

ALBERT GANYANI
and
CLEMKWA WHOLESALERS (PVT) LTD
versus
KINGDOM BANK LIMITED
and
SHERIFF OF THE HIGH COURT
and
FALPINO DISTRIBUTORS (PVT) LTD
and
REGISTRAR OF DEEDS

IN THE HIGH COURT OF ZIMBABWE
KAMOCHA J
BULAWAYO 23 JANUARY & 7 MAY 2015

Opposed Court Application

C. Nhemwa for applicants
N. Ndlovu for 1st respondent
H. Ndlovu for 3rd respondent
No appearance for 2nd and 4th respondents

KAMOCHA J: The legal representatives of the first and third respondents conceded at the hearing that in terms of a judgment granted by the High Court sitting in Harare on 18 January 2012 all actions and applications and the executions of all writs, summons and other process against Clemkwa Wholesalers (Pvt) Ltd were stayed and not to be proceeded with without the leave of the court. They therefore agreed that this court issues an order in terms of the draft as amended by deleting paragraph 3.

The representatives of the 1st and 3rd respondents, however, contended that they should not be made to bear any costs in this matter. The applicant conceded that the 3rd respondent should not bear any costs but maintained that the 1st respondent bears the costs as prayed for.

Applicant submitted that on 25 January 2012 his legal practitioners addressed a letter to the 1st respondent's legal practitioners drawing their attention to the facts that Clemkwa

Wholesalers (Pvt) Ltd was placed under provisional judicial management. In terms of the order as read with section 301 (1) (c) of the Companies Act [Chapter 24:03] all actions and proceedings and execution of writs, summonses and other process against the company were stayed and could not be proceeded with without leave of the court.

Further the first respondent was made aware of the fact the attachment in execution of stand 971A Gwelo Township was invalid because the stand did not belong to Clemkwa Wholesalers (Pvt) Ltd. It belonged to Albert Ganyani who is the registered owner but had not been cited as a respondent in the proceedings.

Despite having been made fully aware of those facts the first respondent went ahead with its actions.

There can be no doubt that the conduct and behaviour of the first respondent has put the applicant and the 3rd respondent in unnecessary financial expenses. They need to recover all their expenses. This is a proper case for awarding punitive costs as a sign of disapproval of the 1st respondent's conduct.

In the circumstances this court issued the following order.

It is ordered that:-

- (1) the sale in execution of stand 971A Gweru Township to 3rd respondent be and is hereby declared null and void;
- (2) the 4th respondent be and is hereby ordered to cancel the Deed of Transfer transferring all rights, interest and title of the 1st applicant to the 3rd respondent; and
- (3) the 1st respondent be and is hereby ordered to pay costs of suit at an attorney and client scale.

C. Nhemwa and Associates, applicants' legal practitioners
Cheda & Partners, 1st respondent's legal practitioners
Chitere, Chidawanyika & Partners 3rd respondent's legal practitioners