

LAZARUS CHASIYA
versus
LOU HONG QIANG
and
THE REGISTRAR OF DEEDS

HIGH COURT OF ZIMBABWE
KAMOCHA J
HARARE 20 MAY 2004

Opposed Court Application

Mr *Ncube*, for the applicant
Mr *Tsurama*, for 1st and 2nd respondents
no appearance from 3rd respondent

KAMOCHA J: This is an application for a joinder wherein applicant sought to join the 2nd and 3rd respondents as parties to an action filed under case No. HC 6032/02 "the main case". In that case 1st respondent sought to evict the applicant from his (1st respondent's) property known as No. 44 Northolt Drive, Bluffhill - "the property".

The facts that are common cause are that applicant was employed by the 2nd respondent. The 1st respondent is its managing director. In addition to the claim of ejectment of applicant from the property 1st respondent was claiming payment of certain sums of money.

The basis of the claims was that the 1st respondent had offered transfer of the property from his name into that of the applicant as payment or satisfaction of the applicant's claims against the 2nd respondent which arose from the termination of the employment contract between him and the second respondent on mutually agreed terms in the sum of \$1 300 000 and whatever other claims applicant had against the 2nd respondent and on condition that the applicant took over the repayment of the balance due in terms of a mortgage bond registered over the property. Thereafter, applicant was given possession of the property and he started making bond repayment for the property.

The first respondent is now claiming that the applicant has resiled from this agreement and has instituted proceedings in the main case. The proceedings have prompted applicant to apply for a joinder of the 2nd and 3rd respondents as second and third plaintiffs in the main matter. The basis of the joinder is that applicant intends to file a counter claim against the 2nd respondent for wrongful termination of employment and non payment of commissions, salaries and leave pay. The 3rd respondent is being joined because applicant intends to compel him to approve the registration of No. 44 Northolt Drive, Bluffhill in his name.

The first respondent has not specifically denied the averments of the applicant contained in paragraphs 5, 7 and 8 which are therefore taken as being admitted. In those paragraphs applicant pointed out that the declaration filed by 1st respondent clearly refers to him as being employed by the 2nd respondent and that his employment with second respondent was mutually terminated. The declaration also reveals that second respondent and applicant agreed that applicant would be paid a sum of \$1 300 000 in respect of all his outstanding claims and further that first respondent would offer applicant the said immovable property in lieu of any claims that applicant might have against second respondent.

Applicant went on to explain in paragraph 7 that he sought to join 3rd respondent because he intended to seek an order to compel him to approve the registration of the said property in his name. He further contended that in view of the fact that his counter-claim was against the second respondent and that the activities of the second respondent were managed and directed by first respondent, it was in the interest of justice that the second respondent be joined as a party to the proceedings in the main case.

Applications for joinder are brought in terms of rule 85 of the rules of court which provides that:-

"Subject to rule 86 two or more persons may be joined together in one action as plaintiffs or defendants whether in convention or in reconvention where -

- (a) if separate actions were brought by or against each of them, as the case may be, some common question of law or fact would arise in all the actions; and
- (b) all rights to relief claimed in the action, whether they are joint, several or alternative, are in respect of or arise out of the same transaction or series of transactions".

A multiplicity of actions is undesirable. The joinder procedure was designed to prevent such multiplicities of actions which involve the same parties, issues or questions of law and fact. In *Building Electrical & Mechanical Corp (Salisbury) Ltd vs Johnson* 1950(4) SA 303 (SR) BEADLE J as he then was had this to say about the main object of this procedure at 308 C-D -

"It is to avoid multiplicity of actions dealing with substantially the same subject matter and involving much the same evidence. Its object is to combine such actions together in one trial and so save time and expense, particularly to save the defendant from the inconvenience of proving over again the same facts for the purpose of getting the remedy to which he is entitled ..."

The learned Judge continued at 309 G.

"I think therefore that when the same facts have to be conned over in order to ascertain the liability and to give relief to one or other of the parties in such a case the rule now provides that it is unnecessary to have separate actions or separate proceedings but that a third party notice may be served."

In casu applicant's actions are cost effective and will save time. If he were to bring separate actions against the company and the director of the company he would be duplicating actions unnecessarily. The 3rd respondent has to be made party so that he can be compelled to carry out the order the court may issue. In the light of the foregoing I would grant the application in terms of the draft.

Gill, Godlonton & Gerrans, applicant's legal practitioners

Sawyer & Mkushi, 1st and 2nd respondents legal practitioners