

TENDAI SAVANHU  
versus  
T and S MARKETING (Pvt) Ltd  
and  
MESSENGER OF COURT N.O  
and  
ESTATE LATE TENDAI SAVANHU  
(Represented by Partson Mutandadzi)  
and  
MASTER OF THE HIGH COURT

HIGH COURT OF ZIMBABWE  
MHURI J  
HARARE, 18 March and 21 March 2022

**Urgent chamber application**

Ms *P Chikangaise*, with Mr *R Mutero* for the applicant  
Mr *H Muromba* for the 1<sup>st</sup> respondent  
Mr *P Mutandadzi* for the 3<sup>rd</sup> respondent  
No appearance for the 2<sup>nd</sup> and 4<sup>th</sup> respondents

MHURI J: Through a Court Order issued by the Magistrate Court on the 25<sup>th</sup> of January 2022 Applicant was evicted from house number 1 High Saddle Close Folyjon Crescent Glen Lorne Harare on the 17<sup>th</sup> of February 2022. On the force of the same order, Applicant's movable property was attached and sold in execution.

The order was issued as a default order under case number MC 2681/21. It is not disputed that on the date of eviction, that is 17 February 2022 the Magistrate's Order was extant and the eviction as such was lawfully executed contrary to the averments in the certificate of urgency that respondents unlawfully evicted her from the matrimonial home. It was thereafter that applicant filed an application for the rescission of the default order. It is noted that the applicant's founding affidavit is silent on the date she filed the application for rescission. The magistrate's judgment is also silent on the date the application was filed.

However, it is common cause that applicant's application for rescission was granted on the 11<sup>th</sup> of March 2022. The Magistrate's judgment is filed of record at page 32 of the application. Applicant avers in her founding affidavit that on the 11<sup>th</sup> of March 2022 she tried to access the property but was refused access by a guard manning the same. She sought assistance from the police at Highlands, armed with the order but no one was willing to help.

She further avers in paragraph 17 of her affidavit that since rescission had been granted the cause for the execution had fallen away. The first and second respondents were then required to restore the *status quo ante* that is the *status quo* before the granting of the abortive default judgment. In paragraph 18.1 she further avers,

"I was ejected from the property on the basis of a default judgment. My property within the house was attached and removed on the basis of the same default judgment. The default judgment has now been rescinded/set aside. I am now entitled to the status quo ante. In other words, I am entitled to an order restoring my occupation of the property and an order directing the first and second respondents to return the attached and removed property."

In paragraph 19 of the founding affidavit, applicant maintains her averment that she was evicted on the basis of the default judgment which has since been rescinded and that there is no longer a cause to deny her access to the property and that the status quo ante ought to be restored.

On the 14<sup>th</sup> of March 2022, applicant's legal practitioners wrote a letter to the first respondent's legal practitioners referring to the 11<sup>th</sup> of March 2022 order rescinding the default judgment and telling the legal practitioner to advise first respondent to grant applicant access to the property with immediate effect.

The above narration clearly shows that applicant is seeking the relief granting her access and vacant possession to the property that is number 1 High Saddle close, Folyjon Crescent Glen Lorne Harare on the strength of the Magistrate's order rescinding the default order.

I find myself unable to grant the relief she is seeking. Firstly, even if she and her late husband Tendai Savanhu have been residing at this property for a long time, it is not in dispute that this property is not registered in their names but in first respondent's name. The property therefore belongs to first respondent. Secondly, as stated earlier, applicant was evicted from the property through a lawful process, the default order was extant and enforceable at the time. Applicant was therefore lawfully evicted from the property. Thirdly, through a response dated the 15<sup>th</sup> of March 2022 to Applicant's Legal Practitioner's letter of the 14<sup>th</sup> of March, Applicant was advised that the property was now leased for a year to someone on the 28<sup>th</sup> of February 2022 and

that the lease agreement is extant. Applicant is therefore aware of this lease even though she tried to argue that it is a sham. Lastly, applicant is aware of a Protection Order issued against her on the 7<sup>th</sup> of March by the Magistrate Court wherein she was ordered inter alia not to approach or enter the premises where complainant (Tatenda Savanhu) is employed namely T & S Marketing Properties, 1 High Saddle, Folyjon Crescent, Glen Lorne, Harare.

This is the same property she is seeking occupation of. The Protection Order is still extant. Applicant's Legal Practitioner admits this to be the position. Granting her the relief that she takes occupation of the said property, will be going against the said Protection Order, which means that I will be setting aside the Protection Order through the back door. This is improper in my view.

As regards paragraph 3 of the provisional order wherein Applicant is seeking the return of the movable property, Applicant submitted that this is no longer being pursued in this application and is therefore abandoned. She will pursue it under other remedies.

In the result therefore, it is ordered that the application be and is hereby dismissed.

*Maposa and Ndomene Legal Practitioners* together with *Caleb Mucheche and Partners*, applicant's legal practitioners.  
*Kantor Immerman*, respondent's legal practitioners.