

ELIZABETH GLASER PEDIATRIC AIDS FOUNDATION  
versus  
AMOS MAGORONGA  
and  
TAKAWIRA MUNYANYI

HIGH COURT OF ZIMBABWE  
MHURI J  
HARARE, 26 July & 3 August 2022

### **Application for Rescission**

*Advocate T Mpofu*, for the applicant  
Mr *K Gama*, for the 1<sup>st</sup> respondent  
No appearance for the 2<sup>nd</sup> respondent

**MHURI J:** On 24 January 2022 a Court application for the registration of a Labour Court Order was filed in the matter between Takawira Munyanyi, Amos Magoronga and Elizabeth Glaser Pediatric Aids Foundation under case No HC 436/2022.

The respondent therein received the application on 25 January 2022. The respondent had 10 days within which to file its opposing papers. On 7 February 2022 the respondent filed the opposing papers. The *dies inducea* was to expire on 8 February 2022.

However, the opposing papers quoted case No 651/2022 instead of the court application case No 436/22. As a result these papers did not find their way into the record under HC 436/22.

By a letter dated 15 February 2022 addressed to the Registrar, the respondent's legal practitioners advised the Registrar of this anomaly and sought assistance to rectify it. The letter was copied to the applicant's legal practitioners Gama and Partners who received it on 24 February 2022. On 14 February 2022 as the record HC 436/22 will show, applicant's legal practitioners applied for a set down date of the matter on the unopposed roll. The matter was set down for 23 February 2022 and was postponed to 2 March 2022 because the Judge had raised certain queries.

On 2 March 2022 the application was heard and a default order was granted in favour of the applicants.

It is this default order that the applicant *in casu* seeks rescission and is strongly opposed by the 1st respondent. This application was filed on 18 March 2022. Meanwhile, an urgent chamber application was filed by applicant on 17 March 2022 and was heard by CHINAMHORA J on 18 March 2022 in which an order was issued that, applicant pays respondents wasted costs in the sum of US \$ 400.00 and that the costs be paid before any process or application is filed by applicant. It was not disputed that the present application was filed before CHINAMHORA J's order was complied with. An explanation was proffered which is reasonable in my view as to how the application preceded the payment of costs. The costs were eventually paid. I am also persuaded by MUTEVEDZI J's reason in the *ex-tempore* reasons in case Number HC 2043/22. Wherein he stated

“The first respondent’s objections *in limine* were dismissed for the following reasons:  
a. The applicant substantially complied with CHINAMORA J’s order of 18 March 2022 directing it to pay costs in the sum of \$ USD 400 to the first respondent in case number HC 1782/22 before it could file any process or application. Applicant’s failure to fully comply was a result of first respondent supplying it with incorrect bank account details.”

The application therefore cannot be struck off on the basis of this point. The point was not well taken and I dismiss it.

As stated earlier, applicant filed its opposing papers before the *dies inducea* expired. The papers however quoted a completely different case number from the one quoted in the court application. Applicant brought this anomaly to the attention of the respondent. By 2 February 2022 when respondent applied for default judgment, he was aware that the application was opposed though the papers had not found their way into the record due to the error.

Rule 29 (1) of the High Court Rules 2021 provides as follows:

“(1) The court or a judge may in addition to any other powers it or he or she may have, on its own initiative or upon the application of any affected party, correct, rescind or vary –  
(a) an order or judgment erroneously sought or erroneously granted in the absence of any party affected thereby, or  
b .....  
c.....”

By the 2 March 2022, respondent was aware that applicant had filed opposing papers but nonetheless went ahead to seek default order. This default order was erroneously sought. Had it been brought to the attention of the presiding judge, the default order would not have been granted. The judge in my view did not erroneously grant the default order but respondent erroneously sought it and to that end, the default order can be and is to be rescinded.

Consequently, it is ordered that the application for rescission be and is hereby granted with costs. The default order granted under HC 436/22 be and is hereby rescinded.

*Dube Manikai Hwacha*, applicant's legal practitioners  
*Gama and Partners*, first respondent's legal practitioners