HB 70-18
HC 2886/16
XREF HC 2008/10
XREF HC 1663/13
XREF HC 3030/13
XREF HC 618/14
XREF HC 2155/14

MACKENZI TAYA MLOTSHWA
versus
COGHLAN AND WELSH BULAWAYO
and
THE LAW SOCIETY OF ZIMBABWE
and
THE DEPUTY REGISTRAR OF THE HIGH COURT

HIGH COURT OF ZIMBABWE
MOYO J
BULAWAYO 20 FEBRUARY 2018 AND 22 MARCH 2018

Opposed Application

Applicant in person
E Sarimana with *Mrs Bhebhe* for the 1st respondent

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

1. That third respondent be and is hereby directed to appoint a lawyer to represent Mrs Ivy Mary Abraham in defending her interests in HC 2008/10.
2. That second respondent be and is hereby directed to conduct an enquiry into the affairs of first respondent with a view to taking corrective action if need be.
3. That second respondent be and is hereby directed to investigate the affairs of its own secretariat to establish whether or not they were knowingly working in cahoots with first respondent.
4. That first respondent pays damages amounting to USD 200 000-00.
5. That a sum of $118-00, being the bond cancellation fee which first respondent had erroneously charged applicant, be refunded.

6. Interest at the prescribed rate he charged on the started amount of USD 2000000-00 appearing in order 4 above, from the date of judgment to the date of payment.
7. Interest paid on the sum of USD 118-00 from the 27th of July 2015 (being the date payment was made to first respondent) to date of payment.
8. First respondent pays the costs of suit at a punitive scale.

At the hearing of this matter I dismissed it after upholding the two points *in limine* raised by the first respondent and I stated that my reasons would follow, here are the reasons. The first respondent raised two points *in limine,* the first one being that the applicant has no *locus standi* to institute proceedings on behalf of Mrs Ivy Mary Abraham who is also an adult and is in control of her affairs. The first respondent also raised another point *in limine* to the effect that applicant cannot sue for damages by way of motion proceedings, that he should have filed action proceedings in that regard.

The facts of this matter are that the applicant lent his title deeds to the Abrahams so that they could use the title deeds as security for a loan. The Abrahams were given a loan by Agribank and applicant's title deeds were duly mortgaged. First respondents are lawyers for Agribank. When the Abrahams defaulted their repayments, Agribank then instructed first respondent to foreclose the bond and recover its monies. First respondent did just that. Applicant then frantically tried to block the sale of his house by seeking an order that his property be released from being security against the debt owed by the Abrahams to Agribank and that the property owned by the Abrahams be substituted as security and that it then be mortgaged instead. After some time, he got such an order but the Abrahams did not surrender their original title deed so that the swap could be effected. Applicant had to approach the court again seeking an order that the Registrar of Deeds be ordered to accept the bond registration on the title deed owned by the Abrahams, without the original title deed. All this time the Abrahams were represented by a firm of lawyers. Agribank was represented by first respondent. Applicant was not happy with the manner in which first respondent conducted itself, he expected first respondent to do

something about the non-availability of the original title deeds from the Abrahams, he expected them to act in his interests and find or produce an original title deed for the Abrahams property and then register the bond on it. First respondent could reasonably not do that in the circumstances, the Abrahams were not its clients, they had no power or authority to act in the manner that applicant expected then. Applicant then reported first respondent to the Law Society of Zimbabwe. He was equally not happy with the Law Society's conduct causing him to cite them as the second respondent in this case. As for first respondent the claim for damages emanates from its inaction in failing to "produce" an original title deed by the Abrahams so that applicant's interests would be served.

It is not clear as to why applicant decided to sue on behalf of the Abrahams, without their authority, it is not clear as to why he would want lawyers to be appointed by the Deputy Registrar on the Abraham's behalf and yet they have their own firm of lawyers and even if they did not it is none of his business that they do not have lawyers as he has no authority to think, decide and act on their behalf.

The claim for damages is not only baseless as against first respondent but it is brought inappropriately as these are motion proceedings and they cannot be used to bring such a claim because of the obvious reason that there are issues that need to be ventilated therein and the procedure of doing so requires action proceedings. The applicant is a self actor and seems not to have the slightest appreciation of the substantitve law and the procedural aspects of same. He has just decided to plunge himself head long with his eyes closed, on a venture in which he is totally ignorant. The unfortunate thing is that there are no separate rules for self actors and a litigant who approaches a superior court like this one, with no, know how as to the mission he seeks to embark on, is subjected to the same rules of court as the ones applicable to legal practitioners. It therefore follows that where a self actor, initials litigation in these courts, they are undertaking to follow and be subjected to the rules as are applicable to everyone else. In other words a self actor who approaches a superior court like this one is saying I know what I am

doing I have researched and I am aware of the parameters of both the substantive and the procedural aspects of the law relating to my case.

I say so for if a self actor is indigent, and is ignorant of the rules and the law, he should seek legal counsel from those who know through approaching legal aid organisations. If he can afford legal representation, then it is better to engage a lawyer who is going to properly advise him than to plunge headlong into a mission he does not comprehend. This application is in fact abuse of court process as I have already shown herein. It is an unwarranted, unprecedented and unnecessary suit that has left those defending it out of pocket. It is for these reasons that the points *in limine* were upheld and the application was dismissed with costs on a punitive scale. Costs will be awarded to the successful party on a punitive scale where the litigation mounted is frivolous and vexatious and amounts to an abuse of court process. In the case of *re: Ailuvial Creek Ltd* 1929 CPD 532 it was held that the grounds upon which a court may order a party to pay costs at an attorney-client scale include the following, that the party has been guilty of amounting vexatious proceedings, where an application was made recklessly without any attempt to ascertain the correctness of the facts. It was also held in the case of *Lemore* v *African Mutual Credit Associates* 1961 (1) SA 195 (C) that proceedings may be vexatious although the intention of the litigant may not have been such.

It is for reasons enunciated herein that I dismissed the application with costs on an Attorney and client scale.

Coghlan and Welsh, 1st respondent's legal practitioners