

GABROC ENTERPRISES (Pvt) Ltd
versus
ARNOLD ZINDOGA
and
DEBROLL INVESTMENTS (Pvt) Ltd

HIGH COURT OF ZIMBABWE
MANGOTA J
HARARE, 13 January 2014

Chamber application

C. Mavhondo, for the applicant
N. Bvekwa, for the respondents

MANGOTA J: The applicant filed an application in terms of rules 136 and 241 of the rules of this court. It prayed that the application which the respondents filed with the court on 12 April 2013 be dismissed with costs for want of prosecution.

On going through the papers which were filed of record in respect of both applications, I noted that:

on 12 April, 2013 the respondents filed an application with the court for rescission of a default judgement which had been entered against them when they failed to file their plea within the time which the rules of court permitted them to have done so.

the applicant filed with the court, and served on the respondents, its notice of opposition within the time limits which the rules of this court prescribed – and

the respondents did not file their answering affidavit(s) nor did they set the matter down for hearing after the applicant had filed and served on them its notice of opposition.

I noted, further, that the rules of this court allowed the respondents **one month** within which they had to act. The applicant, it is needless to stress, filed and served on the respondents its notice of opposition on 29 April 2013. The applicant's application was considered and granted on 9 September, 2013 - i.e. some three months after the time which the rules permit. I was, in view of that stated fact, not persuaded to even consider that the

respondents harboured in their minds the intention to continue with their application for rescission of judgement.

The application which the applicant placed before me was filed in terms of Rule 236 (3) (b) of the rules of this court. The rule reads:

“Where the respondent has filed a notice of opposition and an opposing affidavit and, within one month thereafter, the applicant has neither filed an answering affidavit nor set the matter down for hearing, the respondent on notice to the applicant, may either-

- (a) ----- or
- (b) make a chamber application to dismiss the matter for want of prosecution, and the judge may order the matter to be dismissed with costs or make such other order on such terms as he thinks fit.”

It is pertinent to mention that the respondents *in casu* were applicants in the application which they made for rescission of judgements and the present applicant was the respondent in the same case. It goes without saying, therefore, that rule 236 (3) (b) is properly applicable in the present case. That rule supports the case of the applicant in a manner which requires no debate at all.

For the abovementioned reasons, therefore, I remained convinced that the applicant’s application was not without merit. The application is, accordingly, sustained with costs.

Mhishi Legal Practice, applicant’s legal practitioners
Bvekwa Legal Practice, respondent’s legal practitioners