

COLLIN JIMU  
versus  
LIFESAVER INVESTMENTS (PRIVATE) LIMITED  
and  
DEPUTY SHERIFF

HIGH COURT OF ZIMBABWE  
HUNGWE J  
HARARE, 14 July 2010

The applicant in person  
*A.A. Dehwe*, for the first respondent

HUNGWE J: This is an application for rescission of judgment in which the application was dismissed on the turn.

The applicant, a self actor requested for written reasons for the decision dismissing this application on the date of hearing. These are the reasons.

The applicant seeks rescission of judgment granted in default on 25 January 2010 under HC 7064/08.

In his founding affidavit the applicant avers that he was not in wilful default because he had punctually attended at Court J where the matter was scheduled to be heard. After waiting for business to resume to no avail he left Court J to seek assistance from the Registrar. He was assured that he was in the right court, he had to be patient.

He went back into Court J. Later the same officer approached him to advise that there had been a mix-up as this case was before the JUDGE PRESIDENT in Court N.

When he eventually got into Court N business in that court had concluded. A default judgment had been entered against him in favour of the first respondent.

As for his defence against the first respondent's claim he claims that the first respondent is not the owner of the house in question so he has no right to evict him. He claims that he has no power of attorney to act on behalf of the owner of the house, one Dennis Shoko. He denied that he was given the three months notice to vacate that he would have been entitled to at law, in terms of the rent regulations.

First respondent in its opposing affidavit pointed out that the applicant's affidavit is founded on false information. It pointed out that the applicant has always known that the first

respondent was the lawful estate agent of the lessor. The applicant had applied for his tenancy through it and as such had recognised the first respondent as the lawful agent of the owner of the house. It attached the applicant's application form for full measure.

Secondly, the first respondent disputed that Dennis Shoko owned, the house. In support of this it produced title deeds to the premises which showed that in fact the true owner of the house is Blessing Bessie Nyatsango.

It also produced a notice to vacate dated 25 July 2008 and received by one O'connor the brother to the applicant on 26 July 2008.

In fact, the applicant stopped paying rent in June 2008 prompting the owner to file for the applicant's eviction, so the first respondent says.

The applicant had no answer to all these assertions besides stating that he had paid his rentals in advance.

He was asked to prove his claims that his rentals were up to date till the day he received summons. He could not.

The first respondent conceded properly that the applicant was not in wilful default as there was a mix-up of the courts that day. It says it was also affected by the mix up.

It further contends however that the applicant cannot succeed unless he can also show that he had a good defence to the first respondent claim. The first respondent urged the court that as the applicant's case was very weak, it was bound to fail. No purpose will be served by rescinding the default judgment since the applicant will fail anywhere in the main case.

I agree with the contention that where an applicant for rescission is unable to demonstrate that he has a plausible case, or a triable issue, or sufficient cause, he cannot succeed in a rescission of judgment. See *Shinga (Pvt) Ltd v Hubert Davies (Pvt) Ltd* 1989 ZLR 45 (H).

It will be an abuse of process to allow hopeless resistance to just claims the discretion of rescission. Rescission is a step which is within the discretion of a court which must be exercised judiciously. To bend backwards so as to allow hopeless argument is not a judicial exercise of such discretion.

In the present case it is clear on the papers that the main basis for instituting the application for eviction was that the applicant had not paid his rentals since July 2008. Had this contention been false, this could have been easily demonstrated by attaching proof of such payment at the outset of the proceedings. The fact that even in his application for rescission the

applicant did not bother to show this proof demonstrates that the claim is not being seriously made.

In the premises I dismissed the application on the turn.

*Dehwe & Partners*, 1<sup>st</sup> respondent's legal practitioners