

SHABIR OMAR  
and  
AISHA OMAR  
versus  
JAMILA OMAR  
and  
THE SHERRIFF OF ZIMBABWE

HIGH COURT OF ZIMBABWE  
UCHENA J  
HARARE, 21 and 24 March 2014

**Urgent application**

*T. Dzvetero*, for the applicant  
*V. Chivore*, for the 1<sup>st</sup> respondent

UCHENA J: The first applicant and second applicant filed an application for stay of execution pending their application for re instatement of the first applicant's appeal against an order for eviction granted in favour of the first respondent. The later application is pending before the Supreme Court.

The first applicant did not file a founding affidavit nor did he give any one a power of attorney to represent him. The second applicant took it upon herself to mount this application in the first applicant's name who she called the first applicant. She made her self the second applicant and deposed to a founding affidavit on which this application was based.

Mr *Chivore* for the first respondent raised a point in limine arguing that the second applicant had no *locus standi* to file this application as she was not a party to the case in which the first respondent was granted an eviction order against the first applicant. She was also not a party to the appeal which has lapsed, for which an application for reinstatement has been made to the Supreme Court.

Mr *Dzvetero* submitted that she had *locus standi* on the basis that she was the first applicant's wife and has an interest against the pending eviction.

I in an *extempo* judgment, based on the brief notes for judgment recorded in my note book, ruled that the second applicant did not have *locus standi* and dismissed the application. The applicants appealed to the Supreme Court, resulting in my being requested for a written judgment. The following are the reasons I gave in my *extempo* judgment of the 24<sup>th</sup> March 2014.

The second applicant did not have *locus standi* because she was not a party to the dispute between the first applicant and the first respondent. The second applicant decided to mount this application without the involvement of the first applicant whose appeal had lapsed leading to the pending execution which she sought to stop through this application. She said she had to do so because the first applicant was not in the country. She further sought to apply on behalf of the first applicant without being empowered to do so.

In considering the preliminary issue I took into consideration the fact that the first applicant is not properly before the court. I am satisfied that one can not apply on behalf of another without being authorised to do so. The second applicant's attempt to bring an application on behalf of the first applicant without his authorisation must therefore fail.

The issue of the second applicant's entitlement to file this application in her own right depends on whether or not she has a real and substantial interest in the matter. The first applicant was the appellant in the case which was pending in the Supreme Court but has lapsed. An application is being made for its re-instatement in the same manner this application has been made. The second applicant seeks to involve herself in staying execution pending the application for the reinstatement of the appeal to which she has not been and is not a party.

Generally a party who has not been a party to already completed litigation is not allowed to thereafter, interfere with such litigation. In the case of *Econet (Pvt) (Ltd) v Telecel Zimbabwe (Pvt) (Ltd)* 1998 (1) ZLR 149 (HC), it was held that "as Telecel was not a party to the proceedings before the Judge President, it did not have *locus standi* to appeal against the order".

The second applicant could have obtained a power of attorney from her husband and sued in his name. She can not just intervene on her own disregarding the need to properly involve her husband who is the appellant in the lapsed appeal. I therefore uphold the respondent's preliminary issue.

The applicants' application is dismissed with costs.

*Antonio & Dzvetero*, for the applicant  
*Gula-Ndebele & Partners*, for the 1<sup>st</sup> respondent