

ZIMBABWE ELECTRICITY SUPPLY AUTHORITY

Versus

MBALENHLE SIBANDA

And

DEPUTY SHERIFF, BULAWAYO

IN THE HIGH COURT OF ZIMBABWE
NDOU J
BULAWAYO 18 & 31 MAY 2012

N. Ndlovu for applicant
S. Mguni for 1st respondent

Urgent Chamber Application

NDOU J: The applicant seeks stay of execution of a judgment granted by default under case number HC 236/12. The applicant seeks such stay to be in operative until the determination of the application for rescission. The background of the application is the following. On 4 January 2012 1st respondent's legal practitioners wrote to the applicant demanding payment of US\$4 299 being the medical costs of 1st respondent as per a specialist quotation. As a result of this letter the parties held a meeting on 26 January 2012. At this meeting the applicant agreed to bear the 1st respondent's medical costs. This agreement was confirmed in writing by applicant in a letter dated 26 January 2012. Before this meeting the 1st respondent had already filed summons on 23 January 2012 claiming payment of the same medical costs. The issue of the summons was discussed in the above-mentioned meeting of the parties. It was the applicant's understanding that since it had admitted liability, the 1st respondent would not proceed with the summons. According to *Mr Mguni*, for the 1st respondent, the latter decided on her own to stay the summons pending the payment as per the agreement. When 1st respondent did not receive the payment on time, she decided to obtain judgment by default. The 1st respondent did not notify the applicant that she was proceeding with the summons. Unknown to the applicant, the 1st respondent then set the matter down on the unopposed roll and obtained default judgment. The applicant paid the specialist a sum of \$4 299 even before it became aware of the existence of the default order. When the applicant became aware of the default judgment, it was aggrieved by paragraphs (2) and (3) of the order. It has sought rescission of these two paragraphs. In his submissions *Mr Mguni* also struggled to justify the claim for US\$5 000 for "ancillary expenses" not covered by

the applicant for 1st respondent's medical expenses. The 2nd respondent has already attached the applicant's two motor vehicles at the behest of the 1st respondent. In my view the matter is urgent and it is at the interest of justice to hear the applicant on the claim of US\$5 000 and the costs on a higher scale. Accordingly it is hereby ordered that the provisional order be granted in terms of the amended draft.

Cheda & Partners, applicant's legal practitioners

R. Ndlovu & Company, 1st respondent's legal practitioners