

ARETHA MANASE
versus
ANEX INVESTMENTS (PRIVATE) LIMITED
and
THE SHERIFF OF ZIMBABWE N.O.

HIGH COURT OF ZIMBABWE
TAGU J
HARARE, 24 & 2 November 2022

Urgent chamber application

Mr *T S T Dzvetero*, for the applicant
Ms *P Mathuthu with P Dube*, for the 1st respondent

TAGU J: This is an Urgent Chamber Application for stay of Execution of a writ issued and obtained by the first respondent following a default judgment granted in its favour by this Honourable Court on 14 September 2022 in HC 5024/22. The stay is being sought pending finalization of an application for rescission pending in HC 7024/22.

The facts are that the applicant entered into a lease agreement for certain property known as 6 Cannock Gardens, Cannock Road, Mount Pleasant, Harare. The said lease was cancelled or otherwise terminated mutually and a new verbal lease agreement was entered into in or around August 2019 between the first respondent Company represented by Mrs. Hay and one Xylem Trading (Pty) Limited, a company registered in the Republic of South Africa, for applicant's benefit. On unknown date the first respondent issued summons in this Honourable Court for applicant's eviction in HC 5024/22. The summons was effected by affixing the summons and declaration at the main gate at number 4 Fairman Close, Mount Pleasant yet the respondent was aware that applicant could be served at the premises which are the subject of the lease agreement being number 6 Cannock Gardens, Cannock Road, Mount Pleasant, Harare. The applicant did not see the summons until 14 October 2022 when applicant was served with the notice of Seizure and Attachment which indicated that removal was due on 19 October 2022. She expeditiously

approached her legal practitioners who filed a Court Application for rescission under HC as well as the present application.

In its Notice of Opposition the first respondent submitted that at all material times the Applicant's address of service, known to the first respondent, is Tolgate Holdings (Private) Limited, 4 Fairman Close, Mount Pleasant, Harare, her domicilium Citandi. It further submitted that applicant is not disputing that she was in rental arrears hence must be evicted.

It is not in dispute that the summons and declaration were served by affixing at the main gate at number 4 Fairman Close, Mount Pleasant, Harare. This is the address in the terminated lease agreement. Evidence has been shown that applicant had moved out of number 4 Fairman Close, Mount Pleasant, Harare. She is now residing at 6 Cannock Gardens, Canock Road, Mount Pleasant Harare. This fact was well known to Isaac Manikai, legal practitioner for the first respondent. I say so because attached to Mr Isaac Manikai's affidavit is a note showing the address of applicant as number 6 Cannock Gardens. On this basis the application for rescission has prospects of success. Further, a look at the agreement shows that the parties entered into an illegal transaction where in rentals were to be paid in foreign currency in contravention of the exchange control regulations, S.I. 33/19, S.I. 42/19 and other financial regulations which sanction the conduct of the first respondent. Applicant may be in arrears, but the transactions were illegal and not enforceable.

IT IS ORDERED THAT

1. Execution of a Writ of Execution dated 11 October 2022 pursuant to an order dated 14 September 2022 obtained in HC 5024/22 be and is hereby stayed pending the finalization and determination of an Application for Rescission pending in HC 7024/22.
2. First respondent to pay costs of this matter.

Antonio & Dzvettero, applicant's legal practitioners
Dube Manikai Hwacha, first respondent's legal practitioners.