HUGGINS DURI
versus
MBADA DIAMONDS (PVT) LTD

HIGH COURT OF ZIMBABWE
MATHONSI J
HARARE, 14 and 22 July 2015

Opposed Application

S Chako, for the applicant
G Gomwe, for the respondent

MATHONSI J: This application is made in terms of s 98 (14) of the Labour Act [*Chapter 28:01*] for the registration of an arbitral award handed down by E Nyamanhindi, an arbitrator, on 11 March 2015. At the hearing of the application I granted a consent order which had the effect of amending the arbitral award sought to be registered and said the reasons for doing so would follow. These are they.

Historically, the arbitrator issued an award on 21 October 2014 directing the respondent who had dismissed the applicant from employment, to reinstate him without loss of salary and benefits and that if reinstatement was no longer tenable, that the parties were to negotiate damages in *lieu* of reinstatement. If the parties could not agree on the quantum of those damages either of them was at liberty to return to the arbitrator for quantification of the damages.

It would appear that indeed reinstatement was no longer an option but to their credit the parties successfully negotiated a settlement in respect of the damages and signed a deed of settlement in terms of which the respondent agreed to pay a sum of $40 902-30 in *lieu* of reinstatement. That amount was to be paid in 3 equal instalments commencing on 31 December 2014 with the full amount being cleared by 28 February 2015.

The commendable spirit of settling the matter ended there because the respondent only paid a sum of $7 000-00 towards its indebtedness to the applicant leaving a balance of $33 902-30. On 11 March 2015 the arbitrator issued another arbitral award quantifying the

applicant's damages in *lieu* of the reinstatement as agreed by the parties in the deed of settlement, that is $40 902-30, which amount was to be paid in full within 7 days of the receipt of the award.

It is that award which the applicant seeks to have registered as an order of this court for enforcement purposes. The application was opposed by the respondent only to the extent that what is now due to the applicant is no longer $40 902-30 but $33 902-30, the respondent having paid $7 000-00 to reduce the liability. The applicant concedes that indeed the debt has been reduced by a payment of $7 000-00 and seeks an amendment of his draft order to reflect the amount that is owing now.

The registration of an arbitral award evinced by s 98 (14) of the Act is for enforcement purposes only in light of the fact that the Labour Court under which arbitrators operate does not have enforcement mechanisms: *Muneka & Ors* v *Manica Bus Co* HH 30/13; *Tapera* v *Fieldspark Investments* HH102/13.

In that regard, where it has been shown that the applicant for registration is entitled to much less than what is contained in the arbitral award, it would be improper to register the whole amount awarded by the arbitrator because the applicant is no longer entitled to that amount but much less. If the award is to be an order of this court for enforcement purposes, this court must be at liberty to register only that which is lawfully due. For that reason I am entitled to recognize for enforcement purposed only that part of the award that remains outstanding there being no legal basis for enforcement of what has been paid.

In my view, the concession made by the applicant has been properly made. It remains for me to deal with the issue of costs. The applicant has asked for costs of the application to be awarded in his favour. Indeed quite often applicants for registration of arbitral awards seek costs of making the application with some even demanding costs on the admonitory scale.

It occurs to me that the process of registration of an arbitral award is merely administrative and arises out of expediency given that arbitrators do not have the wherewithal to enforce their awards. It arises out of need in order that the award may then be executed using the mechanism available at this court. For that reason, there is no reason for the costs of an application for registration to be borne by the respondent as if it is the respondent who has caused the application to be made in the first place. If the arbitrator, or indeed the Labour Court, could issue writs for the execution of their awards or orders, there would be no need for an application for registration to be made.

The application has to be made to this court because of a *lacunae* that exists in the law of this country, the legislature having omitted to provide for enforcement mechanism. I know that applicants for registration would argue that if the award is complied with there would be no need for registration. I am however of the view that it is not enough to justify an award for costs of an application occasioned by a gap left by the legislature not attributable to the respondent.

For that reason, unless there is something more that is caused by the conduct of the respondent, like filing opposition when such should not be filed at all, there should be no award of costs for registration. In this matter, there was merit in the opposition, as the applicant himself conceded. The respondent therefore should not have been saddled with the costs. However, the respondent was represented by counsel and chose to consent to the order for costs thereby tying my hands.

In the result, it is ordered that:

1. The arbitral award dated 11 March 2015 by the Honourable arbitrator, E. Nyamanhindi be and is hereby registered as an order of this Honourable Court.
2. The respondent shall pay to the applicant the sum of US $33 902-30 being the outstanding balance of the amount awarded in terms of the arbitral award.
3. The respondent shall pay costs of suit.

Mawire & Associates, applicant's legal practitioners
Mutamangira & Associates, respondent's legal practitioners