

AGRICULTURAL BANK OF ZIMBABWE
LIMITED
versus
TONGAI KASUKUWERE

HIGH COURT OF ZIMBABWE
MATHONSI J
HARARE, 28 March 2013 and 3 April 2013

Opposed Application

S K Chiwizhe, for the applicant
The respondent in default

MATHONSI J: This is an application in which the applicant seeks summary judgment in the sum of US\$43 086-65 plus interest at the prescribed rate from due date to date of payment. It also seeks an order that stand 1346 Que Que Township of stand number 277A Que Que Township which was mortgaged be declared executable and that the respondent should bear the costs of suit on a legal practitioner and client scale.

In its summons the applicant averred that the parties entered into a written loan agreement on 20 August 2010 in terms of which it advanced certain sums of money to the respondent of which the amount claimed remains outstanding. It stated further that as security for the loan the respondent passed a Note of Hand over his property located in Kwekwe.

The respondent entered appearance and filed a plea in which he denied that the loan was ever advanced to him. He averred that the loan agreement was not entered into by him but other “persons” who did not have his authority but took the loan in their “personal capacities.” He also denied authorising the registration of the security on his property.

In support of its claim the applicant has produced the loan agreement signed by the respondent on 20 August 2010 as well as a schedule of the respondent’s account showing how the amount claimed is arrived at.

In his opposing affidavit the respondent raised essentially two defences namely that the deponent of the founding affidavit to the summary judgment application cannot swear positively to the facts and has no authority to depose to the affidavit on behalf of the applicant. He also contested the interest.

Rule 64 (2) of the High Court of Zimbabwe rules requires that the application for summary judgment must be supported by:

“an affidavit made by the plaintiff or by any other person who can swear positively to the facts set out therein, verifying the cause of action and the amount claimed, if any and stating that in his belief there is no *bona fide* defence to the action.”

Norman Chanaka the deponent of the founding affidavit is the Legal Services Manager of the applicant who states that he is duly authorised to depose to the affidavit.

I am satisfied that r 64 (2) has been complied with and that there is no merit whatsoever in the argument advanced by the respondent. See *Timnda Truck Parts (Pvt) Ltd v Auto Light Distributors (Pvt) Ltd* 1996 (1) ZLR 244 (H).

In order to succeed in defeating an application for summary judgment the respondent must disclose his defence and material facts upon which it is based with sufficient clarity and completeness to enable the court to decide whether he has a *bona fide* defence: *Maharaj v Barclays National Bank Ltd* 1976 (1) SA 418 (A) 426 D; *Hales v Doverick Investments (Pvt) Ltd* 1998 (2) ZLR 235 (H) 238 G.

In *casu* the respondent denies entering into a loan agreement with the applicant but does not dispute the authenticity of his signature on it. He vaguely denies passing the security of his property without giving any meaningful explanation. Even his challenge of the interest is unclear.

I am satisfied that the respondent does not have a *bona fide* defence to the claim and that appearance has been entered for purposes of delay. Accordingly it is ordered, that:

1. Summary judgment be and is hereby entered against the respondent as follows:
 - (a) The respondent shall pay the applicant the sum of US\$43 086-65 being the outstanding loan advanced to the respondent by the applicant.
 - (b) The respondent shall pay the applicant interest at the prescribed rate on the loan balance calculated from the date of summons to date of payment in full.
 - (c) Stand number 1346 Que Que Township of stand number 277 A Que Que Township tendered as security for the loan is hereby declared executable subject to the availability of movable property to satisfy the debt.
 - (d) The respondent shall bear the costs of suit on a legal practitioner and client scale.

Wintertons, applicant's legal practitioners
Mtamangira & Associate, respondent's legal practitioners