

LATRIC INVESTMENTS (PRIVATE) LIMITED
versus
DERIDON CHARTERED ACCOUNTANTS

HIGH COURT OF ZIMBABWE
MAWADZE DJP & WAMAMBO J
HARARE; 20 March 2025

Civil Appeal

L Majoni, for the appellant
G Matsamba, for the respondent

WAMAMBO J: This is an appeal against the judgment of the Magistrates Court. At the hearing we upheld the point in limine raised.

It is now our understanding that an appeal has been lodged in the Supreme Court. There is however, no request for full reasons in the IECMS System. Our attention was brought for the full reasons to be availed by the Registrar's Office.

The reasons behind the decision we arrived at now follow.

The respondent as the plaintiff in the court *a quo* issued summons against the appellant (who was the defendant in the court *a quo*).

The claim was for the payment of the sums of US4960 or equivalent at the prevailing interbank rate US6200 or equivalent at the prevailing interbank rate and interest and costs.

Plaintiff's claim was based on agreements entered into with defendant for advisory services for shareholder buyout and a value proposition report. According to the plaintiff she fulfilled her obligations in terms of the agreement, but defendant failed to pay the sums due to defendant as referred to earlier.

Defendant raised a special plea that plaintiff is not a registered entity and also raised a counter claim for US3000.00. Citing the case of *Gloar Design Team v Zimbabwe National Road Authority (ZINARA)* HH 319/14 and other related cases the trial Magistrate dismissed the special plea of lack of *locus standi* with costs.

The appellant was dissatisfied with this outcome and noted an appeal with this court. This is the appeal before us.

Appellant raised a number of grounds of appeal as follows:

- “1. The court *a quo* erred and seriously misdirected itself at law in that having found that the respondent is not a registered entity in Zimbabwe proceeded to dismiss the appellant’s special plea of *locus standi* in clear circumstances where no locus had been established.
2. The court *a quo* erred and seriously misdirected itself at law and fact in that having found that the respondent is a non existing entity by virtue of being unregistered proceeded to dismiss the appellant’s special plea.
3. the court *a quo* erred and seriously misdirected at law and fact in that having established that the respondent is not a registered legal entity proceeded to dismiss the appellant’s special plea on the basis that respondent’s name was a trading name in clear circumstances where absolutely no evidence was placed before it, to that effect.”

At the appeal hearing before us respondent raised a point *in limine*. Respondent referred us to his heads of argument where the point *in limine* is canvassed in some detail.

The following is raised by the respondent.

This appeal is made against an interlocutory order of the court *a quo* which is not final and dispositive of the matter.

The right to appeal interlocutory rulings is limited to ensure the efficient administration of justice.

Reference was made by respondent to s 40 of the Magistrates Court Act [*Chapter 7:10*] and among others, the cases of *South Cape Corp v Engineering Management Services* 1977(3) SA 534(A)

Chitsaka & Others v Heyns & Others SC 46/23.

Nhau v Zuze HH 697/2022.

The respondent was of the firm view that the appeal is;

“Fatally defective, mischievous and is designed to simply frustrate and delay the finalisation of the matter.”

Mr *Majoni* for the appellant gave a short response to the point *in limine* raised. He was of the initial view that the point *in limine* lacks merit as the special plea of *locus standi* is definitive and disposes of the matter.

We ventured to pose questions to the appellant on when a special plea is raised and whether it can be raised after the close of pleadings. Mr *Majoni* conceded that the special plea was raised after the close of pleadings.

We agree with the stance adopted by the respondent.

Clearly, the point *in limine* upheld by the court *a quo* is not final and definitive. It is clear that the proceedings ought to proceed after the ruling on the point *in limine*. If, however, the point *in limine* was upheld in reverse it would stop the proceedings and would be final and definitive and thus appealable.

The special plea was taken after the close of pleadings s 40(2) of the Magistrates Court Act which provides as follows:

“40 Appeals

1. No appeal shall lie from the decision of a court if before the hearing is commenced, the parties lodge with the court an agreement in writing that the decision of the court shall be final.
2. Subject to subsection (1) an appeal to the High Court shall lie against
 - (a) any judgment of the nature described in section eighteen or thirty nine
 - (b) any rule or order made in a suit or proceeding referred to in section eighteen or thirty nine and having the effect of a final and definitive judgment including any order as to costs.
 - (c) any decision overruling an exception when the parties consent to such an appeal before proceeding further in an action or when it is appealed from in conjunction with the principal case or when it includes an order as to costs.
3. ...
4. ...

A number of judgments have emanated from the High Court interpreting the import of s 40 above.

In *Nhau v Zuze* (supra) MUCHAWA J at p 2 – 3 said the following when interpreting s 40(2) of the Magistrates Court Act [*Chapter 7:10*]

“This means that allowing an appeal on an interlocutory order by the court *a quo* which is not final and definitive is bad at law. The order of the court *a quo* did not affect in a final and definitive manner, the issues between the parties which would be settled at the end of the trial. This appeal offends against the provisions of 40(2) (b) of the Magistrates Court Act”

The Learned Judge proceeded to refer to a long line of cases as further authority that a superior court should generally not intervene in untermiated proceedings of a lower court.

In untermiated proceedings of a lower court.

Amongst the cases cited in support of this proposition are the following cases:-

NMB Bank Ltd v Tawanda Mushava & Ors SC 146/21

National Housing Enterprises v Edwin Beukes & Ors Case No SA 21/2013.

Masedza and Others v Magistrate Rusape and Another 1998(1) ZLR 36.

In *Nyaradzo Florence Mahlaba v Matingindi Holdings (Private) Limited* HH 193/18

MUREMBA J at pp 2 – 3 said the following:

“In terms of s 40(2) (b) an appeal lies against rules or orders of a magistrate having the effect of a final and definitive judgment. Clearly s 40(2)(b) refers to interlocutory orders having the effects of final and definitive judgments as the ones that are appealable. What it means is that interlocutory order that do not have final and definitive effect are not appealable. It is important to define what an interlocutory order is Herbstein Van Winsen, Civil Practice of the High Court of South Africa 5 ed p 12014 define an interlocutory order as:-

“An order granted by a court at an intermediate stage in the course of litigation, settling or giving directions with regard to some preliminary or procedural question that has arisen in the dispute between the parties. Such an order may be either purely interlocutory or, an interlocutory order having final or definitive effect. The distinction between a purely interlocutory order and interlocutory order having final effect is of great importance in relation to appeals.”

The interlocutory ruling in this matter is not appealable as it is not final and definitive.

We accordingly ordered as follows:-

The point *in limine* be and is hereby upheld with costs.

WAMAMBO J:.....

MAWADZE DJP agrees:.....

Zimudzi and Associates, appellants’ legal practitioners
Coghlam Welsh & Guest, respondents’ legal practitioners