

ELLEN MBUVAH
Versus
JAMES RANGANAI MANGACHENA & ANOTHER

CASE NO. HC 3891/12

MINING INDUSTRY PENSION FUND
Versus
DR ZIWAI MANESWA

CASE NO. HC 2152/12

NATIONAL RAILWAYS OF ZIMBABWE
Versus
DISHAI MARKETING & MERCHANDISING (PVT) LTD
And
ARUN HASSANI
And
POONAM HASSANI

CASE NO. HC 2151/12

NMB BANK LTD
Versus
BARMORE INVESTMENTS (PVT) LTD & 4 OTHERS

CASE NO. HC 3847/12

POSTATE INVESTMENTS
Versus
SIHLE NDLOVU

CASE NO. HC 3739/12

BEKITHEMBA MKANDLA
Versus
SIPHIWOKUHLE MAHLANGU

CASE NO. HC 3361/12

PLYMFIELD INVESTMENTS
versus
PRESTIGE SECURITY SERVICES (PVT) LTD
And
BASIRIO B. MACHACHA

CASE NO. HC 3975/12

JAMESON ZOWA
Versus
SUSAN ZOWA (NEE CHIDEME)

CASE NO. HC 786/09

IN THE HIGH COURT OF ZIMBABWE
CHEDA AJ
BULAWAYO 24 JANUARY 2013

Judgment

CHEDA AJ: I made an order in motion court that the above matters be removed from the roll and said the reasons would follow. These are they.

In case number 3891/12 the applicant filed a chamber application for a provisional order against the respondent. The provisional order was granted and served on the respondent. Thereafter, the respondent having not opposed the confirmation of the provisional order, the applicant proceeded to file a notice of set down for the hearing and confirmation of the provisional draft order in court.

Instead of the applicant filing a proper court application the application was set down for hearing still in the form of a chamber application. The rules for setting down a case as a court application were not followed.

Order 32 and the Rules therein set out clearly how a court application is made to a court. A chamber application is made to a judge in chambers according to Rule 226 (1)(b). A court application is made to a court in accordance with Rule 226 (1)(a).

Rule 226 (2) provides for a default judgment to be made as a chamber application. Rule 230 says a court application shall be made in Form number 29.

Rule 241 directs that a chamber application shall be made on Form number 29B.

It follows that a court application cannot be made to a court as a chamber application and vice versa. The correct format should be followed. For the sake of clarity a judge may at his discretion direct that a court application be heard by him in chambers and a chamber application be heard in court if he sees fit. A matter that starts as a chamber application should wear its correct court application jacket when it goes to court as it will no longer be a chamber application.

Accordingly, it was not proper to simply take chamber applications to court and attempt to treat them as court application while they are still presenting themselves as chamber applications, yet the orders sought are court orders to be made in open court.

Default judgments on simple claims are also chamber application as stated earlier. There is no justification for a default judgment to be set down in court, although there are specific cases, such as matrimonial cases and certain claims for damages which are made as court applications.

Accordingly, where a party seeks an order from a judge in chambers or a court order from the court, the correct format should be followed in terms of the above rules.

The above example applies to the above cases that were removed from the roll and must now be set down in terms of the appropriate rules and format.

I have discussed the above with the other judges and they concur with the above directive.