

EVESSION MUTANDWA
versus
SUNNINGDALE 2 MEDICAL CENTRE

HIGH COURT OF ZIMBABWE
MUNANGATI-MANONGWA J
HARARE, 17 September & 8 November 2024

Opposed Matter

A A Makore., for the applicant
K Shonhayi, for the respondents

MUNANGATI-MANONGWA J: The applicant approached this court seeking registration of a Designated Agent ruling in terms of s 128 (1) of the Labour Act [*Chapter 28:01*] for enforcement purposes.

The facts of the case revolve around the following synopsis. The applicant was employed by the respondent as a receptionist on a contract earning US\$300 per month with no transport allowance. He was employed in 2014 and his contract was terminated in November 2017. His termination was effected verbally and he was summarily dismissed without notice thus constituting an unfair dismissal. He was not served with any letter stating a charge which might have formed the basis of his dismissal.

Aggrieved by the dismissal, the applicant referred the dispute to the National Employment Council for the Medical and Allied Industry. The terms of reference were unfair dismissal, underpayment and non-payment of leave days. The designated agent one MaryGrace Chikomwe heard the matter and delivered her ruling on 19 October 2018. The applicant was awarded monetary benefits and other relief as follows;

- US\$3 520 for underpayment of wages and transport allowances.
- US\$2 280 for notice pay and cash in lieu of leave.
- Reinstatement to his position without loss of salary and benefits. In case reinstatement was no-longer tenable, the parties were to negotiate on the damages.

However, despite having knowledge of the ruling, the respondent neglected to pay the applicant the amount awarded to him for five years. The designated agent made several efforts in 2018, 2020 and 2023 to have the ruling confirmed by the Labour Court, but the matter kept on being postponed and removed from the roll. The applicant avers that the ruling has become automatically confirmed in terms of s 128 of the Labour Act.

The applicant raised a preliminary point to the effect that the deponent to the respondent's opposing affidavit is not authorized to act as such. The deponent to the opposing affidavit in response contends that he is the respondent's director and is a duly authorized representative of the respondent in this matter, having done so in preceding proceedings which involve the parties.

For clarity, the respondent's affidavit was deposed to by one Tirivafi Engelberth Chiwunze. A perusal of documents filed in case number LC/H/LRA/795/18 shows that the respondent was represented by one O. Dzamara who is identified as the general manager. There is no proof of any resolution authorizing Tirivafi Engelberth Chiwunze to represent the respondent in both the current or preceding matters.

It is common cause that the respondent as an entity can only act through its representatives and must have an appointed representative to act on its behalf in legal proceedings. An individual representing an entity ought to be authorized to do so by providing proof to that effect. The entrenched position of law is that when the authority of a deponent acting on behalf of an entity is put to issue, the deponent is obliged to provide proof in the form of a company resolution that he is authorized to act in that capacity (see *Dube v Premier Service Medical Aid Society* SC73/19). This approach is used to prevent unauthorized persons from acting on behalf of a company or a legal entity without its knowledge. In certain instances, the position is relaxed when the deponent proves that he has prior authorization through a resolution and has acted in a representative capacity on behalf of the entity in prior litigation relating to a similar dispute. The production of a board resolution is not a matter of fashion but a matter of necessity should the other party harbor genuine doubts as to the authority. The courts do not apply a restrictive approach as far as this issue is concerned, but address such issue on a case-by-case basis.

It is imperative to note that the respondent has not placed enough evidence before the court to convince it that the deponent possesses authority to act on behalf of the respondent (see *Madzivire v Zvarivadza & Ors* SC10/06. That being the case, the respondent's notice of opposition

cannot stand for lack of authorization. Therefore, the preliminary objection has merit and succeeds. In that regard there is no opposition to this application and the matter proceeds as unopposed.

The applicant states that whilst he had sought to have the determination confirmed by the Labour Court and he met hurdles, that exercise is no longer necessary given the promulgation of s 128(1) of the Labour Act which provides that all pending registrations of Labour Officer rulings are deemed confirmed. It is imperative to note that determination by a Labour Officer is the one which has to be confirmed before the Labour Court. The determination by a designated agent, as the one before the court does not require confirmation by the Labour Court. The court notes that the applicant adopted a wrong procedure of seeking registration in the Labour Court for a determination made by a designated agent.

Given that at present the Labour Court does not have its own mechanisms to enforce its own judgments, its judgments are therefore registrable in the High Court or Magistrates Court for enforcement purposes in terms of s 92 B (3) of the Labour Act. For clarity, s 92 B (3) reads as follows;

“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 Magistrates 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”

The aforementioned section relates to orders or judgments made by Labour Officers and not designated agents. The applicant had in his founding papers stated that the ruling was made by a Labour Officer. A closer look at the Employment Council For The Medical Aid Alliance Industry Form L.R filed on record shows that the determination was made by a designated agent. The applicant sought to find refuge in s128 of the Labour Amendment Act.

In determining whether the ruling is registrable, the court interpreted s 128 (1) of the Labour Amendment Act which is set out in s 36 of the Labour Amendment Act which the applicant relies on. For clarity the section provides as follows;

“128 Transitional Provisions

- (1) Where a **labour officer** makes a draft ruling in terms of s93(5)(c) and **for what reason**, the draft ruling was not registered with the Labour Court in terms of s93 (5a) and (5b) of the replaced provisions, such draft ruling shall automatically be deemed to be a judgment or ruling of the Labour Officer which for execution purposes shall be registered in the appropriate court:”

The above stated section is very clear that it applies to draft rulings made by Labour Officers and not designated agents of employment councils. The applicant is mistaken that his determination falls within the ambit of the transitional section for enforcement purposes. Apparently, labour officers at the end of the dispute settlement process can only issue “draft rulings” which are subject to confirmation by the Labour Court. On the other hand, designated agents do not issue draft rulings which have to be confirmed by the Labour Court (see *Isoquant Investments (Pvt) Ltd t/a as ZIMOCO v Darikwa CCZ 6/20*). Determinations by a designated agent are deemed final and can only end up in the Labour Court through an appeal or review.

It is crucial to interpret s 63 (3a) of the Labour Act to clear the confusion. The section provides that a ruling of a designated agent is deemed the same as that of a labour officer. This relates to the exercise of their powers only. The section is clear that a designated agent who meets prescribed qualifications shall be authorized to redress or attempt to redress any dispute referred to him where such dispute has occurred in the industry and within the area for which there is a registered employment in the same capacity as that of a labour officer. Designated agents are empowered to exercise certain powers as are reposed in labour officers, and to follow certain steps as labour officers are required to follow. What the section omitted is to provide the procedure to be followed after they have redressed a dispute.

For completeness, the court refers to the provisions of s92B (3) of the Labour Act which reads as follows

“**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 Magistrates 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”

The aforementioned section is clear that anyone to whom a decision, ruling or order related is empowered to pursue its enforcement. The words “any person” is inclusive of the person in whose favour the ruling was made to seek its enforcement. This relates to registration of draft rulings issued in terms of s 92B or confirmed in terms of s (93(5b)) by the Labour Court. This entails that only those in possession of draft rulings issued by the Labour Court can rely on this section and must seek enforcement of the same in the appropriate court, that is either at the Magistrate Court or High Court depending on jurisdictional size or value of the order or judgment

(see *Zimbabwe Rural District Councils Workers' Union v Nyanga Rural District Council* HH118/22).

The applicant's dispute having been handled by a designated agent, does not fall within the provisions of any of the analyzed provisions. The applicant being in possession of various awards validly issued by quasi-judicial tribunals vested with statutory authority to issue such awards would obviously pursue enforcement. Where respondent has failed to comply with the terms of the determination and the applicant is thus unable to enjoy execution of what he is entitled to, the determination will in fact be *brutum fulmen*. Anyone in the position of the applicant would have assumed that they will find redress in the Labour Act and the courts. Surprisingly, there is no statute which specifically provides for enforcement procedure of determination by a designated agent.

The position was extensively addressed in a composite judgment in *Zimbabwe Rural District Councils Workers' Union v Nyanga Rural District Council* HH118/22 wherein it was ruled as follows:

“The authority of the designated agent is indisputable. The Constitutional Court endorsed that position beyond doubt in the *Isoquant Investments* (or *ZIMOCO*) decision. Evidently it was the deliberate decision of the Legislature, mindful of the need to attain industrial justice, to set up dispute resolution mechanisms by making provision for the appointment of designated agents and clothing them with certain adjudicatory powers. But registration of awards by a court is something quite different. There is no statutory authority for it. That seems to leave the determination by a designated agent at the level of a liquid document or some such instrument of debt. In my view, there is an obvious need for the Legislature to step in and correct the anomaly. In the premises I would also dismiss the applications.”

Given the foregoing sentiment, this court in the exercise of its inherent jurisdiction cannot draw such authority. What this court offers in situation like the present applicant was addressed in the *Nyanga* case *supra* where MAFUSIRE J made the following remarks;

“I consider that the applicant is not without a remedy. The determinations by the designated agents can form the basis of proceedings for judgments from this court in much the same way as liquid documents are

Suffice that whilst the above option may be available, it is burdensome on the litigant as the litigant needs to approach court again and litigate yet registration if available would be the best and most convenient procedure to adopt given that a determination would already have been made. It is imperative that the Legislature proceeds with haste to enact legislation that covers the *lacuna* in the law and ensures that provision is made for enforcement of determinations by designated

agents. Without such provision, successful candidates who hold determinations in their favour remain deprived and unjustly prejudiced due to inability to immediately enjoy the benefits ensuing from their awards.

Given the foregoing, this application cannot succeed.

Accordingly, the following order is made :

1. The application is dismissed.

MUNANGATI-MANONGWA J.....

Matsikidze Attorneys- At- Law, applicant's legal practitioners.
Shonhai Law Chambers, respondent's legal practitioners.