

TETRAD INVESTMENT BANK LIMITED  
versus  
BINDURA UNIVERSITY OF SCIENCE EDUCATION  
and  
THE SHERIFF OF ZIMBABWE

HIGH COURT OF ZIMBABWE  
CHIKOWERO J  
HARARE, 3 & 12 June 2019

### **Urgent chamber application**

*T. Zhuwarara*, for the applicant  
*G. Gomwe*, for the 1<sup>st</sup> respondent  
No appearance for the 2<sup>nd</sup> respondent

CHIKOWERO J: The facts of this matter are not in dispute.

They are well set out in three judgments of the superior courts of this country.

The first is a judgment of the court, per ZHOU J, in the matter *Bindura University of Science Education v Tetrad Investment Bank Limited* (Under Provisional Judicial Management) and The Sheriff of Zimbabwe (N.O.) HH 319/17. This was handed down on 24 May 2017.

Therein, Bindura University of Science Education “Buse” was granted leave to execute the writ issued pursuant to the order of this court in case number HC 2106/14, against Tetrad.

In other words Buse was granted leave to execute against Tetrad, then under judicial management.

Tetrad appealed to the Supreme Court.

In a written judgment delivered on 22 February 2019 under the name *Tetrad Investment Bank Limited (under Judicial Management) v Bindura University of Science Education and The Sheriff of Zimbabwe SC 5/19* the Supreme Court dismissed the appeal with costs.

This meant that, with effect from 22 February 2019, no legal impediment existed militating against Buse enforcing the earlier judgment of this court.

Accordingly, because Buse had issued a Writ of Execution Against Movable Property on 16 September 2014 under case number HC 2106/14, it caused the attachment of Tetrads' property to be effected by the Sheriff.

The attachment was carried out on 14 May 2019.

A day later, that is on 15 May 2019, Tetrads filed an urgent chamber application for stay of execution.

As interim relief, Tetrads sought to interdict Buse from executing under case number HC 2106/14 pending determination of the matter on the return date.

Also as interim relief, Tetrads sought release of the property attached pending the determination of the matter on the return date.

The final relief sought was a declaratur that Buse was a creditor under the scheme of arrangement between Tetrads and its creditors sanctioned by order of this court, sitting at Bulawayo, granted on 27 April 2017.

That order, per MAKONESE J, runs under the name *Tetrads Investments Bank Limited (under Provisional Judicial Management)* HC 1048/17.

The second leg of the final relief that was sought was a replica of the first leg of the Interim relief sought.

That urgent chamber application, *Tetrads Investments Bank Limited v Bindura University of Science Education and the Sheriff of Zimbabwe* HH 355/19, was adjudged by MANZUNZU J on 24 May 2019 not to be urgent.

His Lordship's judgment handed down by himself in the presence of the parties and their legal practitioners, discloses the following pertinent finding. The need to act arose on 22 February 2019 when the Supreme Court dismissed the appeal I have already referred to. The need to act did not arise when the Sheriff attached Tetrads' property on 14 May 2019.

Accordingly, that urgent chamber application was struck off the roll of urgent applications with costs.

Tetrads did not make an oral application for leave to appeal against that judgment.

Rule 262 of the High Court Rules, 1971 makes provision for such oral application to be made immediately after judgment has been passed. The judgment was interlocutory, so leave to appeal was required.

However, a written application for leave to appeal to the Supreme Court was filed with the Registrar of this court on 27 May 2019.

What is now before me is an urgent chamber application for stay of execution pending determination of the application for leave to appeal.

I find it unnecessary to determine the first preliminary point raised by Buse. I prefer to leave that point open for debate and resolution at the hearing of the main application. I mention only that the contention was that the application for leave to appeal was fatally defective for want of compliance with Rule 263. In particular, it was argued that Tetrads failed to satisfactorily explain why it did not make an oral application for leave to appeal.

In my view, I am not required to resolve that question. I would be offside if I were to attempt to do so.

I agree with Buse on the second point raised in *limine*.

I find that this application is not urgent.

I have had regard to the matter of *Saltlakes Holdings Private Limited v Themba Peter Mliswa, CBZ Bank Limited and the Sheriff of Zimbabwe N O* HH 636/15 and the other cases referred to therein.

In this respect, the prejudice which might befall Tetrads if I were to dismiss this application and execution is successfully carried out is not irreparable.

That prejudice sounds in money. If Tetrads obtains leave to appeal, if the appeal succeeds and if the urgent Chamber Application which was placed before MANZUNZU J were to then be proceeded with resulting in success to Tetrads both at interim and final stages Tetrads' remedy would then be restitution of all sums recovered from it by Buse.

In reasoning as I have done, I find good company in the following decisions. *Document Support Centre (Pvt) Ltd v Mapuvire* 2006 (2) ZLR 232 (H) and *Mutarisi v United Family International Church* 2012 (2) ZLR 434 (H).

I have also considered *Mr Muza t/a Sunset Savemore v Radchart Investments (Private) Ltd and Sheriff of Zimbabwe* HH 313/14. I am satisfied that on the facts of the matter before me irreparable prejudice has not been demonstrated. This matter is not urgent.

Out of abundance of caution, I will delve into the merits of the matter.

Buse was granted leave to execute against Tetrads, under judicial management, on 24 May 2017.

The decision was upheld by the Supreme Court on 22 February 2019.

Both judgments are extant.

Buse can therefore lawfully execute against Tetrads' property.

In handing down judgment on 24 May 2017 in HH 319/17 ZHOU J considered the High Court Bulawayo orders sanctioning the scheme of arrangement and placing Tetrad under provisional judicial management. All the same, he granted leave to execute.

It must not be forgotten that the court order sanctioning the scheme of arrangement was granted at Bulawayo on 27 April 2017 with the order for leave to execute coming almost a month later, on 24 May 2017.

I agree with Mr *Gomwe* that I cannot entertain the same argument, about the effect of the court order sanctioning the scheme of arrangement, all over again.

There is an extant judgment of this court which resolved that issue.

The Supreme Court has also spoken on it. In these circumstances who am I to effectively sit as a Court of Appeal over a decision of the Supreme Court?

It is clear that the application for leave to appeal has no prospects of success. Tetrad wants to place before the Supreme Court issues which that court has already decided. That is abuse of court process because the extant Supreme Court judgment is final. See *Matamisa v Mutare City Council (AG Intervening)* 1998 (2) ZLR 439 (S).

There are no special circumstances justifying this court granting the application for stay of execution pending determination of the application for leave to appeal. See *Mupini v Makoni* 1993 (1) ZLR 80 (S). That application is doomed.

For completeness' sake I record that I totally agree with MANZUNZU J that the need to act arose with the dismissal of Tetrad's appeal on 22 February 2019.

I also venture to say this. Strictly speaking, the need to act which arose on 22 February 2019 was not to file an urgent Chamber application for stay of execution at all.

Instead, it was to negotiate with Buse on terms to pay off the judgment debt of US\$473 025.52, interest, costs of suit and collection commission granted in favour of the University on 2 April 2014 under case number HC 2106/14.

It follows therefore that this application is also an abuse of Court process.

In the result I make the following order:

1. The application is dismissed.
2. The applicant shall pay the 1<sup>st</sup> respondent's costs of suit on the legal practitioner and client scale.

*Mawere and Sibanda*, applicant's legal practitioners  
*Mutamangira and Associates*, 1<sup>st</sup> respondent's legal practitioners