

SHINGIRAI VAMBE
versus
O MATARE N.O
and
RUSAPE TOWN COUNCIL

HIGH COURT OF ZIMBABWE
MUZENDA J
MUTARE, 1 and 25 July 2022

OPPOSED APPLICATION

Applicant in person
Ms *V Chakuzira*, for the 1st respondent

MUZENDA J: This is an application for review where the applicant is seeking the following:

“IT IS ORDERED THAT:

- 1. The High Court should review the ruling from Rusape Magistrate Court of (sic) granting RTGS 5 0000 against a claim of US\$ 50000 dated 26 may 2020.*
- 2. Respondent to pay cost of this application”*

The application is opposed more pertinently the first respondent contends that applicant does not allege any procedural irregularity on the part of second respondent’s conduct of proceedings which must be the legal basis for review in terms of s 27 of the High Court Act.

Background

Applicant sued first respondent in the Magistrates Court under Case Number 152/18 for payment of general damages of US\$5000. After all the pleadings were filed he applied for default judgment and the magistrate granted applicant damages in the sum of ZWL 5000 and not US\$5000. First respondent applied for rescission of the default judgment before the magistrate and the Magistrate Court has since rescinded the default judgment and there is no longer a judgment to talk about. The applicant insists with the application for review and the first respondent in its preliminary points wants the application to be struck off with costs.

Disposition

It is conspicuous from the perusal of the record that applicant does not clearly spell out exactly what the magistrate did procedurally wrong that would warrant a superior court to interfere. I am persuaded by the first respondent's submission that the application falls far short in meeting the requirements of s 127 of the High Court Act. In case the applicant does not dispute that the judgment in his favour has since been rescinded and hence there is no longer any judgment to speak about. Applicant is fully aware of this development and deliberately continued to set the application for hearing. This attitude by the applicant is not condoned by this court and to show its displeasure the court will order applicant to pay the first respondent's wasted costs, albeit at an ordinary scale.

The following order is granted:

- 1. The application is struck off.**
- 2. Applicant to pay first respondent's costs on party to party basis.**

Atukwa Attorneys, 1st respondent's legal practitioners