

MAXWELL MATSVIMBO SIBANDA
and
GLADYS SIBANDA
versus
MARTIN NDORO
and
MERCY NDORO
and
MESENGER OF COURT

HIGH COURT OF ZIMBABWE
TAGU AND MUREMBA JJ
HARARE, 3 June 2021 and 17 May 2022

Civil appeal

Appellants, in person
Mr CT Tinarwo, for respondents

TAGU J: We heard this appeal on the 3rd of June 2021. After hearing submissions from the parties, we delivered an *ex tempore* judgment and dismissed the appeal. We have now been asked to supply full written reasons for purposes of appeal. These are they.

The appellants who are husband and wife are appealing against the whole judgment of the Magistrates Court in Case No. 10791/19 handed down at Harare on the 30th day of September 2020. The court *a quo* had dismissed the appellants' threefold applications for condonation for late filing of an application for review, review of taxation and stay of execution. The threefold applications were in respect of an earlier court order evicting the appellants from the premises known as No. 593 Prince Road, Borrowdale Brooke, Harare where they were renting.

The appellants who are self-actors' four grounds of appeal are as follows-

"1. The court *a quo* erred to dismiss Appellants' application to stay execution pending appeal by failing to observe that the judgment dated 13 March 2020 which granted respondents execution and eviction was appealed against, the appeal was set down, will be heard on the 16th of October 2020 which is two weeks to go.

1. The court *a quo* further erred by failing to observe that the judgment appealed against runs contradictory to already decided same cases in March and October 2019 and as such is *res-judicata*.

2. The court *a quo* erred to dismiss Appellants' application for condonation and failed to observe that, the taxation dated 29 May 2020 was conducted illegally and that the taxed bill was prepared fraudulently in the absence of Appellants. The court *a quo*'s judgment dated 24 July 2020 allowed Appellants to submit condonation application. However, the dismissal of the same application is a contradiction. Further the court *a quo* failed to observe that the condonation application was not opposed by the Respondents.
3. The court *a quo* erred to dismiss appellants' application for review of taxation dated 22 July and amendments dated 3rd of August 2020 by failing to observe that the taxation application of \$631 000.00 exceeded the Magistrates jurisdiction limit of \$300 000.00, and the claimed rate was not as per Law Society tariff and was also illegally conducted. Further the court *a quo* failed to observe that the review application was not opposed by the respondents.
4. The court *a quo* failed to observe that the Rent Board judgment dated 11 April 2019 and the Magistrate's judgment dated 21 October 2019 dismissed the respondents' application for eviction and ordered no costs, that judgment was not appealed against by the respondents yet the court *a quo* issued yet another judgment contradicting judgment that the Appellants should be evicted which makes the second judgment dated 13 March 2020 by the court *a quo* *res-judicata*.

The Appellants were seeking the following relief:

1. That the instant appeal succeeds with costs.
2. That the matter is *res-judicata*.
3. That the judgment/order of the court *a quo* be overturned to read as follows:
 - a) The judgment of court *a quo* be set aside."

In the interest of justice, and cognized of the fact that they were self-actors, we allowed the appellants to address us though their grounds of appeal were not short and concise but argumentative and not in compliance with High Court Rules, 2021. At the hearing of the appeal the first appellant who was representing the second Appellant applied for the postponement of the appeal *sine die* until their appeal in CIV "A" 84/20 was heard first.

Counsel for the respondents opposed the postponement and indicated that the appeal being referred to by the first appellant was already heard. The Appellants had defaulted court and their appeal was dismissed by MANGOTA J. The appellants applied for rescission of the default judgment but rescission was again dismissed and the respondents' counter claim was granted. He submitted that the first appellant was not being candid with the court. He further submitted that the current appeal was for academic purposes since the appellants had already been evicted from the premises. He further said the current appeal at the Supreme Court had nothing to do with the present appeal.

We dismissed the application for postponement *sine die*.

We invited the appellants to address us on the grounds of appeal. The first appellant who was representing the second appellant indicated that they abided by the heads of argument. In response to what counsel for the respondents had said he admitted that they were indeed no longer in occupation of the premises since execution had already been affected and they were evicted. However, the first appellant maintained that the taxation was fraudulently done and they were not invited. He conceded that the respondents had filed a counter application after they had filed theirs.

In response the counsel for the respondents submitted that the current appeal had been overtaken by events and the rest of what the first appellant was saying had nothing to do with the appeal before us. He prayed for the dismissal of the appeal.

Having considered the submissions by the parties and the court *a quo*'s finding that all the threefold applications by the appellants before it that is, application for stay of execution, review of taxation and condonation were frivolous and vexatious and only meant to frustrate the respondents and that it was an abuse of court process, we found that the court *a quo* did not err in its finding. We found further that the current appeal had been overtaken by events.

Accordingly we dismissed the appeal with costs on a legal practitioner and client scale.

TAGU J.....

MUREMBA J Agrees.....

Zimudzi and Associates, respondents' legal practitioners