the relief being sought is *ultra vires* s 92B(3).

On the merits, it was respondent's submissions that registration of a Labour Court judgment under s 92B is for enforcement only.

In the present case, enforcement of the Supreme Court order does not arise because applicant was paid the sum as per the Supreme Court order, but in RTGS at the rate of 1:1 in compliance with the provision of SI 33/2019. The balance of US$6688-71 was being tendered in RTGS at the rate of 1: 1 in the opposing papers, as such the Supreme Court order which applicant seeks to register is to be treated as having been satisfied. It was respondent's prayer that the application be dismissed with costs.

In response to the points *in limine*, it was applicant's submissions that the points are vexatious, meritless and meant to delay the inevitable as she satisfied the requirements of the Rules

of this court. It was her submission that forms can be modified, a court can vary an order sought and also that rule 7 permits the court to depart from rules so that the matter is finalized.

She cited the cases of:

1) *Telecel Zimbabwe (Pvt) Ltd* v *Portraz and Anor* HH 446/15
2) *Econet wireless* v *Trust Company* SC 43/13
3) *Chiswa* v *Maxess Marketing (Pvt) Ltd* HH 116/20

to support her submissions.

On the merits, she submitted that in an application for registration such as this one, the court will not be sitting as an appeal or review court delving into the merits of the case. The court will be exercising an administrative or procedural function. She relied on the provision of s 92B(3) and (4) of the Labour Act and the cases of;

Biltrans Services v *Minister of Public Service, Labour and Social Welfare* CCZ 16/16.

Further, she submitted that for purposes of enforcement, the Supreme Court Judgment is deemed to have been given by the court in which it has been recorded, that is the Labour Court. She relied on s 24 of the Supreme Court Act [*Chapter 7:13]* to support this submission. It was her case that the Supreme Court order was an order by consent, is still extant and respondent is in contempt of that order. The amount in RTGS which respondent deposited in her account, she returned it to respondent. If respondent felt that what it paid was proper, it should have appealed.

It is common cause that the Supreme Court Order under case number SC 11/19 issued on 25 November 2019 was an Order by consent. It is this same order which the Supreme Court on 20 February 2023 under Civil Appeal number SC 437/22 ordered that it was still extant and had not been satisfied. Applicant's application is titled, court application for registration of award in terms of s 92B of the Labour Act [*Chapter 28:01*]. It is the use of the word "award" which respondent is taking issue with. I find the taking of this issue to be without merit. The application is made in terms of s 92B of the Labour Act which speaks not to registration of arbitral awards but decisions, orders or determination of the Labour Court. Further in paragraph 4 of her founding affidavit, applicant clearly states the application is for the registration of a Labour Court judgment filed in terms of s 92B.

In paragraph 6 she states that the application is pursuant to a judgment handed down by the Supreme Court on 25 November 2019 ,under SC 119/19.

It is my finding that the use of the word 'award' by applicant is not fatal as to warrant the striking off of the application.

Rule 59(1) of this Court's Rules provides as follows:

> "a court application shall be in Form 23 and shall be supported by one or more affidavits setting out the facts upon which the applicant relies:
> Provided that, where a court application is not to be served on any person, it shall be in form of a chamber application with appropriate modifications."

Form 23 reads as follows:

> "TAKE notice that the applicant intends to apply to the high Court for an order in terms of the Draft Order annexed to this notice and that the accompanying affidavit/s and documents will be used in support of the application.
> If you intend to oppose this application you will have to file a Notice of Opposition in form 24, together with one or more opposing affidavits, with the Registrar of the High Court at…….. within…… days after the date on which this notice was served upon you. You will also have to serve a copy of the Notice of Opposition and affidavit on the applicant at the address of service specified below. Your affidavits may have annexed to the documents verifying the facts set out in the affidavits.
> ……"

A reading of the notice filed by applicant clearly shows that she complied with the form 23 word for word except for the inclusion of grounds stated as 1, 2 and 3. In compliance with the form, she annexed to the application the affidavit and documents she used in support of the application. The grounds which respondent take issue with are stated as:-

1. The respondent has not made any payment to the applicant and does not seem to be intending to do so.
2. The amount awarded is within the monetary jurisdiction of this Honourable Court.
3. The applicant is entitled to register the award with this Honourable Court for purposes of enforcement.

Equally this issue taken by respondent is without merit. Applicant complied with the provision of rule 59(1), there was no departure from it at all. The inclusion of grounds cannot be a fatal departure that warrants striking off the application.

The relief applicant is seeking as per her Draft Order is that:-

"1. The Supreme Court judgment handed down on 25 November 2019 be and is hereby registered in terms of s 92B(3) and (4) of the Labour Act [*Chapter 28:01*], as a judgment of this court.
2. The respondent be and is hereby ordered to pay applicants (sic) the sum of USD 47 850.01 inclusive of interest at the prescribed rate.
3. The respondent bears the applicant's costs."

Section 92B of the Labour Act provides as follows:-

"Effective date and enforcement of decisions of Labour Court:-
1. ……
2. ……
3. any party to whom a decision, order or determination relates may submit for registration the copy of it furnished to him in terms of subsection (3) to the court of any magistrate which would have had jurisdiction to make the order had the matter been determined by it, or, if the decision, order or determination exceeds the jurisdiction of any magistrates court, the High Court.
4. where a decision, order or determination has been registered in terms of subsection (3) it shall have the effect, for purposes of enforcement, a civil judgment of the appropriate court.
5. ……"

Noted is the fact that as at the date of application, the Labour Court did not have the powers to register its own orders, decisions or determination for purposes of enforcement. Equally so, the Supreme Court does not have the powers to register its orders, decisions or determination for purposes of enforcement. A party has to approach the inferior courts for that purpose.

Admittedly, s 92B of the Labour Act makes no mention of Supreme Court orders. *In casu* however, as already stated the Order of the Supreme Court under SC 119/19 relates to a Labour Court judgment which though it was set aside was substituted with the terms ordering respondent to pay a total of US$41 161-30 plus interest.

Sections 24 of the Supreme Court Act [*Chapter 7:13*] provides:

"Effect of judgment of Supreme Court in Civil Appeals.
Except as otherwise provided in any other law, judgment of the Supreme Court in any appeal in terms of this part shall be recorded in the court or tribunal of first instance and such judgment may be enforced in all respects as if it had been given by that court or tribunal."

The matter under SC 119/19 having emanated from the Labour Court, it was in my considered view properly placed before this court for registration in terms of s 92B of the Labour Act. I again find the issue raised by respondent without merit and dismiss it.

I associate myself with the remarks by MATHONSI J (as he then was) in the case of *Telecel Zimbabwe (Private) Ltd* v *Potraz, Minister of Information Technology and 2 Ors* HH 446/15 to this effect.

> "Legal practitioners should be reminded that it is an exercise in futility to raise points *in limine* simply as a matter of fashion. A preliminary point should only be taken where firstly it is meritable and secondly it is likely to dispose of the matter. The time has come to discourage such waste of court time by the making of endless points *in limine* by litigants afraid of the merits of the matter or legal practitioners who have no confidence in their client's defence *vis a vis* the substance of the dispute, in the hope that by chance the court may find in their favour
> If an opposition has no merit it should not be made at all."

These points *in limine* as correctly submitted by applicant were ill taken and only meant to delay finalization of this matter.

On the merits, the Supreme Court order under SC 119/19, made it clear what the respondent had to pay. This court under case number HC 4380/20 had ruled in favour of respondent to the effect that by paying the amount of ZWL 41161-30 instead of US$41 161-30 it had fully discharged its obligation.

This judgment was taken on appeal and the Supreme Court under Civil Appeal SC 437/22 made the Order that its Order in case number SC 119/19 is still extant and has not been satisfied. This means the amount as ordered has still not been paid therefore respondent cannot be heard to say there is only a balance of US$66 88-71 to be paid , which it is tendering in RTGS Dollars. As submitted by applicant, if respondent felt the order was not clear, it ought to have sought clarification from the Supreme Court.

In the result, it is my finding that the opposition to this application was unmerited. To that end I will grant the application and order as follows:

1) That the application for registration of the Supreme Court Order under SC 119/19 be and is hereby granted.
2) The Supreme Court Order of 25 November 2019 under SC 119/19 be and is hereby registered as a judgment of this court
3) Respondent be and is hereby ordered to pay applicant the sum of US$47 850-01 inclusive of interest calculated at the prescribed rate.
4) Respondent to bear costs of this application.

Gill Godlonton & Gerrans, respondent's legal practitioners