

DAINE TAURAI CHIKOWORE

Versus

MARGRARET MSIMBE

And

REGISTRAR OF DEEDS OF BULAWAYO

IN THE HIGH COURT OF ZIMBABWE

NDOU J

BULAWAYO 28 MAY & 12 JULY 2012

No appearance for plaintiff

Ms C Mudenda for 1st defendant

Judgment

NDOU J: In this matter I granted judgment by default in the following terms:

“It is ordered that the 1st defendant’s special plea is upheld and the plaintiff’s claim is dismissed with costs on the legal practitioner and client scale.”

I indicated then that my reasons for doing so will follow in due course. These are they. The background facts of this matter are the following. On 21 October 2011 the plaintiff issued summons out at this court seeking against the 1st defendant.

- “(a) Delivery of the property pledged as security for the loan of Z\$200 000,00 being number 24 Rennin Road, Redcliff, Kwekwe to the plaintiff.
- (b) that the first defendant approach the offices of the second defendant and there sign all papers to transfer number 24 Rennin Road, Redcliff, Kwekwe to the plaintiff within 14 days of service of this court order failing which the Deputy Sheriff act in first defendant’s stead.
- (b) [Sic] costs of suit.”

The summons were served on the 1st defendant on 8 February 2012. The first Defendant filed a notice of appearance to defend on 22 February 2012 and subsequently filed a special plea on 15 March 2012 based on the fact that the claim has prescribed in terms of the Prescription Act [Chapter 8:11]. And further that in seeking to take transfer of the immovable property mortgage as security, the plaintiff seeks to enforce a *poetum commissorium* which is not enforceable at law. The matter was set down for the determination of the special plea. The set down date was 28 May 2012. The plaintiff was personally served the notice of set down on 16 May 2012. On 22 May 2012 he filed a document entitled "*Notice of Refusal to appear on the 28th day of May 2012 in terms of section 18 subsections 2 and 9 of the Constitution of Zimbabwe.*" The document further stated:

"TAKE NOTE THAT the plaintiff refuses to appear before this honourable court because of many reasons, one of which is that the courts and court officials are not impartial as referred to the above-mentioned constitutional section of laws.

FURTHER TAKE NOT [*sic*] THAT case number HC 3120/11 was only meant for execution under section 7 of the Supreme Court Act and section 20 of the High Court Act, since the case is in the Magistrate, High Court Harare and Supreme Court on case numbers MC 163/02; MC 1142/05; SC 398/02; HC 266/03; MC 1313/02, which are mentioned on High Court case HC 867/12 which the defendant received on the 23rd of April 2012 and HC 1152/12. And all these above-mentioned cases are well known to defendant and her legal practitioners. Some are mentioned on case number SC 5/02 and SC 41/03.

THIS IS DONE AT BULAWAYO THIS 22ND DAY OF MAY 2012.

(SIGNED)

Daine Taurayi Chikowore"

The plaintiff also annexed a document entitled "*Plaintiff's Opposition to the Defendant's Special Plea*"

Plaintiff further filed another document entitled "*The Plaintiff Answers The First Defendant's Heads of Arguments Although Knowing That The Honourable Court Has No Jurisdiction Over This Case Since It Is Already in the Supreme Court As Mentioned Above*"

Under heading “*General Submissions*” the documents state *inter alia*,

- “1. ...
2. ...
3. ...
4. ...
5. ...
6. Although the plaintiff knows that there is no legitimate Head of State and government, courts, judicial officials, government officials and government departments, he believes that all his cases be referred to the purported Head of State and Government, Because of section 31H subsection 1 and 2 of the Constitution of Zimbabwe or before an impartial court which doesn’t involve judges and magistrates and lawyers of this country.” There are several documents annexed to this one.

The long and short of it is that the plaintiff refused to appear before this court, and such refusal has legal consequences. The plaintiff brought his matter to this court. He, therefore, submitted himself to the jurisdiction of this court. He cannot now allege that he does not wish to be bound by the jurisdiction of the same court after dragging the defendant thereto. I am sure if he did not sue the defendant in this court he would have been entitled to his views. The legal consequences of suing defendant in this court and serving her with summons is that she was entitled to defend herself, which she did. He has no lawful excuse to boycott, if I may call it that, the proceedings ancillary to the action that he had instituted in this court. The legal consequences of such boycott is that he is in willful default because he has been served with the notice of set down. This was good service which he disregarded at his own (legal) peril, so to speak. It is for this reason that I granted the default order despite his above-mentioned pre-emptive written protestation. He deliberately chose not to follow the legal praxis of the court.

It is for these reasons that I granted the above-mentioned order.

IEG Musimbe & Partners c/o Mudenda Attorneys, 1st defendant’s legal practitioners