

CHARLES J. MAKARI
versus
TOLL FREE ZIMBABWE (PRIVATE) LIMITED

HIGH COURT OF ZIMBABWE
TAGU J
HARARE, 18 July & 19 September 2018

Opposed Matter

J. Mambara, for applicant
S. Frank, for respondent

TAGU J: This is a chamber application for the registration of an arbitral award in terms of section 98 (14) of the Labour Act [*Chapter 28:01*] as read with r 241 of the High Court Rules 1971. The facts are that on the 13th February 2017 an arbitral award in favour of the applicant was handed down by the Honourable Arbitrator Brighton Mudiwa sitting at Harare. The Arbitral award granted the applicant US\$ 17 559. 54 being arrear salaries but did not quantify the damages to be paid. On the 11th October 2017 the damages were quantified in the sum of US\$10 080.00. The aforesaid award is now sounding in money and is capable of registration for purposes of enforcement hence the application.

In its notice of opposition to the registration of the arbitral award the respondent submitted that the quantified amount was to be paid in two equal instalments with the first instalment to be paid on or by the 11th November 2017 and the second instalment to be paid on or by the 11th December 2017. The applicant then approached the Honourable Court on the 30th October 2017 prior to the respondent having defaulted with its obligations in terms of the award hence the respondent was not given an opportunity to comply with the award. For that reason the respondent submitted that the application should be dismissed.

At the hearing of the matter counsel for the respondent submitted that the company is no longer operating and was staggering to survive. As and when it gets the money it would pay since it currently does not have employees.

In my view there is no valid opposition to the application for registration of the arbitral award. In *Brian Muneka and Ors v Manika Bus Company* HH-301-13 MTSHIYA J stated the following:

“the registration of an arbitral award in terms of the Labour Act is in my view, a matter of course as long as the award remains enforceable and unsatisfied. *In casu*, what is before the court is not a review process, but a mere application for registration of an award, which process I believe can be done through the Registrar of the High Court with a certificate of registration being granted to the beneficiary of the award.”

In any case it is settled law that an arbitral award ought to be set aside and not be registered if its enforcement would offend the public policy of the land. This adage of our law is made palpably clear in *ZESA v Maphosa* 1999 (2) ZLR 452 at 466 whereat it was held that if an arbitral award that constitutes an affront to the conception of justice of a fair-minded person, then such award must be set aside. See also the seminal case of *Delta Ops (Pvt) Ltd v Origen Corp (Pvt) Ltd* 2007 (2) ZLR 81 (S) at 88E.

In casu, since the 11th of October 2017 when the damages were quantified to date the respondent has not complied with the award. In the result the application is granted.

IT IS ORDERED THAT

1. The arbitral award handed down by the Honourable Arbitrator B. Mudiwa on 13th February 2017 and quantified on 11th October 2017 be and is hereby registered as an order of this court.
2. The respondent be and is hereby ordered to pay costs of this application.

J Mambara & Partners, applicant's legal practitioners
Ncube & Associates, respondent's legal practitioners