

DENFORD TAPIWA ZHUNGU
and
BENJAMIN TAPFUMANEYI NHUKARUMWE
and
GIRLIE ASSUMPPTA GWATIRINGA
and
AGNES MASUKU
and
MUNYARADZI CHINHO
and
MARTIN MAHEMBE
and
ANGELAH GORORO
and
TAKATADZEYI MUSERE
and
IAN SIBANDA
and
GRAY HAMA
and
SITHEMBILE NDLOVU
and
VICTOR CHANDIPWISA
and
GABRIEL MAZARIRE
and
DANIEL KARIGWINDI
and
TENDAYI MAPANGA
versus
CITY OF HARARE

HIGH COURT OF ZIMBABWE
TAGU J
HARARE 11 JUNE AND 07 SEPTEMBER 2016

Opposed Matter

S Banda, for the applicants
R Mhlanga, for the respondent

TAGU J: The applicants seek to register an arbitral award that was granted in their favour by the Honourable Arbitrator Kenneth Machekano Nhongo on 25 September 2013 under case number 774/06/13 in terms of s 98 (14) of the Labour Act [*Chapter 28:01*].

The application to register the said award is opposed by the respondent. In its opposing affidavit the respondent opposed the registration of the said award on the basis that the registration of the award would be against the public policy of Zimbabwe in that it stands to contravene a fundamental principle of Zimbabwean Law that a lower court or tribunal cannot attack an extant judgment made by a higher court. The respondent averred that the award constituted a palpable inequity that is so far reaching and outrageous in its defiance of logic that a sensible or fair minded person would consider that the conception of justice would be intolerably hurt by the award.

At the hearing of the matter the applicants submitted that the subject matter is judgment handed on 10 of March 2013 which award has not been set aside nor satisfied, and that the appeal filed is still pending before the court. They argued that the matter that was set aside is a different one.

On the other hand the respondent submitted that the applicants are misleading the court in that the award cannot be registered because it was set aside in its entirety by the judgment in LCH 686/13. Hence the applicants cannot seek to register an award that does not exist.

From the papers filed of record the undisputed facts are that on 25 September 2013 an arbitral award in favour of the applicants was handed down by the Honourable Arbitrator Kenneth Machekano Nhongo. At the material time the award was not sounding in money and therefore was not registrable. The applicants subsequently made an application for quantification of the award to make it capable of registration. On 3 March 2015 a quantified award was handed down in favour of the applicants. The respondent then appealed against the quantified award to the Labour Court. While the appeal was pending the applicants filed this application for registration of the quantified award on 16 March 2015.

On 3 June 2015 the appeal was heard and on 2 October 2015 judgment was delivered by the Labour Court in case LC/ H/686/2015 dismissing the arbitral award that had been granted in favour of the applicants on 25 September 2013 and later quantified on 3 March 2015. The arbitral award was therefore dismissed before the current application for its registration had been heard. It follows therefore that the application to register the award was overtaken by events.

The applicants are insisting that the award that was set aside is a different one. I do not agree with that submission for the following reasons.

In his opening statement in his judgment in case LC/ H/ 686/2015 the Honourable Judge, Justice R. MANYANGADZE said:

“This is an appeal against an arbitral award handed down by Honourable K.M. Nhongo on 25 September 2013. The award ordered the appellant to comply with the agreement in certificates of settlement issued by a Labour Officer on 9 April 2013.”

In their application for registration of the arbitral award the first applicant Mr Denford Tapiwa Zhungu stated among other things in his founding affidavit that:-

- “6. **On 25th September 2013**, an arbitral award in favour of the Applicants was handed down by the Honourable Arbitrator Kenneth Machezano Nhongo. Same is hereto attached as “A”. At the material time, the award was not sounding in money and therefore not registrable.
7. The Applicants however, subsequently sought its quantification, and on 3rd March 201, a quantified award was handed down with the result that same is now capable of registration. The quantified award is hereto attached and marked Annexure “B”.
8. We now approach this Honourable Court in terms of section 98 (14) of the Labour Act [Chapter 28:01] for its registration.”

The rest of the other 14 applicants submitted supporting affidavits in which each one of them stated that:-

- “2. I have given authority to DENFORD TAPIWA ZHUNGU to depose to the founding affidavit as he did. I hereby adopt in full his averments, verify them as correct and fully associate myself with them.”

From the forgoing I agree with the counsel for the respondent that it would be misleading to say that the matter that was set aside was a different one to the one they seek to register.

The operative part of Justice R. MANYANGADZE in case LC/H/ 686/2015, apart from the typographical error on the year is clear and unambiguous that it referred to the award which the applicants now seek to register where he said-

“It is accordingly ordered that;

1. The appeal be and is hereby allowed.
2. The arbitral award issued by Honourable K.M. Nhongo on 25 September 2011 (sic) be and is hereby set aside.
3. Each party bears its own costs.”

There was no other award issued in 2011 or any other day involving the same parties. This was a typographical error. The correct year is 2013. If ever there was a different award it boggles the mind why the applicants in their application kept on making reference to the award dated 25 September 2013. It follows therefore that the award that was granted by the

Honourable K. M. Nhongo on 25 September 2013 was later quantified on 3 March 2015. This is the award that was later dismissed and set aside on 2 October 2015 by the Honourable Justice R MANYANGADZE. I therefore agree with the counsel for the respondent that there is no award left to be registered. As a result the application fails.

It is accordingly ordered that:-

1. The application to register the award is dismissed with costs.

J. Mambara & Partners, applicants' legal practitioners
Kanokanga & Partners, respondent's legal practitioners.