VASCO OLYMPIO

and

TSVANGIRAYI GARAKATA

and

LEONARD MITENGO

and

GABRIEL MAPFUMO

and

KANUKAI ZHOU

versus

SHOMET INDUSTRIAL DEVELOPMENT

HIGH COURT OF ZIMBABWE

CHIWESHE JP

HARARE, 5 October 2010

Mr *O. Shava*, for the applicants

Mr *T. Hussein*, for the respondent

CHIWESHE JP: The applicants were the recipients of an arbitral award granted on 22 July 2009 against the respondent. In this application they seek the procedural relief of registration of the award as a judgment of this court in terms of s 98 (14) as read with s 98 subs (13) and (15) of the Labour Act [*Cap 28:07*]. They do not seek any substantive relief.

The respondent has opposed this application on the grounds that the award was irregularly obtained. An appeal against the grant of the award is pending in the Labour Court as well as an application for stay of execution. The respondent also argues that it is in the interests of justice and public policy that such a questionable labour award be first tested in the courts before it is registered.

I agree with the applicants that the respondent’s opposition cannot be sustained. The registration of an arbitral award does not in any way affect the substantive rights of the parties concerned. The purpose of registration is merely to facilitate the enforcement of such an order through the mechanism availed to the High Court or the Magistrates Court, namely the office of the Deputy Sheriff or the Messenger of Court, respectively. Thus whether registered or not, an arbitral award remains binding on the parties who may fulfil its terms even in the absence of registration. Where one of the parties is reluctant to fulfil his obligations in terms of the award, the legislature, through s 98 (14) of the Labour Act, has provided for its registration with those court clothed with the power to enforce judgment in order that the aggrieved party may, through the powers given to such courts, enforce the award.

In an application such as the present this court is not required to look at the merits of the award – all that is required of this court is that it must satisfy itself that the award was granted by a competent arbitrator, that the award sounds in money, that the award is still extant and that it has not been set aside on review or appeal and that the litigants are the parties the subject of the arbitral award. There must also be furnished a certificate given under the hand of the arbitrator validating the arbitral award.

It is clear that the respondent wishes to challenge the grant of the award on the merits. What has been lodged is an appeal. The noting of an appeal in the Labour Court does not suspend the decision appealed against. In any event the appeal is yet to be determined. The application for stay of execution filed with the Labour Court is also yet to be determined.

For as long as the arbitral award has not been suspended or set aside on review or appeal in terms of the Labour Act, there is no basis upon which this court may decline its registration. For this reason, the application must succeed.

It is accordingly ordered as follows:

1. The arbitral award handed down in applicants’ favour on 22 July 2009 be and is hereby registered as an order of the High Court.
2. The respondent be and is hereby ordered to pay to each applicant the amounts due to him in terms of the arbitral award.
3. The respondent be and is hereby ordered to pay the costs of this application.

*Mbidzo Muchadeham & Makoni*, applicants’ legal practitioners

*Hussein Ranchod & Company*, respondent’s legal practitioners