

PRIMROSE ZIKHALI
versus
PROPERTY PLUS REALTORS (PVT) LTD
and
SHERIFF OF THE HIGH COURT-BULAWAYO

HIGH COURT OF ZIMBABWE
MOYO J
BULAWAYO 7 AUGUST 2018 AND 27 SEPTEMBER 2018

Urgent application

Applicant in person
Ms J Mugova for the 1st respondent

MOYO J: This is an urgent application wherein the applicant seeks the following interim relief:

“pending the determination of this matter, the applicant is hereby granted the following relief:

- 1) The second respondent Sheriff of the High Court is ordered to immediately and unconditionally suspend execution and ejection and if already removed, the second respondent be and is hereby ordered to unconditionally and at no cost to the applicant, release and deliver all the attached goods to the applicant.”

At the hearing of this application I dismissed it and stated that my detailed reasons would follow. Here are the reasons.

Applicant is conducting business at the premises owned by first respondent. First respondent had a lease agreement with a third party who is not before this court wherein that third party leased the premises now occupied by the applicant. It would appear there was a

private arrangement between applicant and that third party, allowing applicant to exercise that third party's rights as a sub-tenant.

Such an arrangement is not based on any contractual agreement with first respondent. Therefore according to first respondent it is that third party who is leasing the shop and now that there is a writ of ejectment against her and all those who claim through her, that writ operates effectively against the applicant who is not a tenant but claims through the absent third party.

For applicant to get the kind of relief that she is seeking, she should satisfy the requirements of an interdict which are

- 1) a *prima facie* right
- 2) a well-grounded fear of harm (to that right)
- 3) the absence of another remedy
- 4) and the balance of convenience favouring the granting of an interdict.

Refer on this aspect to the case of *Zesa Staff Pension Fund v Mushambadzi SC 57/02*.

The applicant's case hit a brick wall on the very first requirement for an interdict, that is, she has no *prima facie* right to be in the premises as she is in unlawful occupation having no lease agreement and claiming through a person whom the court has already granted an eviction order against.

Applicant falls into the category of all those claiming through the first defendant in the main case, in that her occupation of the premises is itself unlawful since she has no lease agreement with the first respondent but she depends on some agreement she had with the rightful tenant. She therefore has no *prima facie* right to present and protect. She is equivalent to a trespasser and an unlawful occupier. The application has to fail solely on this basis. Even if for arguments' sake a right did exist in applicant's favour, the relief she seeks is incompetent as it is final in nature.

It is for these reasons that I declined the order sought and dismissed the application with costs.

Messrs Mushoriwa Pasi Corporate Attorneys, 1st respondent's legal practitioner