

DRUMMOND RANCHING (PRIVATE) LIMITED
versus
WEST AGENCIES (PRIVATE) LIMITED

HIGH COURT OF ZIMBABWE
MOYO J
BULAWAYO 13 JUNE 2017 AND 22 JUNE 2017

Provisional Sentence

S P Sauramba for the applicant
P Garayi for the respondent

MOYO J: Plaintiff in this matter issued summons claiming a sum of \$55 895-21 together with interest at the prescribed rate. Plaintiff's claim is based on an account reconciliation statement and an acknowledgment of debt signed by defendant's finance manager. From the facts of the matter, it would appear both plaintiff and defendant were involved in the business of rearing and slaughtering chickens. This debt arises from plaintiff rendering assistance to defendant in the chicken slaughtering business where they were both leasing premises from Lunar Chickens Pvt Ltd. It would appear an electricity debt accrued during their co-existence forcing the defendant to pay to Lunar Chickens Pvt Ltd in terms of the electricity bill, what it supposedly owed plaintiff per Lunar Chickens Pvt Ltd's directive.

I will not delve into the nitty gritty of the relationship amongst the three parties or the merits or demerits of the agreements made in relation to the payments made. At the hearing of this matter defendant raised a point *in limine* to the effect that, this matter cannot be effectively heard or finalized without the joinder of Lunar Chickens Pvt Ltd as a party since it is an interested party in the matter and might assist in the resolution of the dispute.

Defendant submits that it has since made a court application in HC 747/17 for joinder of Lunar Chickens Pvt Ltd to these very proceedings hence the need to wait for that application to be finalized prior to this one being heard.

Plaintiff opposes that move and instead wants the matter to be dealt with on the merits. I have perused the court record in HC 747/17 and I note that Lunar Chickens Pvt Ltd consented to be joined in these proceedings as it is an interested party.

Paragraphs 6.1 and 6.2 of the affidavit filed on behalf of Lunar Chickens Pvt Ltd in those proceedings read thus:

“6.1 The second respondent does indeed have an interest in the main matter, and I am advised by my legal practitioners of record that in terms of the court application made by the client, Rule 93 of the High Court Rules provides for a third to be joined if there is indeed an interest in the matter.”

“6.2 It is therefore as a result of the above that the second respondent has no objectives to being joined in the proceedings as we have interest in the matter as has been indicated in the court application by the applicant.”

Of course that application is opposed by the plaintiff herein. It is now at heads of argument stage. It makes no difference in my view whether that application is opposed by the plaintiff as clearly, Lunar Chickens Pvt Ltd consents to the joinder and does express interest in the matter.

It would therefore not be in the interests of justice that an application to join a party to these proceedings is made and is pending, we however proceed to hear this application so much so that the other application for joinder is rendered academic. What if Lunar Chickens Pvt Ltd is indeed joined to these proceedings and will render the resolution of this dispute simpler and straight forward? Why would this court rush to determine a dispute between two parties in which a third party might be relevant without that third party being involved and yet court processes to involve it are at an advanced stage and in fact that third party has consented to the joinder as it certainly considers itself as being relevant in the resolution of this dispute?

I hold the view that to rush to determine the issue without first awaiting to see if the court will join the third party would certainly not be in the interests of justice.

The main aim of this court is to achieve justice between man and man and it would not be in the spirit of achieving justice to clearly shut out a possibility that a third party could have an interest or could even assist the court in the resolution of the dispute.

It is for these reasons that I hold the view that whatever the result of the application for joinder will be, this matter cannot proceed without the application for joinder having been finalized first.

I will accordingly uphold the point raised *in limine* by the defendant and I will order that this matter shall only proceed after HC 747/17 has been heard and finalized.

It is ordered that:

- 1) This matter be and is hereby postponed *sine die*.
- 2) That this matter can only be re-set after the application for joinder in HC 747/17 has been finalized.
- 3) That costs shall be in cause.

Majoko and Majoko, applicant's legal practitioners
Chinawa Law Chambers, respondent's legal practitioners