

MARIA NHAWU
versus
BERNARD CHIGUTEI
and
THE DIRECTOR OF HOUSING, CITY OF HARARE
and
THE SHERIFF OF ZIMBABWE

HIGH COURT OF ZIMBABWE
ZHOU J
HARARE, 10 & 16 March 2016

Urgent Chamber Application

Applicant in person
N. Bvekwa for 1st respondent

ZHOU J: This is an urgent chamber application for stay of execution of a judgment given by this court in favour of the first respondent in Case No. HC 3230/08. The precise relief being sought is set out in the draft provisional order as follows:

“TERMS OF THE FINAL ORDER

1. That you should cause (*sic*) to this Honourable Court why an order should not be made in the following terms:
 - (a) That the application for stay of ejectment should be granted.
 - (b) That the 1st respondent shall not pay costs of this application.

INTERIM RELIEF GRANTED

Pending determination of this matter, Application (*sic*) is granted the following relief:

- (a) The stay of ejectment be and is hereby granted.

SERVICE OF THE ORDER

This provisional order shall be served by the 3rd respondent on the respondents.”

The application was filed in response to the service of a Notice of Seizure and Attachment which was served upon the applicant on 7 March 2016. In terms of that notice the respondent and all persons claiming occupation through her were given 48 hours within which to vacate premises known as 7374 Budiriro 4 Township, Harare. Although the draft provisional order does not say so, it is clear from the affidavit that the application is predicated upon a notice of appeal which was filed by the applicant against judgments of this Court given in Case Nos. HC 237/14 and HC238/14. The appeal was filed in the Supreme Court on 31 July 2015 under Case No. SC439/15.

The application is opposed by the first respondent.

The background to the matter is that on 20 August 2008 the Court granted the following judgment in favour of the first respondent who was the applicant in Case No. HC 3230/08:

“IT IS ORDERED THAT:

- (a) The 1st respondent signs all papers necessary to pass cession of the rights, title and interest in Stand Number 7374 Budiriro Township to the Applicant within ten days of service of this order at her *domicilium citandi et executandi* failing which the Deputy Sheriff, Harare be and is hereby authorised to sign such papers on her behalf.
- (b) The 1st respondent and all those claiming rights of occupation through her be and are hereby evicted from Stand 7374 Budiriro 4 Township.
- (c) 1st respondent pays costs of this application on the level of legal practitioner and client.”

The applicant herein was the first respondent in Case No. HC 3230/08. The order was given in default of the applicant. After a writ of execution had been issued the applicant sought and obtained a provisional order to stay execution of the order given in Case No. HC 3230/08. She also instituted an application for rescission of that judgment. Both applications

were opposed by the first respondent. The applicant failed to prosecute the two applications in terms of the rules after being served with the opposing papers. Consequently, the first respondent made chamber applications for the dismissal of the two applications for want of prosecution in terms of the rules. The two applications were granted. Those are the orders which the applicant appealed against in her notice of appeal which was filed under Case No. 439/15.

At the hearing Mr *Bvekwa* produced a letter from the Registrar of the Supreme Court advising the applicant that her appeal was deemed to have lapsed by reason of her failure to make arrangements to pay for the preparation of the record within the stipulated period. In short, there is no appeal which is pending before the Supreme Court. The applicant did not dispute that her appeal was deemed to have been abandoned. Her submission was that she had not seen the letter from the Registrar of the Supreme Court. But that is immaterial, as the fact remains that presently there is no appeal which is pending before the Supreme Court.

In view of the fact that there is no appeal which is pending in respect of the judgments given in favour of the first respondent, the basis of the instant application has collapsed. The relief was being sought on the basis that the applicant had a pending appeal before the Supreme Court. As that is not the case the applicant cannot justify the relief which is being sought. Indeed, even at the hearing of this application all that the applicant said was that she was appealing for the court to be “lenient” with her as she had not seen the letter in terms of which her appeal was deemed to have been abandoned. That is not a valid ground for the relief to be granted.

In the result, the application cannot succeed, and is accordingly dismissed with costs.