

NYAMUZARA ENTERPRISES [PRIVATE] LIMITED
versus
LOVEMORE CHAPWANYA
and
ROBERT SHOPERAI
and
MUTOTI MUTOTI
and
MAPUTIRE BRIGHTON
and
THE SHERIFF OF THE HIGH COURT, MASVINGO N.O.

HIGH COURT OF ZIMBABWE
MAFUSIRE J
HARARE, 24 May 2018; 13 & 20 June 2018

Urgent chamber application

Mr *F.R.T. Chakabuda*, with him, Mr *B.T. Hazangwi*, for applicant
Adv W. Chinamora, with him, Mr *M. Mureri*, for first, second, third and fourth respondents
No appearance for fifth respondent

MAFUSIRE J:

- [1] This was an urgent chamber application for a stay of execution. I never got to determine it on the merits. That makes the facts of the dispute largely irrelevant. This judgment is primarily to explain the trajectory of the matter after it was filed.
- [2] The application was filed on 22 May 2018. I caused it to be set down for hearing on 24 May 2018. On that day the parties agreed to postpone the matter to 5 June 2018. The postponement was at the instance of Mr *Mureri*, for the respondents, to accommodate the respondents' counsel of choice, Mr *Chinamora*, who was said to be engaged elsewhere.
- [3] On 5 June 2018, just before the hearing, it was advised that the parties were engaged in discussions for an out of court settlement. They wanted more time. I obliged. They agreed on, and proposed a new date, 13 June 2018. I further obliged.

[4] On 13 June 2018 the parties, at the applicant's instance, agreed on a further 2-hour adjournment to enable them to thrash out the settlement. I obliged.

[5] When the hearing resumed, the parties advised that they had reached a settlement. All that remained was for them to type it out and sign. Each side opted to read out to me their respective understanding of the terms and conditions of the settlement. I was taking down notes. At their request I read out my notes back to them. Both agreed and confirmed I had captured the essence of what each party had understood the terms and conditions of the settlement to be. There was nothing complicated really.

[6] From the applicant, the terms of settlement were:

- That an agreement had been reached in principle;
- ***That the matter would be removed from the roll*** [my emphasis].
- That the respondents would not proceed with execution but on condition the applicant made a down payment of a lump sum in an agreed amount towards satisfying the outstanding judgment. The balance of the judgment amount would be settled by way of monthly instalments.
- That the lump sum amount and rate of instalments would be shortly finalised;
- That the applicants would pay the respondents' costs on the ordinary scale.

[7] From the respondents, the terms of settlement were:

- That a potential agreement had been reached.
- That the proposed down payment would be made within 30 days.
- That if the lump sum was not paid within the 30 days then execution would proceed.
- ***That the matter would be removed from the roll*** [emphasis].
- That the costs payable by the applicant to the respondents had been agreed at \$2 000 [two thousand dollars].

[8] Mr *Chakabuda*, for the applicants, confirmed that the costs payable by the applicant to the respondents had been agreed at \$2 000.

- [9] Among other things, I proceeded to pronounce for the record that the parties had reached a settlement in principle; that the matter was being withdrawn from the roll, but that I would keep the record for the next day to receive the deed of settlement. I went on to commend the parties for finding each other thereby saving valuable time.
- [10] In all the sittings the applicant's representatives, Mr Kingdom Chiororo – Operations Director – and Mrs Spiwe Chiororo, *nee* Sithole – Director – were in attendance.
- [11] The parties left my Chambers to go and type out their agreement. They undertook to file it by not later than the close of business the following day, Thursday, 14 June 2018. They never did. Instead, come Thursday, 14 June, I was advised the parties wanted further audience with me to apprise of certain developments that had occurred after leaving my Chambers the previous day. Being tied up with prior commitments at the time, I advised that whatever it was they wanted to tell me should be put in writing for record purposes.
- [12] Later that day the record was brought back to me. Inside was a notice of renunciation of agency by Messrs Chakabuda Foroma Law Chambers, and two letters: one from that law firm to the Registrar, and the other from Mr Chiororo to the law firm. All the documents bore the same date: 14 June 2018.
- [13] The material portion of Mr Chiororo's letter to the law firm read:

“RE; RENOUNCIATION [*sic*] OF AGENCY; NYAMUZARA ENTERPRISES VS LOVEMORE CHAPWANYA AND OTHERS”

We wish to inform you that directors of Nyamuzara Enterprises have resolved that you renounce your agency in the matter above.

In the process of handling the above matter, the Applicant was deprived by you of access to the file and was not consulted on any action or process that you embarked upon. Despite asking for the, [*sic*] your Mr. Foroma was clearly evasive and belittled the client's representatives.

It is our belief that our interests cannot be properly guaranteed where [*sic*] you to proceed with any action you deem fit without the input of the Directors of the client.

We request therefore that you renounce your agency and stop acting on our behalf forthwith.

Inform other parties that they can still contact Nyamuzara Enterprises through the address stated above. We also request that you return all documents referred to you by Mr. Mutendi together with the file you used in the High Court proceedings to the undersigned through your reception by 10 am on the instant date.”

[14] The material portion of the law firm’s letter to the Registrar read:

“RE: NYAMUZARA ENTERPRISES P/L v L. CHAPWANYA & 4 ORS – CASE No. HC 215/18

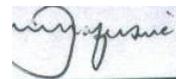
1. You may be aware that, we appeared before His Lordship Mafusire J. yesterday in chambers.
2. We have since filed a renunciation of agency in the matter pursuant to client’s request in terms of a letter a copy of which is attached hereto for ease of reference.
3. We have no problems on the renunciation aspect but we take issue with factual allegations being levelled against our Mr Chakabuda and set the record straight as follows;
 - 3.1 The application was filed pursuant to client’s instructions through Mr. Kingdom Chiororo and Spiwe Sithole who duly signed affidavits filed of record.
 - 3.2 We appeared before his Lordship on two occasions and both deponents to the applicant’s affidavits were in attendance.
 - 3.3 At the hearing held yesterday before his Lordship, the two persons were also in attendance and in agreement with all resolutions made. They had full appreciation of the proceedings and did not raise any objections. In fact, they confirmed their agreement to settlement of the matter out of court.
 - 3.4 We therefore acted in terms of our mandate and no further.
4. In the circumstances and by reason of Applicant’s letter, we are unable to enter into a deed of settlement with Counsel for the Respondents for filing today as agreed before his Lordship.
5. We attended court this afternoon with Counsel for the Respondents together with Applicant’s three representatives but were not able to see his Lordship for purposes of appraising him of the turn of events.

By copy of this minute, we kindly seek your indulgence in placing same before his Lordship for his attention.”

[15] I caused the matter to be re-set down for 20 June 2018. On that day Mr *Hazangwi* appeared. He explained the letters. He said their mandate had been withdrawn but that he had appeared out of courtesy to the court.

- [16] Mr *Mureri*, appearing without Mr *Chinamora*, objected to any possible re-opening of the matter on the merits given that the parties had reached a settlement in principle. He stressed that at the previous sitting both parties had expressly agreed that the matter should be withdrawn from the roll and that this had been duly done.
- [17] I enquired from Mr Chiororo and Ms Sithole in what capacity they were appearing. They said as directors of the applicant. I explained to them the difficulty of them trying to represent a juristic person such as the applicant when they were not registered legal practitioners. Nonetheless, I would hear them out on this occasion. Both explained that they needed time to engage another legal practitioner. They said the one legal practitioner that they had initially engaged had eventually not taken up the case. The other, Professor Madhuku, had expressed a willingness to do so.
- [18] I explained that at the previous sitting the matter had expressly been removed from the roll and that it would stay removed. The applicant was free to engage any other legal practitioner of its choice who would render legal advice.
- [19] Thus the matter was concluded on the basis that the matter had been withdrawn from the roll with costs in the sum of \$2 000 [two thousand dollars] payable by the applicant to the respondents.

5 July 2018



Chakabuda Foroma Law Chambers, legal practitioners for the applicant
Matutu & Mureri, legal practitioners for the first, second, third and fourth respondents