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TICHAFARA R. VIRIRI
and
TSISTI NJANJARI AND 49 ORS
versus
MASHONALAND TURF CLUB

HIGH COURT OF ZIMBABWE
CHATUKUTA, J
HARARE, 7 February 2018

Opposed Matter

E Z Mapendere, for the applicants
C T Mazikana, for the respondent

CHATUKUTA J: The second applicant and another 41 applicants were employed by the respondent. The respondent terminated their employment on 5 August 2015 but did not pay them retrenchment packages as compensation for loss of employment in terms of s 12C (2) of the Labour Act [*Chapter 28:01*]. The dispute between the parties over the retrenchment packages was referred to the first applicant for determination. The first applicant, in his capacity as a designated agent, issued a ruling in favour of the second applicant and another 42 on 29 August 2016 for the payment of a total of USD160 614.60. On 6 October 2017, the ruling was confirmed by the Labour Court in terms of s 93 (5a) of the Labour Act. The applicants sought the registration of the ruling as confirmed by the Labour Court in terms of s 93 (5b). The application was opposed by the respondent. After hearing the parties, I granted the application and gave *ex tempore* reasons for my decision. The respondent has appealed against my decision. The following are the written reasons for my decision.

This application was filed in terms of s 93 (5b) of the Labour Act. Sections 93 (5a) and (5b) read as follows:

> "93 (5a) A labour officer who makes a ruling and order in terms of subsection (5) (*c*) shall as soon as practicable—
> (*a*) make an affidavit to that effect incorporating, referring to or annexing thereto any evidence upon which he or she makes the draft ruling and order; and
> (*b*) lodge, on due notice to the employer or other person against whom the ruling and order is made ("the respondent"), an application to the Labour Court, together with the affidavit and a claim for the costs of the application (which shall not exceed such amount as may be prescribed), for an order directing the respondent by a certain day (the "restitution day") not being earlier than thirty days from the date that the application is set down to for hearing (the "return day" of the application) to do or pay what the labour officer ordered under subsection (5) (*c*) (ii) and to pay the costs of the application.
>
> (5b) If, on the return day of the application, the respondent makes no appearance or, after a hearing, the Labour Court grants the application for the order with or without amendment, the labour officer concerned shall, if the respondent does not comply fully or at all with the order by the restitution day, submit the order for registration to whichever court would have had jurisdiction to make such an order had the matter been determined by it, and thereupon the order shall have effect, for purposes of enforcement, of a civil judgment of the appropriate court."

Section 93 (5a) is clear that if a labour officer issues a ruling and an order and the order is not complied with, he/she shall apply to the Labour Court for confirmation of the order and for the Labour Court to direct the respondent to comply with the order within a specified period. Section 93 (5b) further provides that if the Labour Court hears the parties and grants the application, it can either confirm the order as is or amend it accordingly. Thereafter, the labour officer is empowered, where the order of the Labour Court has not been complied with partially or fully, to make an application to an appropriate court for the registration of the order.

It is common cause that the first applicant filed an application before the Labour Court for confirmation of his order of 29 August 2016 which application was duly granted. The Labour Court did not in any way amend the order. It is also common cause that the respondent did not comply with the first applicant ruling resulting in the present application.

The respondent opposed the application on the basis that it had filed an application to the Labour Court for leave to appeal to the Supreme Court against the Labour Court's decision and the application was set down for hearing on 14 February 2018. It was contended that an injustice would occur if the present application was to be granted. It was further contended during the hearing of the application that the applicant could not seek to register the order by the first applicant but that of the Labour Court. The Labour Court order was ambiguous as it was not sounding in money.

During the hearing, Ms Mazikana conceded, and rightly so, that the filing of an application for leave to appeal against the decision of the Labour Court to the Supreme Court

does not suspend the decision of the Labour Court. (See *NMB* v *Goto* HH 187/17). There would be no appeal before the Supreme Court having the effect of suspending the decision of the Labour Court until the application for leave to appeal has been granted and the appeal has been filed with the Supreme Court.

Turning to the question whether or not the order by the Labour Court is ambiguous and not sounding in money, it was my view that the order is very clear. The order reads:

> "1. The ruling by Designated Agent Mr T Viriri be and is hereby confirmed.
>
> 2. First respondent be and is hereby ordered to comply with ruling officer/Designated Agent T Viriri within 30 days of this order.(*sic)*
>
> 3. The first respondent is to pay costs of suit on the sum of $3.00 within 30 days of this order."

An order is sounding in money if the amount claimed is easily ascertainable. Ms Mazikana conceded that an order is sounding in money if the amount claimed, though not appearing on the face of the order itself is easily ascertainable. The order by the Labour Court identifies what is being confirmed and that is the ruling by the first applicant. The first applicant's order was not varied and therefore the amounts ordered to be due to the individual applicants remain as stated in that order.

Despite persisting with the submissions in the respondent's heads of argument, Ms Mazikana conceded that there was no legal basis for opposing the registration of the order. Her concessions were in my view proper. Having so conceded, there was no basis for me to decline registering the order.

At the commencement of the hearing the court queried the number of the applicants who were cited on the face of the application as 49. The applicant's counsel conceded that it was an error to refer to "49 others" instead of "41 others". It was my view that there was no prejudice in granting the order in relation to the 42 employees referred to in the first applicant's order.

I accordingly granted the order sought with the necessary amendment limiting the order to the 42 employees in the first applicant's order.

Mapendere and Partners, legal practitioners for the applicants
Lunga Attorneys, legal practitioners for the respondent