

PATHFINDER INTERNATIONAL (PVT) LTD
versus
THE TRUSTEES OF ALEXANDER CLUB

HIGH COURT OF ZIMBABWE
BHUNU J
HARARE, 24 February 2011 and 25 February 2011

Mr Mabulala, for the applicant
Mr Machingambi, for the respondent

BHUNU J: The respondent is the applicant's tenant. The parties are engaged in litigation under case Number HC 5940/2010 wherein the applicant has instituted eviction proceedings against the respondent.

On 26 November 2010 the respondent filed a Court application seeking to amend its plea filed on 4 November 2010 where upon the applicant filed its notice of opposition on 9 December 2010. A period of more than one month has since expired without the respondent prosecuting its application.

The respondent ought to have filed its answering affidavit or set the matter down for hearing within a period of one month in terms of r 236 (3). Failure to do so entitled the applicant to apply for the dismissal of the application for want of prosecution. To date the respondent has neither filed an answering affidavit nor set down the matter for hearing in terms of the rules.

The applicant has now filed a chamber application seeking the dismissal of the applicant's application to amend its plea. At the hearing in my chambers it emerged that the respondent had no reasonable excuse for its failure to comply with the rules other than to delay proceedings as it is currently occupying the applicant's premises without paying any rentals. That being the case, this application can only succeed. The respondent's conduct in this regard is reprehensible as it amounts to an abuse of process. The Court can only express its displeasure by an award of adverse costs.

It is accordingly ordered that the court application filed by the respondent in Case No. HC 8608/10 be and is hereby dismissed with costs at the legal practitioner client scale.

2

HH 59-2011

HC 8608/10

Mabulala and Motsi, applicant's legal practitioners

Machingambi Legal Practitioners, respondent's legal practitioners