

HOOPWESTERN INVESTMENTS (PVT) LTD t/a AFRI MINING  
and  
JAN ZWART  
and  
BART ZWART  
and  
GARTH GREEFF  
and  
TAKAWIRA GATSI  
versus  
LAFARGE CEMENT ZIMBABWE LIMITED  
and  
THE SHERIFF OF THE HIGH COURT OF ZIMBABWE N.O.

HIGH COURT OF ZIMBABWE  
CHINAMORA J  
HARARE, 13 August 2020 and 28 September 2022

**Application for stay of execution – denial of jurisdiction**

*NC Mugoge*, for the applicants  
*MP Mhangu*, for the 1<sup>st</sup> respondent

CHINAMORA J:

**Background facts:**

On 13 August 2020, the parties appeared before me in an urgent chamber application for stay of execution filed by the applicants. The salient facts are that, on 3 February 2020, the parties appeared before JUSTICE TSANGA under HC 670/20 after the first respondent filed an urgent chamber application. An interim order was granted with the following operative part:

“INTERIM RELIEF SOUGHT

That pending the return date, the applicant is granted the following relief:

1. The respondent be and is hereby ordered to within 48 hours of the granting of this order return to the applicant’s possession the following property:
  - (a) 1 x Xgma Wheel Loader
  - (b) 2 x Howo Tipper Truck RHD
  - (c) 1 x Volvo Ec 4800 Excavator
  - (d) 1 x KobeleoSI 5001c Excavator.”

### **Dirty Hands**

It is obvious that the order granted by TSANGA J has not been appealed and, therefore, remains extant and ought to have been complied with. For that reason the applicant urged the court to decline jurisdiction until the first respondent had purged its contempt of the court order. In light of this, it is clear that the applicant defied an order granted by this court. The first respondent sought to argue that the aforesaid order was impossible to comply with as it was not in possession of the property listed in the order. However, before the hearing of this matter, the first respondent did not make any approach to this court to have the order corrected or amended, despite the availability in the Rules of provisions to do so. In this regard, r 29 (1) (b) allows a court to correct, rescind or vary a judgment or order where there is an ambiguity, patent error or omission. It is trite that court orders are valid until set aside or overturned on appeal or review. In this respect, I find it instructive to refer to and adopt the rationale for applying the dirty hands doctrine which was succinctly articulated by the late CHIDYAUŠIKU CJ in *Associated Newspapers of Zimbabwe (Pvt) Ltd v Minister of State for Information and Publicity & Ors* 2004 (1) ZLR 538 (S) as follows:

“This court is a court of law and, as such, cannot connive at or condone the applicant’s open defiance of the law. Citizens are obliged to obey the law of the land and argue afterwards. . . For the avoidance of doubt the applicant is not being barred from approaching this court. All that the applicant is required to do is submit itself to the law and approach this court with clean hands on the same papers.”

In *casu*, there is no order setting aside or overturning order granted under HC 670/20. It is therefore apparent that the first respondent’s hands are dirty and, for that reason, I decline my jurisdiction until such defiance or contempt has been purged. Such dirty hands can only be cleansed by complying with the court order in question. I must emphasize that even if one may not agree with a court order, he/she/it has to follow its dictates as long as it is extant and its execution has not been stayed. Another simple (yet commonsensical) rationale for obeying an extant court order is that the order enjoys a presumption of validity until declared otherwise by a competent court of law. For this proposition of law, I refer to *Econet Wireless (Private) Limited v The Minister of Public Service Labour and Social Welfare and Others* SC 31-16. In *casu*, there is no obvious basis for non-compliance with the court order. For the avoidance of doubt, I wish to clarify that the applicant is not being barred from approaching the court, but is being asked to submit to the law and approach this court with clean hands after doing what the order require it to do. The first

respondent should have complied with the order of TSANGA J and complained later. Alternatively, if the first respondent's view was that it was impossible to comply with the said order, it should have come to court in terms of r 29 (1) (b) and demonstrated the impossibility. If that had been done, this court could have utilized the powers vested in it and corrected, rescinded or varied the order.

**Disposition**

It is for the reasons that are evident from this judgment that I issued the following order:

1. By reason of the applicants' non-compliance with the order granted by TSANGA J in Case No. HC 670/20, this court hereby declines its jurisdiction until such time as the applicants have purged their non-compliance.
2. The applicants shall pay the first respondent's costs.

*Magoge Law*, applicants' legal practitioners  
*Gill Godlonton & Gerrans*, first respondent's legal practitioners