

ZIMBABWE CONSTRUCTION AND  
DEVELOPMENT COMPANY  
and  
EDMUND CAMPION TAKAWIRA SHONHIWA  
**versus**  
LLLG CONTRACTORS AND ENGINEERING  
PRIVATE LIMITED

HIGH COURT OF ZIMBABWE  
MATHONSI J  
BULAWAYO 26 MAY 2017 AND 1 JUNE 2017

### **Civil Trial**

*N Mangena* for the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs  
*B Sengweni* for the defendant

**MATHONSI J:** In this matter the notice of set down was erroneously served upon the defendant at its physical address being No. 2 Ramvilla Court, 3<sup>rd</sup> Avenue and Fort Street Bulawayo. This was despite the fact that Messrs Sengweni Legal Practice had assumed agency on the defendant's behalf on 5 October 2016 the same day that the defendant's erstwhile legal practitioners Lunga, Gonese Attorneys had renounced agency.

When the matter came up for hearing on 23 May 2017 Mr *Sengweni* was in attendance on behalf of the defendant. He sought a postponement of the matter on the ground that he had taken over the matter from a colleague who was in South Africa who had been unaware of the date of set down. He also wanted to contact his client who was not in court, despite the notice of set down having been served at their physical address.

I acceded to the request and postponed the matter to today. Today Mr *Sengweni* has once again appeared without the defendant. He says he has failed to contact the defendant by telephone despite being given both the South African and Zimbabwean numbers belonging to the representative of the defendant. Mr *Sengweni* moved for the removal of the matter from the roll because the defendant was not properly served.

I find that to be totally preposterous because he is in court as a representative of the defendant because he is aware of the court date. In addition the defendant was served at its physical address, the only address which Mr *Sengweni* has as well although he says he has since been advised that the defendant moved from that address.

Surprisingly, Mr *Sengweni* is not aware of any new address at which the defendant may be served.

In my view, the defendant is deliberately avoiding court because, everything humanly possible has been done to bring the defendant to court but it has stayed away. Mr *Mangena* for the plaintiff has moved for the grant of default judgment in the circumstances.

I have no reason to refuse the application regard being had to the fact that proper service was effected but the defendant chose not to attend.

In the result it is ordered that;

1. Judgment be and is hereby entered in favour of the plaintiff against the defendant for payment of the sum of \$8392-00.
2. Interest on that amount at the prescribed rate of 5% per annum from 3 December 2015 to date of payment.
3. Costs of suit on an ordinary scale.

*Messrs Coghlan & Welsh*, plaintiffs' legal practitioners  
*Sengweni Legal Practice*, defendant's legal practitioners