

EDWIN WANGIRAYI NHANDO
and
NEW CIVILS (PRIVATE) LIMITED
versus
INTERFIN BANKING CORPORATION LIMITED
and
SHERIFF OF ZIMBABWE
and
DEPUTY SHERIFF, BULAWAYO
and
THE SECRETARY FOR THE MINISTRY OF LOCAL GOVERNMENT,
PUBLIC WORKS AND NATIONAL HOUSING
and
ZIMBABWE NATIONAL WATER AUTHORITY

HIGH COURT OF ZIMBABWE
MATANDA-MOYO J
HARARE, 24 December 2013 & 8 January 2014

Advocate Mativenga, for the applicant
Advocate Uriri, for 1st respondent
Dondo, for 5th respondent

MATANDA-MOYO J: On the date of the hearing I dismissed the application as being improperly before the court. I indicated that reasons would follow. These are they:

Applicant seeks the following relief;

“TERMS OF FIANL ORDER SOUGHT.

That you show cause to this Honourable court why a final should not be made in the following terms-

1. That the debt owed by the Zimbabwe National Water Authority to second applicant be and is hereby ceded to the first respondent for the value of the judgment debt in case No. HC 2559/13.
2. The second respondent be and is hereby ordered to permanently stay execution against applicant’s dwelling being stand No. 6 Anita Road, Burnside, Bulawayo.
3. Costs shall be borne by the applicants if the application is unopposed

OR Alternatively that:

4. The second respondent be and is hereby ordered to permanently stay execution against applicant's dwelling being No. 6 Anita Road, Burnside, Bulawayo.
5. That second applicant be and is hereby ordered and directed to pay the amounts due to the first respondent upon its receipt of the funds owed to it by the Zimbabwe National Water Authority.
6. -----

INTERIM RELIEF GRANTED

Pending determination of the application for rescission of judgment, the applicant is granted the following relief:

- 1) The second respondent be and is hereby ordered to send written notification to the 4th respondent that the 1st applicant's dwelling being stand No. 6. Anita Road Bumside, Bulawayo has been attached and to take no further steps in regard to the sale of the dwelling or eviction of the occupants for a period of ten days.
- 2) 3rd respondent be and is hereby ordered to stay execution against applicant's property pending a response from 4th respondent in terms of Order 40 Rule 348 A (3).
- 3) The Zimbabwe National Water Authority be and is hereby ordered to pay all amounts owed by it to the 2nd applicant, to the 1st respondent's legal practitioners Messrs Dube Manikai and Hwacha to the value of the judgement debt in case No. HC 2559/13.
- 4) Costs to be borne by first applicant"

The brief facts are that 2nd applicant was advanced a loan by the 1st respondent. 1st applicant and his wife stood as sureties for the loan advanced. As at 12 March 2013 the loan amount stood at \$321, 962.78. As a result 1st respondent applied for and was awarded a provisional sentence against 2nd applicant, 1st applicant and his wife on 15 May 2013. On 3 September 2011 a writ of execution was issued by this court against stand No. 6 Anita Road, Burnside Township. Such writ of execution was served upon 1st applicant and his wife on 9 September 2013. On 13 December 2013 applicant filed an urgent chamber application for the stay of execution of the sale of a dwelling in terms of Order 40 Rule 348A of the High Court Rules, 1971;

The respondents raised a point *in limine* that such application was filed out of time and should be dismissed as no condonation had been sought and granted by this court.

Rule 348 A (5a) provides:

“Without derogation from subrule (3) to (5) where the dwelling that has been attached is occupied by members of his family, the execution debtor may within ten days after the service upon him of the notice in terms of rule 347, make a chamber application in accordance with subrule (5b) for the suspension of;

1. The sale of the dwelling concerned, or
2. The eviction of its occupants.”

In a similar case of *Meda v Homelink (Pvt) Ltd & Anor* 11 HB 195 this court ruled that the application was not properly before the court as it had been filed well after the ten day period provided for in the rules. In *casu* this application having been filed well after the ten day period, and condonation not having been sought nor granted, I found that the application was improperly before me.

According the application is dismissed with costs for want of compliance with the rules.