

SHACKIE NHAMOINESU MUSEVE  
(ZVAVAZUMBA INVESTMENTS)  
versus  
BANWAX ENTERPRISES (PVT) LTD  
and  
DONALD GWISAI

HIGH COURT OF ZIMBABWE  
TAGU J  
HARARE, 8 NOVEMBER 2021

### **OPPOSED APPLICATION**

*S Sangayi*, for the applicant  
*F Nyamayaro*, for the respondents

**TAGU J:** On 8 November 2021 this court heard an application for summary judgment against the respondents. The application was opposed. Having heard submissions from the parties, the court delivered an ex tempore judgment and granted the application. The court has now been asked for a typed judgment. The following is the judgment.

The background facts are that the applicant is the registered owner of immovable property known as Stand 383 Limpopo Way, Willovale, Southerton, Harare which he developed into four industrial bays. The respondents have been leasing bay No. 1 at the applicant's said premises for a long time. The lease agreement between the applicant and the respondents is for an amount of US\$700 per month payable at the prevailing Reserve Bank of Zimbabwe auction rate in Zimbabwean Dollars or US Dollars whichever the respondents prefer to use. From 1 January 2020 up to date the respondents have failed to pay the agreed rentals in full and have an outstanding balance of US\$3 467 (United States Dollars Three Thousand and Four Hundred and Sixty Seven) as of 4 December 2020. The respondents also owe the applicant an amount of RTGS \$12 758 in respect of the usage of electricity provided whilst the metre was still in applicant's name. Despite several demands the respondents failed and neglected to pay the outstanding rentals and electricity bills. The applicant was left with no option but to issue out summons for-

(a) Arrear rentals of USD \$3 467.

- (b) Arrear electricity bills amounting to RTGS \$12 758
- (c) Holding over damages calculated from 1 January 2021 at the rate of USD \$30 per day to date of ejectment or full payment.
- (d) Ejectment of respondents and all those claiming occupation of Bay No. 1 at Stand 383 Limpopo Way, Willowvale, Southerton, Harare.
- (e) Interest at the prevailing rate of interest calculated on the outstanding amounts from the date of Summons to date of full payment for both arrear rentals and arrear electricity bills.
- (f) Costs of suit on higher scale of attorney and client scale due to the fact that respondents deliberately opposed a clear claim by the applicant for no apparent reasons.

Having been served with the summons the respondents entered an appearance to defend prompting the applicant to file the present application for summary judgment.

The contention by the applicant is that the respondents have entered appearance to defend deliberately in order to delay the applicant from getting judgment as a dilatory way to continue occupying the applicant's property without payment of arrear rentals and outstanding electricity bills. Further, the applicant submitted that the respondents have no *bona fide* defence to the applicant's claim for (a) ejectment, (b) arrear rentals (c) arrear electricity bills from January 2020 up to date which stands at USD\$3 467 as of 4 December 2020 plus RTGS\$12 758.

The second respondent is the director of the first respondent. His defence to the application is basically that the amount of US\$700 was discussed and reduced to US\$400 due to the effects of Covid 19. He therefore disputed the arrears of US\$3 467 and put applicant to strict proof. He conceded that if there are any rental arrears, they do not exceed US\$1 500. His contention was that due to Covid 19 the parties were to agree as to how to settle the arrears but to date no such agreement has been reached. Further, he suggested that the applicant's system of book keeping is chaotic hence it is difficult to tell if one is in arrears or not. He further stated that the respondents' building caught fire and all the documents were destroyed, hence is unable to produce receipts of any payments. He therefore prayed for the dismissal of the applicant's claim.

On the other hand the applicant has been able to produce copies of receipts of payments and letters of demand and other correspondents that took place between the parties and sent to the respondents in his answering affidavit. These are attached to the record from pages 35 to 45 of the record.

The law on summary judgment is trite in that the onus is on the defendants or respondents wishing to resist summary judgment applications. The respondents or defendants as the case maybe, have to show or allege a defence that will entitle him/them to succeed. The plaintiff or applicant's claim must be clear. See *Stationary Box (Pvt) Ltd v NATCON (Pvt) Ltd & Anor* 2010 (1) ZLR 227, *Beresford Land Plan (Pvt) Ltd v URQUHART* 1975 (1) RLR 260 (A), *MBAIWA v Eastern High Lands Motel (Pvt) Ltd* SC-136/86, *Omarshah v Karasa* 1996 (1) ZLR 584 & *Standard Bank of SA LTD v Panayiotis* 2009 (3) SA 363.

*In casu* the respondents have conceded that there are in areas for failing to pay rentals though they disputed the amount claimed. The applicants have been able to demonstrate the amount owed. In my view none payment of rentals is a fundamental breach of the lease agreement that goes to the root of the contract. The applicant's claim is clear and the Respondents have dismally failed to advance a bona fide defence. Summary judgment will therefore be granted.

**IT IS ORDERED THAT**

1. Summary judgment be and is hereby granted to the applicant.
2. The respondents and all those claiming occupation of Bay No. 1, 383 Limpopo Way, Willovale, Southerton, Harare be and is hereby ordered to vacate the premises within fourteen (14) days of service of this court order.
3. Upon their failure the Sheriff or his lawful deputy be and is hereby ordered to eject the respondents and all those claiming occupation through them from Bay No.1, 383 Limpopo Way, Willovale, Southerton, Harare.
4. The respondents are to pay arrear rentals of US\$3 467 as of 4 December 2020 and arrear electricity bills of RTGS\$12 758.
5. The respondents are to pay applicants holding over damages calculated at USD\$30 per day from 1 January 2021 to date of ejection.
6. The respondents and all those claiming occupation through them pay applicant legal costs at attorney and client scale.

*Mushonga, Mutsairo & Associates*, applicant's legal practitioners  
*Farai Nyamayaro*, respondents' legal practitioners