KADOMA CITY COUNCIL
versus
ZIMBABWE URBAN COUNCIL WORKERS UNION
KADOMA BRANCH
and
THE SHERIFF OF ZIMBABWE

HIGH COURT OF ZIMBABWE
PHIRI J
HARARE, 21 & 27 June 2016

Urgent Chamber Application

T. Magwaliba, for the applicant
J. Burombo, for the respondent

PHIRI J: This is an urgent chamber application in which the applicant Kadoma City Council, sought interim relief couched in the following terms:

> "Pending the determination of this matter on the return day the applicant be and is hereby granted the following relief:
>
> "2. The respondents be and are hereby ordered
>
> Not to remove the applicant's property placed under attachment by the second respondent on 15 June, 2016".

The gravamen of this application was based on the fact that writ issued by this honourable court, as a result of the Arbitral Award that was also granted by this honourable Court, was as a result of a claim not sounding in money and that the first respondent committed fraud by the attachment of the applicant's property.

It is common cause that this honourable court registered an Arbitral Award in case number HC 3718/14. A writ of execution was subsequently issued in case number HC 3718/14 on 15 April, 2016.

It is also common cause that an application has been filed for rescission of the judgment of this honourable court in case number HC 3718/14. This court application was filed under case number 6195/16. This court proceeded to hear the merits of this application having held that the matter was urgent.

Mr *Magwaliba,* for the applicant, among other factors, advanced arguments that:

(a) The arbitral award which is the subject of this dispute did not specify the monetary value that was awarded. It simply expressed a percentage. Therefore the judgment granted by this honourable court was erroneously granted.

(b) The writ of execution issued was fraudulently obtained since the rules of this honourable court (Rules 322 and 323) would require that a writ issued should comply with the requirement that it should be a claim sounding in money.

Mr *J. Burombo,* on behalf of the first respondent argued that:

1. The application was without merit as the application should have been brought in the Labour Court in terms of s 89 (1) (a) of the Labour Act [*Chapter 28:01*].
2. The judgment granted by this honourable court in case number HC 3718/14 was not erroneously granted as applicants never opposed the registration of the arbitral award.
3. The applicant's legal practitioners did not attend the Quantification Process when they were fully aware that the Arbitrator had been approached to attend to the Quantification Process.

   It was also submitted that:

4. The applicants have the temerity of alleging fraud when they were fully aware that Quantification of the award was going to proceed.
5. The fact that applicant had either appealed or filed its application for rescission of judgment does not have the effect of suspending execution.

The respondent submitted various case authorities in favour of the positions that this took in this application and ultimately I was persuaded that the interim relief sought by the applicants be dismissed.

I am persuaded that the mere fact that the applicants have made an application for rescission of judgment have filed an appeal against the Arbitral Award does not have the effect of suspending execution.

In the case of *Laylord Bandi* v *Ken Mark Builders (Private) Limited* case no. HH 4/2012 at pp 2 and 3 Patel J, as he then was, held that:

> "it is not in dispute that an appeal, to the Labour Court against the decision of an arbitrator under s 98 (10) of the Labour Act [*Chapter 28:01*] does not suspend the decision appealed against. Also refer to the case of *Senele Dhlomo Bhala* v *Lowveld Rhino Trust* HH263/13 at p 5 and 6 (a judgment of Mafusire J).

> Similarly s 92 E (3) of the labour Court to suspend or stay an award upon application by the aggrieved party "Where no such application is made or where it is dismissed, sub sections (14) and (15) of s 98 entitle the successful party to apply for the registration and enforcement of the award."

I hold the view that the High Court does not have the jurisdiction to "inquire into the merits or otherwise of an arbitral award. That is the Province of the Labour Court. Upon an application or appeal being made to that court" See *FLVS Ndhlovu* v *Higher Learning Centre* case no HB 86/10 at p 2 of the cyclostyled judgment of Mathonsi J.

This court is similarly persuaded by the authorities cited by the respondent, that, it is the Labour Court that has exclusive jurisdiction to deal with labour matters. See the case of *Plaza Hotel (Pvt) Ltd* v *Marimba & Anor* ZLR 200 7 at p 80 (A judgement of Bere J) and the case of *Tuso* v *City of Harare* 2004 (1) ZLR (a judgment of Bhunu J as he then was) at pp 3 to 6.

In the case of *Tuso* v *City of Harare supra* at p 6 Bhunu J as then was observed;

> "Apart from review jurisdiction the Labour Court has appeal jurisdiction which the High Court does not have. Thus the labour Court can combine both appeal and review proceedings and determine the matter more expeditiously and exclusively than the High Court. The High Court can only deal with the procedural aspects of the cases without dealing with the merits, yet the Supreme Court has ruled that it is undesirable to determine labour matters on technicalities."

Bhunu J further cited the cases of *Gaylord Bandi and Elvis* , DHL *International Limited* v *Clive Madzikanda* HH 51-10 a judgment of Makarau J, as she then was and *Benson Samudzimu* v *Dairibord Holdings Ltd* HH 204/10, a judgment of Chiweshe JP where at p 3 he stated;

> "In the present case the respondent has lodged an appeal with the Labour Court. The appeal is still pending. Should the respondent wish to have the arbitrator's determination suspended pending appeal or dealt with in any other interim way, it is to that court it must direct its application."

I am satisfied that the arbitrator's decision that "the appellants (non- managerial staff) be awarded a 40 % wage increment across the board with effect from August, 2013" was very clear.

This was also bolstered by the quantification which was subsequently carried out with the full knowledge of the respondents.

In conclusion I hold that the *dicta* in the case of *Brown* v *Dean* 1909 [1910] AC [1909] 2 KB 573, where it was held that,

> "In the interest of the society as a whole, litigation must come to an end, and when a litigant has obtained judgment in a court of Justice, he is by law entitled not to be deprived of this judgment without solid grounds."

applies, with full force in the present application.

I accordingly hold that the interim relief sought by the respondent in this present urgent application be dismissed with costs.

Mawere & Sibanda, applicant's legal practitioners
Maja & Associates, respondent's legal practitioners