

Judgment No S.C. 48\2002
Civil Appeal No 170\2001

CLEOPAS SANANGURA v (1) MESSER ZIMBABWE (PRIVATE)
LIMITED (2) STANBIC BANK ZIMBABWE LIMITED (3) NATIONAL
MERCHANT BANK (4) KINGDOM ASSET MANAGEMENT LIMITED

SUPREME COURT OF ZIMBABWE
SANDURA JA, ZIYAMBI JA & MALABA JA
HARARE JUNE 11 & 19, 2002

E. Ndizeye, for the appellant

M. Makuyana, for the first respondent

No appearance for the second, third and fourth respondents

SANDURA JA: This appeal, which was only contested by the first respondent, was struck off the roll with the consent of both counsel, but as there was no agreement on whether the wasted costs were to be borne by the appellant or by the first respondent, that issue remains to be determined by this Court.

In my view, the best way in which to determine the issue is to consider first of all whether the appeal had any merit. If it had any merit, the costs should be borne by the first respondent. On the other hand, if it was devoid of merit, the costs should be borne by the appellant.

The relevant facts are as follows. The appellant was employed by the first respondent as its Financial Manager. The first respondent intended retrenching the appellant together with certain other employees. Accordingly, retrenchment negotiations took place but did not result in any agreement with the appellant.

However, during the course of the negotiations the first respondent considered that it had the right to dismiss the appellant on the ground that he had committed certain acts of misconduct. More specifically, it was alleged that the appellant had converted to his own use large sums belonging to the first respondent.

Accordingly, the first respondent suspended the appellant from his position and sought approval for his dismissal from the Ministry of Public Service Labour and Social Welfare.

Before that approval was granted, the appellant filed an urgent application in the High Court seeking an order directing the attachment of the first respondent's funds, before any judgment was granted in his favour, and the payment of the attached funds to the appellant. The funds were in the custody of the second, third and fourth respondents. The application was dismissed with costs. Aggrieved by that decision, the appellant appealed to this Court.

In my view, the appeal had no prospects of success. I say so for three main reasons.

The first reason is that in his application the appellant did not disclose the existence of any litigation in which a claim was being made by him against the first respondent. In the circumstances, the appellant sought the attachment of the first respondent's property as security for an undisclosed claim which had not yet been instituted against the first respondent. There was, therefore, no legal basis for the attachment sought, and this was a fatal defect in the application.

Secondly, the appellant did not disclose the total funds of the first respondent which he sought to attach and why so much had to be attached. He simply sought an order attaching all the first respondent's funds held by the second, third and fourth respondents without indicating the total amount required. He gave no reason for claiming the attachment of all the funds as opposed to only a part of them. That is another fatal defect in the application.

Thirdly, the appellant made no attempt to show the merits of his challenge to his suspension and intended dismissal. In his founding affidavit he did not deal with the allegations of misconduct levelled against him. This was a serious omission on his part because the success of any claim which he might have against the first respondent would depend upon whether he had a good defence to the first respondent's allegations of misconduct.

In addition, there was no basis for the appellant's allegation that the first respondent was in the process of disinvesting from Zimbabwe and liquidating its assets.

In the circumstances, the appellant failed to establish a *prima facie* right to the attachment, and it follows that the appeal had no merit.

It is, therefore, ordered that the wasted costs shall be borne by the appellant.

ZIYAMBI JA: I agree

MALABA JA: I agree

Gambe & Associates, appellant's legal practitioners

Mawere & Sibanda, respondent's legal practitioners