HUI ZHANG
and
WANG XIAOMING
versus
MING CHANG SINO AFRICA MINING INVESTMENTS (PVT) LIMITED
and
C.T KADENGA

HIGH COURT OF ZIMBABWE
CHITAPI J
HARARE; 29 May 2025

Opposed Court Application – Reasons for judgment

T Runganga, for the applicant
GRJ Sithole, for the respondent

CHITAPI J: This matter came as an opposed chamber application for registration of a Labour Court judgment per MURASI J dated 6 May 2022. By order dated 13 December 2024, I dismissed the application on the turn. I ordered as follows and as had been prayed for in the draft order.

IT IS ORDERED THAT:

1. The Labour Court judgment dated 6 May 2022 per MURASI J be and is hereby registered as an order of this court.
2. First respondent be and is hereby ordered to pay to first applicant the sum of USD$18 000.00 or its equivalent in local currency at the official prevailing rate of exchange on the date of payment.
3. First respondent be and is hereby ordered to pay to the second applicant the sum of USD$40 000.00 or its equivalent in local currency at the official prevailing rate of exchange obtaining on the date of payment.
4. The sums of money in paragraph (2) and (3) shall be paid within 30 days of the date of service of this order on the first respondent.
5. The first respondent shall pay costs of this application.

The following are the reasons for the order:

The first and second applicants Hui Zhang & Wang Xiaoming and the first respondent had an employees and employer relationship which soured leading to the dispute between them being referred for determination by a Labour Officer in terms of the Labour Act [*Chapter 28:01*]. The labour officer ruled in favour of the applicants. The labour officer C.T Kudenga is cited herein as the second respondent.

To put context to the matter without going much into the details of the merits of the matter, the case concerned an alleged unlawful dismissal of the applicants from employment by the first respondent. The first applicant claimed to have been employed as a project manager and the second applicant as a cashier/interpreter. The second respondent after dealing with the dispute of the alleged unlawful termination of employment of the applicants issued an order which the Labour Court repeated or adopted as its order with an amendment that the amounts of money awarded to the applicants to be paid by the first respondent should be paid in local currency. The order issued as amended was as follows:

1. "The application for confirmation of the draft ruling be and is hereby granted.
2. The draft ruling of C.T Kudenga N.O dated 23 December 2021 be and is hereby confirmed as follows:
   (a) The dismissal of first and second respondents be and is hereby declared to be unlawful.
   (b) Third respondent be and is hereby ordered to pay to first respondent the sum of USD$18 000.00 at the official prevailing rate of exchange on the date of payment.
   (c) Third respondent be and is hereby ordered to pay to second respondent the sum of USD$40 000.00 at the official prevailing rate of exchange on the date of payment.
   (d) The sums of money referred to in (b) and (c) above shall be with effect from thirty (30) days of the date of this order.
3. Each party to meet its own costs."

Again to remove confusion, the applicants were so styled in the proceedings before the Labour Officer. They were styled as respondents in the Labour Court where the Labour Officer was the applicant who applied for confirmation of his draft ruling in terms s 93(5a) of the Labour Act. In *casu* the applicants (respondents in the Labour Court) seek registration of the Labour Court ruling for enforcement purposes in terms of s 92 B(3) of the Labour Court Act.

The first respondent opposed the application. It may be advised for purposes of record and paper trail to note that this court per KWENDA J dealt with this application in chambers as an unopposed application and registered the labour court judgment on 5 April 2024. The order was

erroneously issued in default as the first respondent had opposed it. Parties consented to the rescission of the order thus paving the way for the hearing on the merits to be convened, hence this hearing.

The notice of opposition to the registration in this application was very brief. I propose to quote it in material particulars. It raised a preliminary issue of urgency and then dealt with the merits as follows;

> "IN LIMINE
> NO AUTHORITY
> 5. The deponent to the founding affidavit has no authority to depose to the affidavit on behalf of the second applicant. The special Power of Attorney attached dated 15th June 2023 does not relate to registration of the Labour Court Award.
> 6. Consequently registering such an award would fall foul of the public policy doctrine."

At the commencement of the hearing, Adv. *Sithole* formally abandoned the point *in limine* paving the way for hearing of the matter on the merits.

In regard to the merits the first respondent's affidavit says:

> "**AD MERITS**
> **9. Ad para 1 – 2**
> No issues arise
> **10. Ad para 3**
> The judgment is not registrable on account of it being contrary to public policy as the application improperly (sic) before the court.
> 11 The relief sought is clearly incompetent."

In the answering affidavit, the applicants averred that the first respondent did not give any details of how the registering of the Labour Court judgment would offend the public policy of Zimbabwe. They averred that the registration of a court order cannot *per se* offend public policy. They noted that the first respondent had failed in its attempt to set aside the labour court judgment under case No. SC 547/22 and case No. HCH 358/23. The applicants also noted that the first respondent had merely averred that the application was improperly before the court without providing any details of the impropriety.

The setting aside of an award on the basis that it violates public policy is difficult to establish let alone the refusal to register an award for that reason. The application is concerned with a resistance by the first respondent to the registration of the Labour Court judgment or order on the basis that the judgment is against public policy or to register it is against public policy. The

judgment is a lawful judgment which is extant. There is no application by the first respondent that the judgment be set aside on the basis that it offends the public policy of Zimbabwe. It is therefore anomalous for the first respondent to resist registration of the award on the basis that the award itself is contrary to the public policy of Zimbabwe.

The first respondent did not give any details of the facts or evidence upon which a finding could be grounded that the registration of the award would be contrary to public policy. Adv. *Sithole* conceded quite rightly that the first respondent did not give details of how the public policy would be offended. The matter had to end there. The court cannot create grounds of defence for a respondent who chooses to make bare allegations.

The approach of the court to registration of a Labour Court award is that;

(i) The award must have been granted by the labour court.

(ii) The award must still be extant and not have been suspended, set aside or be subject of review.

(iii) The award is sounding in money.

In the case of *Rumbidzai Kusano* v *Innscor Africa* HH 223/16 MAFUSIRE J reiterated the function of this court in registering judgments/awards for enforcement on page 3 of the cyclostyled judgment as;

> "- - The arbitrator was accused of having compiled the damages incorrectly. But such arguments were misplaced. This was not the correct forum for them. In an application for registration of an arbitral award this court is not concerned with the merits of the dispute. It does not exercise an appellate jurisdiction see *ZESA* v *Maphosa*. This point has been dealt with in several cases before. In *Mathews* v *Craster International (Pvt) Ltd* I said, in my considered view an application for the registration of an arbitral award is largely an administrative process. Whilst in such an application the court is not really being called upon to rubber stamp the decision of an arbitrator nonetheless it is largely giving that decision the badge of authority. If the court is satisfied that the award is regular on the face of it and is not deficient in any of the ways contemplated in Articles 34 and 36 of the Arbitration Act."

It *casu* the Labour Court judgment was legally obtained. No justifiable reason was advanced to motivate good grounds to refuse to register the award. Indeed Advocate *Sithole* for the first respondent had a bad day in court. He jokingly that it was one of those days in the professional life of counsel for him. He did not however have instructions to concede. He fairly conceded that no public policy violations were pleaded by the first respondent. He still felt that he could not call it a day without saying something. He stated that he stood by the heads of argument.

The heads of argument did not advance the case for the first respondent as the applicant did not have a defence, having made none in the opposing affidavit. Counsel then submitted that the only point he wanted to emphasize on was that the Labour Court had issued a declaratur yet it had no jurisdiction to do so. Of course the argument is lame for the simple reason that the Labour Court exercised a statutory power. If a statute allows the court to issue an order in the nature of a declaratur, so sounding in words and or effect then the court in doing so acts lawfully. The case of *Air Zimbabwe* v *Mateko & Ors* SC 180/20 sought to be relied upon by the respondent was concerned with a different scenario as appears in the judgment in para 2 per GARWE JA (as then he was) where it is stated:

> "2. The Labour Court has the power to confirm a draft ruling with or without amendment. The issue for determination before this court is the extent in which the Labour Court can, in confirmation proceedings of the draft ruling of a labour officer amend such a ruling."

The first respondent counsel did not in any event give details of the declaration which the Labour Court made. That court amended the draft ruling of the arbitrator to provide that payment of the amounts awarded be made in local currency. No declaration as was done in the *Air Zimbabwe* case as was done by the Labour Court in *casu*. The argument was therefore without merit. The application must succeed. The first respondent is lucky to escape an order of higher costs. The defence was totally unmerited and easily qualified for an abuse of the process of court. The applicants prayed for ordinary costs. The costs are so awarded.

Resultantly the matter is disposed of as follows:

IT IS ORDERED THAT;

1. The Labour Court judgment dated 6th May 2022, per MURASI J be and is hereby registered as an order of this court.
2. First respondent be and is hereby ordered to pay to first application the sum of USD 18 000.00 or its equivalent in local currency at the official prevailing rate of exchange on the date of payment.
3. First respondent be and is hereby ordered to pay to the second applicant the sum of USD 40 000 or its equivalent in local currency at the official prevailing rate of exchange obtaining on the date of payment.

4. The sums of money in paragraph (2) and (3) shall be paid with 30 days of the date of service of this order on first respondent.
5. The first respondent shall pay costs of this application.

CHITAPI J: ……

Zvavanoda Law Chambers, applicants' legal practitioners
Tabana & Marwa, first respondent's legal practitioners