

CONSTRUCTION INDUSTRY PENSION FUND

Versus

CONE ENGINEERING [PVT] LTD

IN THE HIGH COURT OF ZIMBABWE
KAMOCHA J
BULAWAYO 10 MAY 2012

N. Ndlovu for applicant
Malinga for respondent

OPPOSED COURT APPLICATION

KAMOCHA J: On 3 February 2011 this court issued the following order in default.

“It is ordered that:

- (1) The lease agreement between the plaintiff and defendant be and is hereby cancelled.
- (2) The defendant be and is hereby ordered to pay the sum of US \$3222,33 together with interest at the rate of 5% per annum from 6 January ,2011 to the date of full payment.
- (3) The defendant and all those claiming through it be and are hereby ordered to vacate number Unit 1, 5 Woodburg Road, Thorngrove, Bulawayo within 5 days of this order failing which the Deputy Sheriff ,Bulawayo be and is hereby ordered to evict the defendant and all those claiming through it from the premises.
- (4) The defendant be and is hereby ordered to pay costs of suit on an attorney and client scale.”

Three months down the line the respondent filed an application seeking the rescission of the default judgement contending that the judgement was granted in error.

Respondent averred that after receiving summons it proposed to liquidate the arrear rentals at the rate of US \$500 per mensem. The respondent averred that its payment proposal was accepted. Surprisingly, however, it has made no payment ever since its payment proposal was allegedly accepted in January 2011. All it has been doing was to pay its monthly rentals. It paid no cent towards the liquidation of its arrear rentals.

According to the receipts it filed of record it has so far paid a total of US \$2674 for rent.

The respondent complained that it was unfair for the applicant to have continued with the court proceedings while when it seemed to accept the payment plan through its agents. It believed that litigation was no more being proceeded with as it continued to occupy the rented property and had been remitting its rentals.

The applicant on the other hand held a completely different view. It contended that it had never at any stage formerly withdrawn its case before the court. Accordingly, when the need arose it sought and was granted a judgement in default.

On 7 February 2012 the applicant filed the present application seeking an order that the respondent's application for rescission of judgement be dismissed for want of prosecution with costs of suit on an attorney and client scale. It complained that the respondent had failed to set the matter down within one month after it had filed its answering affidavit. Further, the respondent had also failed to file its heads of argument within 10 days of the applicant's heads of arguments.

The respondent was handling its case in a very perfunctory fashion right from the onset. It neglected to pay its rentals until it fell into arrears. It failed to comply with the rules of court when dealing with this matter. It now seeks the court to protect its laxity. This court cannot accede to such a request.

In the result, I would grant the following order:

It is ordered that:

- (1) The application filed by respondent under case number HC 1225/11 be and is hereby dismissed for want of prosecution.
- (2) The respondent be and is hereby ordered to pay cost of suit on an attorney and client scale.

Cheda & Partners, applicant's legal practitioners
Messrs Job Sibanda & Associates respondent's legal practitioners