

JOYCE F MANGWIRO
and
VICTORIA KAPONDA
and
CHARLSE T TSAUNGWEME
and
LIZZY MUCHENA
versus
THE CITY OF HARARE

HIGH COURT OF ZIMBABWE
DUBE J
HARARE, 21 Jan, 18 June 2014

Opposed application

J. Mambara, for the applicants
C. Kwaramba, for the respondent

DUBE J: This is an application for contempt of court.

The facts of this matter are common cause. The applicants were employed by the respondent as Assistant Human Resources Managers grade 5. A dispute involving the applicants' grade was referred to arbitration on 2 March 2012. The applicants obtained an arbitral award in their favour. The award was registered with this court in terms of s 98 (14) of the Labour Act [*Cap* 28:01] for purposes of enforcement. The operative part of the award reads as follows.

- “1. The respondent to carry out a job evaluation of the claimants' job within 14 working days from the date of receipt of this award.
2. Failure to implement the award within the stipulated timeframe, the claimants will be automatically elevated to grade 4 with effect from the date of the award.”

The applicants have lodged this application for contempt of court on the basis that the respondent did not comply with the above award. The applicants seek the following order,

- “1. That the respondent be and is hereby declared to be in contempt of court

2. That the respondent be and is hereby ordered to comply with the arbitral award registered by this Honourable Court on 19 April 2012 upon being served with this order failing which the Sheriff of the High Court be and is hereby authorized to arrest and commit the Respondent to Harare Central Prison for a period of 30 days or until the respondent has purged his contempt
3. Costs”

The applicants submitted that the respondent failed to comply with the award in that no job evaluation was carried out in respect of the applicants’ post. The applicants contended that the respondent adopted a general job evaluation exercise involving a complete restructuring and re-design exercise that was not directed at the applicant’s jobs and endorsed it as the job evaluation in terms of the award and that the posts evaluated are not applicants’ posts. The applicants further aver that the job evaluation for the applicants was accelerated in order to comply with the time frame stated in the arbitral award. The applicants further contend that some aspects of their job description had been removed when the evaluation was carried out. They challenge the manner in which the evaluation was conducted.

The respondent contends that the application for contempt of court lacks a proper basis as it neither disobeyed nor neglected to comply with the arbitral award. The respondent contends that it conducted an evaluation exercise and produced a report within the prescribed time thereby complying with the award.

The primary objective of contempt proceedings is to compel compliance with the court's order. In *Levy v Benator* 1987 (1) ZLR 120 (S) contempt of court was defined as “a wilful and *mala fide* refusal or failure to comply with a civil court order constituting a contempt for which the State can prosecute.” The applicant is required to show factually breach of the order. The following sentiments in *Minister of Lands and Ors v CFU* 2001 (2) ZLR 457 (SC) per CHIDYAUSIKU CJ are pertinent. He remarked as follows:

“CJ Miller in his book *Contempt of Court* 2nd ed at 423-4 had this to say on the issue of contempt of court;

‘Before a finding of contempt of court can be made it is necessary to determine whether there has been a factual breach of an order or undertaking on the part of the body or person brought before the court. This necessarily demands that the terms of the order be expressed in clear unambiguous language and, in so far as possible, the person should know with complete precision what it is he is required to do or to abstain from doing.’

Before a finding of contempt of court can be made, the court must establish whether the applicant has shown as a fact that the respondent breached the court order. The applicant must also show that the respondent has wilfully disobeyed or neglected to comply with the court order. See *Consolidated Fish Distributors (Pvt) Ltd v Zive & Ors* 1968 (2) SA 17.

An applicant seeking an order for contempt of court is required to establish the following,

- a) That an order was granted against the respondent
- b) That the respondent is aware of the order
- c) That the respondent wilfully disobeyed or neglected to comply with it.

The respondent concedes that the first two requirements were met. It denies that it disobeyed or neglected to comply with the order.

The applicants were employed by the respondent as Assistant Human Resources Managers grade 5. On 22 March 2012, the respondent wrote to the applicants advising them of the outcome of the job evaluation and attached a report. The report was received by the respondent on 2 March which was a Friday. The days start running from 5 March 2012 which is a Monday until 22 March 2012. The evaluation report came within 14 days as stipulated in the award.

The evidence on the papers discloses that there was a longstanding dispute between the parties over the issue of grades. There was already a general evaluation exercise that was in process. After the award, discussions and reports over the Assistant Human Resources Manager post ensued. The respondent submitted that the applicants were not cooperative and were bent on frustrating the process. That they refused to submit job descriptions or be interviewed. As a result a meeting was held on 20 March 2012 between the applicants and the consultants. The minutes of that meeting record that the consultants asked for the applicants' job description of the post which was going to be evaluated. Applicants' concerns were that they had not been consulted on the choice of consultants who would carry out the evaluation and that no method had been prescribed for the evaluation. The meeting agreed that the applicants would participate in the evaluation though under protest. Lorimak Consultants Holdings produced an evaluation report dated 21 March 2012. It shows that a job evaluation and grading exercise for the following post, Chief Accountant, Assistant Human Resource Manager was carried out. The evaluation placed the position of Assistant Human Resources Manager in grade 7 which is a lower grade. The consultants wrote in their report that the job evaluation exercise required interviews of the applicants. It records that the applicants were engaged and that they were not co-operative and were not interviewed in respect of their

posts and this delayed the report. They evaluated their job description which they were given by their supervisor. It is difficult to understand the applicants' argument that their post was not evaluated. Whilst they state that the post evaluated is not the applicants' post, they say in another vein that their evaluation was accelerated. It is clear from the foregoing that the respondent did engage in a process of job evaluation for the Assistant Human Resources Manager post and a report was compiled.

A party bringing contempt of court proceedings is required to show that there has been a factual breach of the order. The arbitral award was complied with. Whilst applicants' concerns with regards the manner in which the evaluation was conducted may be valid, the court notes that there was no method prescribed by the arbitrator for carrying out the exercise. Contempt of court proceedings are a wrong procedure for challenging the fairness and substance of a job evaluation process. I am unable to find as a fact that the respondent disobeyed or neglected to comply with the award. I am satisfied that the order was complied with.

In the result I find as follows,

The application is dismissed, costs follow the event.

Mambara and Partners, applicants' legal practitioners
Mbidzo Muchadehama and Makoni, respondent's legal practitioners