

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)**

2013/HP/ARB14

BETWEEN:

STANBIC BANK ZAMBIA LIMITED

CLAIMANT

AND

SAVENDA MANAGEMENT SERVICES LIMITED

RESPONDENT

Before Hon. Mrs. Justice J. Z. Mulongoti
on the 7th day of NOV, 2014

For the Plaintiff: Mr. K. Musabandesu of M & M Advocates

For the Defendant: Mr. W. Mutofwe, Douglas & Partners

R U L I N G

Cases cited:

1. *S. Brian Musonda (Receiver of First Merchant Bank Zambia Ltd (in Receivership) V. Hyper Foods Products Ltd & Two Others SCZ Judgment No. 16 of 1999*
2. *Crush Crusaders Franchising Pty Ltd V. Shakers & Movers (Z) Ltd (2012) ZR Vol. 3, p174 (HC)*
3. *Kunda V. Keren Motors (Z) Ltd (2011) ZR Vol. 1, p451 (HC)*

Legislation referred to:

1. *Orders 18 Rule 11 and 33 Rule 3 of the Rules of the Supreme Court, (White Book) 1999 edition.*
2. *Section 20 of the Arbitration Act*
3. *Order 36 of the High Court Rules, Chapter 27 of the Laws of Zambia*

The Ruling relates to a Notice to Raise Preliminary Issue on Points of Law by the claimant, pursuant to **Orders 18 Rule 11 and 33 Rule 3 of the Rules of the Supreme Court, (White Book) 1999 edition**. According to the Notice the Preliminary issues on points of law are as follows:

- (1) That the proceedings instituted in the High Court by the Respondent following an Award made by the Arbitral Tribunal on 23rd May 2012 and an Additional Award on 24th May 2013 and the reliefs sought and/or being sought under these proceedings are improperly before the High Court for lack or want of jurisdiction as under Section 20(1) of the Arbitration Act No. 19 of 2000, an Award made by an Arbitral Tribunal pursuant to an arbitration agreement is final and binding on the parties.
- (2) That under Section 20(2) of the Arbitration Act, the Respondent can only challenge the Awards made by the Arbitral Tribunal in the High Court on the grounds provided under Section 17(2) of the said Act.
- (3) That the reliefs sought and/or being sought by the Respondent before the High Court are not provided for under Section 17(2) aforesaid or under any other provision of the Arbitration Act rendering these proceedings improperly before the High Court for lack or want of jurisdiction.

At the hearing, learned counsel for the claimant, Mr. Musabandesu, submitted that the Award and Ruling of the Deputy Registrar of 30th May 2014, arose out of arbitration proceedings between the parties before an Arbitral Tribunal. That according to **Section 20 of the Arbitration Act**, an award by an Arbitral Tribunal is final and binding on both parties.

Further, that proceedings by the High Court following the two awards of 23rd May 2012 and 24th May 2013, and the reliefs sought by the Respondent under these proceedings following those awards are improperly before the High Court for lack of jurisdiction under *Section 20(1) of the Act* as the awards are final and binding.

According to counsel, under *Section 20(2) of the Act* the Respondent can challenge the award only on the grounds in *Section 17(2)*. Thus the Respondent's application before the Deputy Registrar to pay the Judgment sum ordered in instalments is not one of the grounds in *Section 17(2)* and was irregular. The reliefs sought are therefore improperly before this court for want of jurisdiction. And should the Court uphold the preliminary issues then the appeal against the Award by the Deputy Registrar of 30th May 2013 should equally not be entertained and the order staying execution of judgment be discharged with costs.

For the Respondent Mr. Mutofwe, submitted that the appeal is against an Additional Award by the Deputy Registrar. That under *Section 20(3) of the Act* read with *Section 18 of the Act*, it is clear that the courts attain supervisory role in terms of enforcement or enforcing the Awards, to this end the Courts as a fountain of justice cannot be ousted from its dispensation. The registration of an Award is a way of supervision over the award. In addition that the court has equitable jurisdiction to interfere in the mode of payment. The case of **S. Brian Musonda (Receiver**

of First Merchant Bank) V. Hype Food Ltd and Two Others (1), was cited that:

“in the exercise of its equitable jurisdiction, the Court has long been entitled to interfere with the contractual rights of the Mortgagor to the extent of enlarging time when there is foreclosure or suspending orders for possession or postponing the alternatives, if there is reasonable prospect that monies due can be paid within a reasonable time.”

Learned counsel contended that this Court can exercise equitable jurisdiction of affording relief where a judgment debtor can pay within a reasonable time. And that *Section 20(3)* states that arbitration award shall be enforceable in the same manner as an Order of the Court. Thus read with *Order 36 of the High Court Rules, Chapter 27*, the Court has power to order reasonable payment in instalments and to stay execution pending payment of the instalments. And that the Respondent was not challenging the award but seeking the Court's intervention on mode of payment.

In response, Mr. Musabandesu reiterated the award was final and binding. That the reference to *Section 20(3)* of the Act does not help the Respondent as it does not provide anywhere that an arbitral award shall be subject to enforcement by this Court. That the courts can only interfere on the grounds stated in *Section 17(2) of the Act*. It was contended further that following the two awards by the Arbitral Tribunal and to the extent that the Judgment sum is not in dispute, the Respondent's application to pay in instalments and the appeal arising from the order of the Deputy Registrar, are improperly before the High Court on the arguments advanced. Accordingly, the appeal be

entirely dismissed and the stay of execution set aside with costs to the claimant.

I have perused the ruling of the Deputy Registrar on an application by the Respondent to pay the Judgment debt in instalments. This application was made after the Respondent failed to pay the Judgment debt awarded by the Arbitral Tribunal within a specified period. This prompted the claimant to take out a writ of possession which then necessitated the Respondent to obtain a stay of execution and to apply to pay in instalments before the Deputy Registrar.

After considering the affidavit evidence and authorities cited such as **S. Brian Musonda (Receiver of First Merchant Bank Zambia Ltd (in Receivership) V. Hyper Foods Products Ltd & Two Others**, the Deputy Registrar reasoned that in balancing the need not to deprive a successful litigant of the fruits of his litigation and the mortgagor's equitable right of redemption, the application to pay in instalments be allowed. He ordered that the debt be paid in 12 equal monthly instalments of K627,939.5 million per month. And that in case of default, the outstanding amount shall become payable and the claimant shall be at liberty to release the securities as adjudged in the arbitral award.

The claimant then applied to appeal out of time against the order to pay K627,939.5 million per month. This then prompted the claimants advocate to raise the preliminary issue, the subject of this Ruling.

I have perused *Section 20 of the Act* and as canvassed by Mr. Musabandesu, it is categorical that an arbitral award is final and binding, both on the parties and any persons claiming through or under them. I also concur with his submissions that arbitral awards are subject to the High Court supervision only in respect of registration and enforcement.

In the case of **Crush Crusaders Franchising Pty Ltd V. Shakers & Movers (Z) Ltd (2)**, Mutuna J, observed that *“once the parties have decided to have their dispute adjudicated upon by way of arbitration, they are in fact saying that they do not wish to avail themselves of the courts save in the limited circumstances provided by the law. And that once an award is rendered, it is binding and enforceable upon the parties pursuant to Section 20 (2) and (3) of the Arbitration Act.”* In addition that *“an aggrieved party can only apply to have it set aside. Thus the courts have a complimentary role to play in the arbitral process which is to provide a forum for registering awards and setting aside of awards.”*

I am persuaded by and concur with the observations by my learned brother. I note that this is also in line with submissions by Mr. Musabandesu aforementioned. This therefore, entails that the proceedings before the Deputy Registrar were irregular and as ably submitted Mr. Musabandesu, the High Court lacks jurisdiction in this regard and cannot grant the reliefs sought by the Respondent. The arbitral awards are final and binding, the

High Court only come in to set aside and for registration purposes as noted.

The Respondent does not seek to set aside the awards. He has in fact admitted being indebted and has made some payments towards the debt. I am thus not persuaded by his counsel's submissions. *Section 20(3)* cannot aid the Respondent as it provides for what happens when the time for making the application to set aside the arbitration award has expired or refused by the court. That in such an instance the arbitration award is enforceable in the same manner as an order of the court. I am thus unable to agree with Mr. Mutofwe's argument that reading this subsection together with *Order 36 Rule 9 of the High Court Rules* empowers the Court to allow for payment in instalments. *Order 36* deals with matters which are before the High Court not arbitration proceedings. The argument is utterly flawed. *Section 20(3)* and *Order 36(9)* are not applicable in the circumstances of this case.

I am further fortified and persuaded by my learned brother Kajimanga, J in **Kunda V. Keren Motors (Z) Ltd (3)** in which he quotes the learned authors, **Redfern and Hunter, Law and Practice of International Commercial Arbitration (Sweet and Maxwell, 3rd edition 1999)** at pages 417 and 418, that "*Arbitral rules, such as those of UNCITRAL ... provide unequivocally that an arbitration award is final and binding. These are not intended to be mere empty words. One of the advantages of arbitration is that it is meant to result in the final determination of the dispute*

between the parties. If the parties want a compromise solution to be proposed, they should opt for Mediation. If they are prepared to fight the cause to the highest court in the land, they should opt for litigation. By choosing arbitration, the parties choose a system of dispute resolution that results in a decision that is, in principle, final and binding. It is not intended to be a proposal as to how the dispute might be resolved, nor is it intended to be the first step on a ladder of appeals through national courts."

I totally agree with this observation by the learned authors which is in conformity with *Section 20 of the Act*.

Accordingly, the preliminary issues raised on points of law have succeeded.

This court lacks jurisdiction to grant the reliefs sought by the Respondent. I find that the awards are final and binding on the parties. In the net result, the appeal which is pending hearing is dismissed as the proceedings before the Deputy Registrar were a nullity.

The stay of execution is equally discharged forthwith. Costs to the claimant to be taxed failing agreement. Leave to appeal is granted.

Delivered at Lusaka this 7th day of NOV.....2014.


J. Z. MULONGOTI
HIGH COURT JUDGE