

INTERFIN BANKING CORPORATION (PVT) LIMITED
versus
MIRACH TRADING (PVT) LIMITED
and
TENDAI CHINYAI
and
ADAMAFIO NDAWA

HIGH COURT OF ZIMBABWE
MATHONSI J
HARARE, 25 June 2014

Pre-trial conference

A. Chagonda with *Ms A. Mugabe*, for the plaintiff
2nd defendant in person

MATHONSI J: This is a matter in which the second defendant is being sued for US\$139 544-25 together with interest at the rate of 20% per annum over the interest rate applicable to the account and costs of suit on a legal practitioner and client scale, as a surety and co-principal debtor for a loan advanced to the first defendant.

I must mention that the principal debtor has not denied liability and judgement has already been entered against the principal debtor but it remains unacquitted.

The pre-trial conference was initially pensiled for 22 May 2014 but was postponed to 28 May 2014 and I issued directions that the parties should hold a round table conference on 27 May 2014 at which they were to prepare and sign a deed of settlement. Those directions were informed by the deliberations before me which showed that the second defendant had no defence.

When the parties returned to me on 28 May 2014 they had not reached a settlement and although the second defendant had been directed in the notice to attend pre-trial conference served upon him on 12 May 2014 to file a summary of evidence before the pre-trial conference, he had not done so.

At the end of the discussions on 28 May 2014, I issued further directions including one requiring the second defendant to file his pre-trial conference minute and summary of evidence by 20 June 2014. He has not done so. Mr *Chagonda* for the plaintiff has applied

that default judgment be entered against the second defendant for failure to comply with directions.

The initial notice for defendant to file his pre-trial conference papers was given in terms of r 182 (4) of the High Court Rules. It was not complied with. I issued further directions which were ignored. In terms of r 182 (11):

“A judge may dismiss a party’s claim or strike out his defence or make such other order as may be appropriate if-

- (a) the party fails to comply with directions given by a Judge in terms of subrule (4) (6) (8) or (10) or with a notice given in terms of subrule (4); and
- (b) any other party applies orally for such an order at the pre-trial conference or makes a chamber application for such an order.”

The second defendant having failed to comply with directions aforesaid and an application having been made orally for default judgement, my hands are tied.

Accordingly it is ordered that;

1. The second defendant’s defence is hereby struck out.
2. Judgement be and is hereby entered against the second defendant in the sum of US\$139 544-25 together with interest at the rate of 20% per annum over and above the rate of interest applicable to defendant’s account with effect from 31 December 2010 to date of payment.
3. Costs of suit on a legal practitioner and client scale and collection commission as provided for under the Law Society of Zimbabwe by laws.

Sawyer and Mkushi, plaintiff’s legal practitioners