

ZIMBABWE FOOTBALL ASSOCIATION
versus
LAZARUS MHURUSHOMANA

HIGH COURT OF ZIMBABWE
TAKUVA J
HARARE; 08 October 2024

Court Application for a Declaratory order

C W Gumiro, for the Applicant
T Garabga, for the Respondent

TAKUVA J: This is a court application for a declaratory order in terms of s 14 of the High Court Act, [*Chapter 7:06*]. The applicant seeks an order couched in the following terms:

1. The tender of payment of the sum of \$108 520.00 by Applicant to the Respondent constitute satisfaction of the judgment debt in case number HC 5721/09
2. Respondent shall pay costs of suit

BACKGROUND OF FACTS

The applicant is the Zimbabwe Football Association, a duly registered association with the capacity to sue and be sued in its own association's name. The respondent, Lazarus Mhurushomana, was employed by the Zimbabwe Football Association as the Director Administrator. In February 2004, the applicant placed the respondent on special leave pending negotiations and agreement on a severance package on the basis of which the respondent's employment contract would be terminated. However, in March 2004, the applicant merely stopped paying the respondent his salary and benefits. The respondent obtained an arbitral award in his favour against the applicant, which was registered as an order for purposes of execution.

Sometime in October 2013, the respondent obtained a writ of execution against the movable property of the applicant. This was done after the respondent had made some calculations on what he believed he was owed by the applicant. The applicant alleges that the

amount on the writ of execution is, however, not consistent with the amount on the court order. The Sheriff executed the writ of attachment and sold in execution the applicant's movable property. The amount acquired in the sale in execution of the applicant's movable property was not sufficient to satisfy the judgment debt. Accordingly, the respondent participated in the sale in the execution of the applicant's immovable property, being stand number 100 Kensington Estate, Harare. The principal judgment creditor in this sale was LED Travel and Tours (Private) Limited. Prior to the sale in execution, LED Travel and Tours (Private) Limited withdrew from the sale and instructed the Sheriff to stop the sale as it had been paid in full its judgment debt. The Sheriff, however, continued with the sale in execution on the basis of the writ of execution of the respondent. When this sale was executed, the respondent was the judgment creditor but has since failed to disclose this information.

In July 2019, the respondent obtained another writ of attachment against the applicant seeking payment of the sum of USD\$518 331.81. However, there is no order of the court for this amount. The applicant rushed to apply for an order for a stay of execution, which order was granted. The parties entered into a deed of settlement in September 2019 with the intention to amicably resolve the dispute between them. On 19 March 2021, the respondent caused the Sheriff to attach the applicants' bank accounts based on the writ of execution. The attachment was only uplifted after the applicant had brought to the attention of the Sheriff the order of the court of stay of execution. On 24 June 2020, the applicant paid the respondent an amount of UDS\$108 520.00 in full, thus discharging its obligation in respect to the judgment debt for the respondent.

The applicant approaches this honorable court for a declaratory order, claiming that it has discharged its obligation in respect to the judgement debt for the respondent.

In his notice of opposition, the respondent contends against the claim that the amount on the writ of execution is not inconsistent with the amount on the court order. The respondent alleges that the amount is not a fixed figure due to the fact that the termination of the employment contract has not been agreed on to date. Therefore, the respondent continues to enjoy his salary and benefits. The respondent argues that the applicant has not discharged its obligations in respect of the judgment debt because it rejected the payment of USD\$108 520.00 as it was not the full and final settlement of the money due to the respondent. The respondent alleges that for 17 years after an order of this honorable court, the applicant has adamantly refused to comply with it.

Issue for Determination

Whether or not the applicant is liable to pay the respondent any further payment in satisfaction of the judgment debt

The Law

The High Court has inherent jurisdiction to grant declaratory orders, and this power is recognized under s 14 of the High Court Act [*Chapter 7:06*], which states;

“The High Court may in its discretion at the instance of an interested person inquire into and determine any existing, future or contingent right or obligation, notwithstanding that such person cannot claim any relief consequential upon such determination.”

In *Ndlela v Shumba and 4 Others* HB 07-24 page 2, the court outlined that;

“The condition precedent to the grant of a declaratory order is that the applicant must be an interested person in the sense of having a direct or substantial interest in the subject matter of the suit which could be prejudicially affected by the judgment of the court. The interest must relate to an existing future or contingent right. The court will not decide abstract, academic or hypothetical questions unrelated to such interest.”

What this entails is that there are basically two requirements for a declaratory order. These are;

- (1) An interested party in the sense of having a direct and substantial interest in the subject matter;
- (2) The interest must concern an existing, future or contingent right.

The application of the law to this issue will enable this court to resolve uncertainty or disputes regarding legal rights, obligations, or status, providing clarity and certainty.

Application of the law to the facts

As already established above, a litigant seeking a declaratory order must first satisfy the court that he has an interest in an existing future or contingent right or obligation. He must have a direct and substantial interest in the subject matter of the suit. In *Mukuruva v Hon Maganyani (Arbitrator) & Anor* HH 87-17 p5, the court held as follows:

“The court made it clear that a litigant seeking a declaratory order must firstly satisfy the court that he has an interest in an existing future or contingent right or obligation. He must have a

direct and substantial interest in the subject-matter of the suit. It is only after a court is satisfied that these requirements have been met, that the court may proceed to consider if there is a proper case for the court to exercise its discretion in the matter in deciding to refuse or grant the order sought.”

I find that the applicant has a direct and substantive interest in this matter in that the relationship between itself and the respondent was that of an employer and an employee. A determination of this issue will enable the parties to resolve their disputes and also establish whether any further payment in respect to the satisfaction of the judgment debt.

In a scenario where an employer and employee agree that the employer has fulfilled all their obligations, a declaratory order can be sought to formally confirm this agreement, providing a clear record of the resolution and the rights and obligations of each party. However, the respondent in this case argues that the applicant has not fulfilled its obligations because the respondent’s contract of employment has not been terminated, thus, his salary and benefits continue to accumulate. The respondent argues that the applicant is only asking the court to defeat the objective of its earlier order for no lawful justification.

The applicant submits that what forms the cause of action for the respondent is the arbitral award of 2005 issued and registered with this court according to section 98 of the Labour Act, which states:

(14) Any party to whom an arbitral award related my submit for registration the copy of it furnished to him in terms of subsection (13) of the court of any magistrate which would have had jurisdiction to make an order corresponding to the award had the matter be determined by it, or, if the arbitral award exceeds the jurisdiction of any magistrates’ court, the High Court.

(15) where arbitral award has been registered in terms of subsection (14) it shall have the effect, for purposes of enforcement, of a civil judgement of the appropriate court”.

Therefore, the applicant argues that the writ that was properly issued is that of 2013. It remains in force until such a judgment has been satisfied. Once judgment is satisfied, the writ becomes of no effect. The applicant contends that the writ cannot be issued piecemeal, as suggested by the respondent. The applicant submits that he tendered payment of the sum of money obtained on the writ issued in 2013. Payment of that amount brings closure to the dispute between the parties. For this cause, no further writ of execution can be issued by the Registrar upon payment of the judgment debt as per the writ of 2013.

As outlined in s 14 of the High Court Act, a declaratory order is a court ruling that clarifies a legal right, obligation, or status, resolving a dispute without necessarily ordering a specific action or remedy, and can be sought when a party has direct and substantial interest in the matter. The applicant has fulfilled its obligations to the respondent as per the court order, and the application for a declaratory order ought to be granted. In the result, it is ordered that:

1. The tender of payment of the sum of \$108 520.00 by Applicant to the Respondent constitutes satisfaction of the judgment debt in case number HC 5721/09
2. Respondent shall pay costs of suit

TAKUVA J:.....

Moyo, Chikono & Gumiro, applicant's legal practitioners
Garabga, Ncube & Partners, respondent's legal practitioners