CLEOBAND INVESTMENTS (PVT) LTD
(a company corporate resume in terms of the Insolvency Act [*Chapter 6:07*]
represented herein by Bongani Ndlovu)
versus
STERLING GOLD
and
SHERIFF OF THE HIGH COURT N.O
and
LM AUCTIONEERS (PRIVATE) LIMITED
and
CHIGAMI SYNDICATE

HIGH COURT OF ZIMBABWE
WAMAMBO J
HARARE; 19 March 2025

Urgent Chamber Application

T S Mawonera, for the applicant
T P Jonasi, for the 1st respondent
W Gandi, for the 4th respondent
No appearance for the 2nd and 3rd respondent

WAMAMBO J: This is an urgent chamber application for stay of execution pending the determination of an application for rescission of judgment.

The basis of the application as per the applicant's founding affidavit is as follows:

On 24 February 2025 under HCH 7808/23 an order was rendered in favour of the first respondent against the applicant in default. After consultations with different legal practitioners applicant filed a court application for rescission of judgment under Case No HCH 1006/25.

Applicant is under corporate rescue. Prior to the appointment of a corporate rescue practitioner an order under HC 8140/21 was granted against the applicant. Fourth respondent instructed the second respondent to execute the order against applicant's movable property. A writ of execution was issued on 21 March 2022. With the knowledge that applicant was under corporate rescue fourth respondent instructed the second respondent to execute the order against applicant's

movable property. A writ of execution was issued on 21 March 2022. With the knowledge that applicant was under corporate rescue fourth respondent instructed, second respondent to sell a mining plant to first respondent, fraudulently. An application to set aside the sale in execution was filed under HC 4787/23. An urgent chamber application to stay the execution and transfer of application's plant was granted under HCH 4415/23.

At the time the urgent chamber application was filed under HCH 4415/23 applicant was not aware of the identity of the purchaser of the gold plant. This knowledge only surfaced upon first respondent filing an application for a declaratur under HCH 4700/23.

First respondent after a false start filed an application for a declaratur under HCH 7808/23. Applicant's heads of argument were however, not filed on time by her erstwhile legal practitioners.

Ms Chatsama who represented applicant advised the deponent to the founding affidavit that HCH 7808/23 was set down for hearing on 24 February 2025 and that she had not filed heads of argument. The heads of argument were subsequently filed. On the date of the hearing Ms Chatsama was double booked and requested counsel for first respondent to stand the matter down while she attended to the other matter. First respondent applied for default judgment and obtained it. Counsel who stood in for Ms Chatsama was not very helpful as he had no instructions nor was he privy to the matter.

The first and fourth respondent opposed the application. First respondent raised one point *in limine*, namely the issue of urgency.

Mr Jonasi for the first respondent made the following submissions.

Urgency does not sexist in this case. Applicant approached this court after a judgment was entered against her and after being barred for failure to file heads of argument. Although applicant filed an application for rescission and that application is one of the reasons advanced in favour of the granting of the order, an application for rescission does not on its own create urgency.

Applicant is barred for failure to file heads of argument under HCH 7808/23. She took seven months to file heads of argument. Applicant did not appear to make an application for the upliftment of the bar. Applicant's legal practitioners failed to institute applicant's rights in a proper manner.

Ms Mawonera for the applicant appeared to concentrate more in responding to first respondent's submissions whilst not emphasizing on establishing urgency. Her submissions are summarised below:

First respondent gives the impression that they obtained an order under HCH 7808/23 and they are dying to hold on to it. The same order is contradictory to an order rendered under HC 4415/23 which order is extant. Applicant is under corporate rescue. The execution of the order will greatly prejudice the applicant financially as well as other creditors considering that applicant is under corporate rescue. Applicant filed this application to protect its rights and did so within a day after the granting of the default order.

In *Shandong Taishan Sunlight Investments Ltd* v *Yunnan Linkun Investments Group Co. Ltd & Others* HH 6/16

FOROMA J at p 7 said:

> "The general rule as far as applications for matters to be heard as a matter of urgency, is that this court must be satisfied that if the matter is not heard urgently substantial injustice would result to the applicant per ADAM J in *Pichving* v *Zimbabwe Newspapers* 1991(1) ZLR 71(H) 93E."

In *Kalayi Sikhaphakhapa Njini and Berthilde Juliet Njini* v *Solwayo Ngwenya and Bulawayo City Council* HB 190/11 CHEDA J at p 2 said the following"

> "The urgency of a matter as envisaged by the rules of this court is that applicant should show that he stands to suffer either actual or potential prejudice which is irreparable. Since an urgent application must, therefore, justify his desire to be accorded first preference ahead of others. This point was made clear in *Madzivanzira and Others* v *Dexprint Invetsments (Pvt) Ltd and Another* 2002(2) ZLR 316."
> In *Chitungwiza Municipality* v *Nyatsime Beneficiaries Trust & Others* HH 348/15 MWAYERA J (as she then was) at p 4 said:
> "The legal position on what constitutes urgency is settled. The cases of *Tripple C Pigs and Anor* v *Commissioner General* ZLR 2007(1) 27 and *Kuvarega* v *Registrar General and Anor* 1988(1) ZLR 188 are instructive.
> In Kuvarega case CHATIKOBO J under scored the fact that urgency which stem from deliberate or careless abstention from action is not the type of urgency contemplated by the rules of this court."

The circumstances of this case reveal clear careless abstention from action.

Knowing very well that first respondent had filed an application under HC 7808/23 the applicants failed to file heads of arguments.

Knowing that the matter was set down for hearing no prior application for the removal of the bar was filed. On the date of the hearing the erstwhile legal practitioner who had failed to file heads of argument in time was double booked before the High Court before two different Judges.

Knowing of being double booked there were no arrangements made of an alternative counsel to make an appearance with full instructions to apply for the uplifting of the bar.

The applicant only rose after the default judgement to file an application for rescission of judgment.

The rescission is sought in a matter where applicant did not file heads of argument in time. Can it be said in the circumstances that applicant acted, when the read to act arose?

Or is it not a situation where applicant is responding to the reality that execution is knocking at the door. I find that the latter is true. Applicant did not act when the need to act arose. Applicant failed to file heads of argument on time and failed to make an application for leave to file the heads of argument. An application for rescission of judgment though strategic and necessary does not on its own create urgency in the circumstances.

I find that the applicant failed to treat this matter with urgency. The applicant has failed to establish urgency.

I accordingly, order as follows:

1. The matter is not urgent and is struck off the roll of urgent matters.
2. Application shall pay first and fourth respondent's costs.

WAMAMBO J:…….

Mawonera Attorneys, applicants' legal practitioners
Jonasi Attorneys, first respondent's legal practitioners
Mahuni & Mutatu, fourth respondents' legal practitioners