

**MAKEH ENTRPRISES (PVT) LTD**

**Versus**

**ZB FINANCIAL HOLDINGS**

IN THE HIGH COURT OF ZIMBABWE  
NDOU J  
BULAWAYO 17 & 31 MAY 2012

*C P Moyo* for the plaintiff  
*J Moyo* for the defendant

Civil Trial

**NDOU J:** On 23 April 2012, the Deputy Registrar of this court addressed a notice to the parties in the following terms:-

“Re: Makeh Enterprises (Pvt) Ltd vs ZB Financial Holdings HC 1116/07 “B”

In terms of the provisions of Rule 215(2) of the High Court of Zimbabwe Rules 1971 [“the Rules”], I have allocated the under-mentioned dates for hearing of this matter:-

Thursday 17 May 2012 and Friday 18 May 2012 at 10:00am.

Please lodge a consent set-down as soon as possible.

Yours faithfully

T. Hwara  
For Deputy Registrar”

The notice was served on the plaintiff’s legal practitioners on 20 April 2012. It was served on the defendant’s legal practitioners (through their corresponding legal practitioners) on 23 April 2012.

The defendant’s legal practitioners did not lodge a consent to set down with the Deputy Registrar. Notwithstanding such failure to lodge the consent to set down, the Deputy Registrar placed the matter on the roll for trial. The defendant and his legal practitioner are not in attendance. Mr *J. J. Moyo*, their correspondent, only appeared after being contacted by Mr *C.P. Moyo* for the plaintiff. Mr *J. J. Moyo* informed the court that the defendant’s view is that the matter was not properly set down as the defendant had not signed and lodged the consent to

set down. Mr *C.P. Moyo* holds a contrary view. The issue is whether the matter was properly set down.

Order 31 Rules 215 and 217 deal with the issues.

Rule 215 provides:-

- (1) Subrules (2), (3) and (4) –  
“date” includes a period not exceeding two weeks.
- (2) Once a date becomes available for the hearing of a case placed on the list in terms of rule 214 the Registrar shall allocate a date for the case to be heard and shall give the parties notice of the date.
- (3) The Registrar may for good cause, and after consultation with the parties, alter a date of set down allocated in terms of the sub-rule (2), and shall give the parties notice of any such alteration.
- (4) Notice given by the registrar in terms of sub-rule (2) and (3) –
  - (a) Shall be delivered by the Registrar to each party’s legal practitioner; or
  - (b) In the case of a party who is not represented by a legal practitioner, shall be posted by the registrar by registered post to the address for service or last known address of the party.
- (5) At the request of one or more of the parties, the registrar may, in consultation with the Judge President, allocate a fixed date for the hearing of a case, whether in or out of term”

Rule 217 provides:

“where a case has been set down for trial or argument any party may apply to the court or a judge to have the set down set aside and for good cause shown the court or judge may set it aside and fix another day for the trial or argument or make such other order as it or her, as the case may be, considers just:

Provided that with the consent of all parties and with approval of the registrar a set down may be altered without application to court or to a judge.”

*In casu*, the Deputy Registrar set down the matter in terms of the provisions of Rule 215(2). If the defendant sought alteration of this date, it should have approached the Deputy Registrar in terms of Rule 215(3). Defendant did not do so resulting in the plaintiff and its legal practitioner attending on the set down date. The Deputy Registrar was not shown good cause for alteration of the set down date by the defendant so he could not have exercised the powers bestowed on him by sub-rule (3) of Rule 215.

The application for alteration of set down date was made by the defendant's corresponding legal practitioner in the absence of the defendant. This oral application was made presumably in terms of Rule 217, *supra*.

From the provisions of Rule 215, it is clear that the consent of the parties to the set down is not a requirement. Once the Registrar allocates a date, it is incumbent upon a party seeking alteration of the set down to apply to the registrar in terms of Rule 215 (3) or a Judge or the court in terms of Rule 217. The set down date remains good even where a party had not consented to it. Strictly speaking there is no legal requirement for the Registrar to seek that the parties file or lodge consent to the set down. It has, however, been the practice of the Registrar to seek such consent of the parties to the set down date. Mr *C. P. Moyo*, for the plaintiff is aware of this practice. It would be tantamount to allowing the plaintiff to snatch at a judgment resulting in compromising the ends of justice if the plaintiff was allowed to take advantage. The conduct of the defendant can be dealt with by an award of costs.

Accordingly, it is ordered that the matter be postponed to 1<sup>st</sup> and 2<sup>nd</sup> August 2012 for trial with the defendant bearing wasted costs for this hearing.

*Moyo & Nyoni*, plaintiff's legal practitioners

*Gill, Godlonton & Gerrans c/o Calderwood, Bryce Hendrie & Partners*, defendant's legal practitioners