

STEPHINA MAZAMBANI
versus
INTERNATIONAL EXPORT TRADING
and
THE SHERIFF OF ZIMBABWE

HIGH COURT OF ZIMBABWE
NDEWERE J
HARARE, 30 August, 2018 and 29 January, 2020

Urgent application

H. Tsuro, for the applicant
G. Nyengedza, for the 1st respondent
No appearance for the 2nd respondent

NDEWERE J: This application took long for me to conclude because there were cases referred to which I needed to check. It took time for Registry to find some of them. In fact by the time of writing the judgment, HC 9227/17 had not been found in Registry.

The background is that the applicant and her husband are joint owners of endeavour farm which they bought from the Government of Zimbabwe. Prior to purchasing the farm, the applicant and her husband concluded an agreement which gave the applicant 90% ownership of the farm, with her husband owning the remaining ten percent. Nothing further was done on the Title Deed to reflect the 90% to 10 % percent sharing ratio.

The applicant's husband Edmore Mazambani was sued for a contract farming debt by the first respondent in case number HC 3117/15. The first respondent was granted judgment against the applicant's husband. When the first respondent was in the process of executing judgment in HC 3117/15, the applicant caused the filing of interpleader proceedings in case number HC 8614/17.

The applicant did not timeously file her opposing affidavit to the interpleader so she was automatically barred. She then filed a chamber application for upliftment of the bar to the interpleader; HC 9222/17. After all documents had been filed; including Heads of Argument, she did not timeously set the matter down for Argument. The first respondent successfully applied for dismissal of the chamber application and it was granted. With the chamber

application out of the way, the first respondent proceeded to set the interpleader on the unopposed roll and the applicant's interpleader claim was dismissed.

The applicant then filed on application for rescission of the judgment dismissing her application for upliftment of the bar; case number HC 4366/18. That application for rescission was still pending when the application before me was argued.

With the interpleader claim out of the way, the first respondent proceeded to execute judgment against the applicant's husband as judgment debtor.

The applicant then filed the application under consideration as an urgent chamber application for stay of execution pending rescission of the default judgment in case number HC 4366/18.

The first respondent opposed the application. He argued that the matter was not urgent.

The applicant said the matter was urgent and that she had prospects of success in the rescission application in HC 4366/18 because the first respondent had snatched a judgment after improper service of the chamber application for dismissal on Mauwa and Associates who had already renounced agency when the chamber application for dismissal was issued.

The first respondent countered that accusation and said it was the applicant who did not notify them of any change of address and the renunciation. It said she advised them of the renunciation of agency on 10 April 2018, after they had already obtained judgment.

The applicant did not file an answering affidavit disputing that she had served the first respondent the notice of renunciation 10 April, 2018.

It is trite law that what is not disputed is taken as admitted. This means that applicant admitted that the first respondent was notified of the renunciation by Mauwa and Associates on 10, April, 2018, long after her case had been dismissed.

The first respondent argued that the matter was not urgent. It argued that the need for the applicant to act arose when the first respondent obtained judgment against the applicant's husband in 2015. It said that is when she should have taken steps to protect her interests; not so late in the day after she had even neglected to prosecute her interpleader claim to finality.

The first respondent filed heads of argument, persisting with the submissions that the application was not urgent. The applicant did not file any Heads of Argument, despite having instructed another law firm to act for her.

The case was argued on 30 August, 2018

The court was persuaded by the first respondent's arguments that this application did not warrant urgent attention. Applicant's application did not meet the requirements of urgency. This was a case which had been in the courts since 2015 when judgment was obtained against her husband. The applicant, being a wife resident at the farm, must have foreseen that if the judgment debt was not paid, the jointly owned farm may be executed upon. But she did nothing since 2015. Then when she attempted to protect her interests, she did not follow up her cases to finality on the two separate occasions she waited for the day of reckoning. As stated in *Kuvarega v Registrar General and Another 1996 (1) ZLR 188* this is not the urgency contemplated by the rules. As stated in *Kuvarega v Registrar General and Another, supra*, a matter is urgent if at the time the need to act arises the matter cannot wait. If the matter can wait, it means it is not the type of urgent application contemplated by the Rules of court. Why then does the applicant want the court to drop everything else and treat her case urgently when she herself did not treat the matter urgently? If the matter waited all this while from 2015, why should it be rushed now?

Furthermore, she did not even establish a clear right to 90% of the farm. As correctly pointed out by the first respondent, she did not provide anything tangible to back her 90% claim to the farm. No encumbrance or claim was ever registered at the Deeds Office; no caveat whatsoever. As pointed out by the first respondent, the presumption is that as joint owner she owned 50% of the farm and her portion as a joint owner is already protected by the joint ownership.

In addition, since she is the wife to the judgment debtor, collusion with the judgment debtor cannot be ruled out.

In my view the application does not deserve urgent attention and it must be removed from the roll of urgent applications.

Consequently; it is ordered that the application, not being urgent, be and is hereby removed from the urgent roll.