

DION BRANDT

Versus

BUBBLE LIGHT TRADING (PVT) LTD

And

CLEMENT HLABANGANA

And

MUSA MANUEL DUBE

And

THE REGISTRAR OF DEEDS

IN THE HIGH COURT OF ZIMBABWE

KAMOCHA J

BULAWAYO 12 OCTOBER 2012

N. Siphuma for applicant

G. Nyoni for respondents

Opposed Court Application

KAMOCHA J: After hearing legal practitioners representing the respective parties, I granted an order in the following terms and indicated that my reasons would follow in due course.

“It is ordered that:

- (a) First, second and third respondents repay applicant the loan of US\$12 500,00 jointly and severally the one paying the others to be absolved;
- (b) Alternatively, that stand number 6574 Nketa Township of Lot 400A Umganin be and is hereby declared executable and the proceeds thereof used to repay the said loan;
- (c) First, second and third respondents pay respondents interest at the prescribed rate from 1 October 2011 to date of full payment; and

(d) Costs of suit.”

The facts giving rise to this case are brief. The first respondent Bubble Light Trading (Pvt) Ltd whose directors are Clement Hlabangana the 2nd respondent and Musa Manuel Dube the 3rd respondent.

Sometime in May 2011 the 1st respondent borrowed and received the amount of US\$12 500,00 which was to be paid back on or before the end of July 2011. As usually happens in matters of this nature Bubble Light Trading (Pvt) Ltd failed to repay the loan as agreed.

After the loan had been granted the 2nd respondent made the following undertakings to pay. The first was made on 23 May 2011 and reads:

“Affidavit

I Clement Hlabangana I.D. 08-650329 F 41 residing at 61441 Pelandaba P O Mpopoma Bulawayo do hereby solemnly and sincerely swear/declare that I will pay Dion Brandt I.D. No. 08-564076 C 00 the sum of ten thousand dollars [S10 000,00 USD] on or before the 1st June two thousand and eleven [1-6-2011] that I owe him.”

This was signed by Hlabangana on 23 May 2011. The affidavit was commissioned on that same day.

His second undertaking dated 16 July 2011 reads as follows:

“I Clement Hlabangana 08-650329 F 41 residing at 61441 Pelandaba Bulawayo do hereby solemnly and sincerely swear/declare that I will pay Dion Brandt the sum of one thousand dollars [S1 000,00] USD on or before the 20th July 2011 [20-07-2011] which I owe him.”

This was commissioned on 16 July 2011.

The next one reads as follows:-

“I Clement Hlabangana 08-650329 F 41 residing at 61441 Pelandaba Bulawayo do hereby solemnly and sincerely swear/declare that I will pay Dion Brandt the sum of one thousand five dollars [S1 500,00] USD on or before the 29th July 2011 [29-07-2011] which I owe him. Legal action will be taken against me if not honoured.”

It was dated 26 July 2011 and was commissioned on that day.

Since no payment was forthcoming until September 2011 the 2nd respondent wrote the following on the letter heads of Bubble Light Trading:

“27/09/2011

I Clement Hlabangana I.D. No. 08-650329 F 41 declare that I will pay Dion Brandt I.D. No. 08-564076 C 00 the sum of twelve thousand five hundred dollars (\$12 500 USD) which I borrowed, as a loan and have not honoured for my company. All payments to be made by the 1st October 2011.

Affidavits that I have not honoured dated (01/06/2011) 1st June two thousand and eleven for (\$10 00 USD) ten thousand dollars (20/07/11) 20 July 2011 for (\$1 000 USD) one thousand dollars, (29/07/2011) 29 July 2011 for (\$1 500 USD) one thousand five hundred dollars.

I have supplied Afro Milling (Pvt) Ltd Kelvin West, Bulawayo with motor rewinds, timing belts, and bearing against tax invoice No. 032 dated 14/09/2011 ZIMRA BP No. 20009984.

Cash to be paid in full from banking accounts listed below from order stated above, when entered into account. Legal action to be taken against me if not honoured. Title

Deeds available as security against loan, company bank details are listed below. BancAbc account No. 1163735502017 Branch 301 BK 21.

ZIMBANK 4303571156 Belmont”

Hlabangana signed the above as managing director for Bubble Light Trading. On that same day Musa Manuel Dube who is also a director of Bubble Light Trading had this to say:-

“Date: 27 September 2011

I Musa Manuel Dube I D No. 08-722830 L 41 declare that the Title Deeds at stand No. 6574 Nketa 9 belong solely to me and am using them as security at Bubble Light Trading owned by Mr Clement Hlabangana I.D. No. 08-650329 F 441 against transactions, for a loan. We as company directors have fully agreed and accepted all terms and conditions

and will honour all payments in full by the stipulated dated made in the name of Bubble Light trading. (Property to be attached in the event of non-payment)”

Hlabangana appended his signature to the above as managing director while Dube signed it as the sales director.

Despite all these documents the respondents denied that the \$12 500 was received by their company. They contended that there should have been some form of documentation showing where the money came from and how it came into the company’s account.

Their deponent alleged that the documents were authored by someone else not them. Hlabangana even denied that the handwritten documents were written by him. He, however, admitted that the signatures appended thereon were his. He alleged that he used to keep blank signed forms in his office. The forms had his full names, I.D. number and residential address already filled in. So someone must have laid their hands on those forms and filled in the rest of what the three hand written documents contained. He was referring to the documents signed on 23 may 2011, 16 July 2011 and 26 July 2011 respectively.

That is clearly a far-fetched afterthought which does not need any serious consideration. It must be rejected.

That hopeless afterthought was also advanced in respect of the two documents executed on 27 September 2011. It is difficult to understand how the person who stole the signed blank bond papers with the company’s letter heads would have known the details of the two bank accounts of the company. If Hlabangana used to keep blank forms signed did the 3rd respondent Musa Dube do the same? Of course not. They both signed the documents authored by Dube together in which they admit the loan and stated that as directors they had fully agreed and accepted all terms and conditions and would honour all payments in full by the stipulated dates.

It was for the above reasons that the respondents’ defence was rejected and the order on page one was made.

Sansole & Senda applicant’s legal practitioners
Messrs Moyo & Nyoni respondents’ legal practitioners