

EX TEMPORE

LOVEMORE CHAZA
v
**(1) NEVER CHAWAREVA (2) MINISTER OF LOCAL
GOVERNMENT PUBLIC WORKS AND NATIONAL
HOUSING**

**SUPREME COURT OF ZIMBABWE
GWAUNZA JA, HLATSHWAYO JA & ZIYAMBI AJA
HARARE, OCTOBER 26 2017**

M. Mavhiringidze, for the appellant

F. Chiriwawadzimba, for the first respondent

No appearance for the second respondent

GWAUNZA JA: In this matter Counsel for the first respondent raised a point in *limine* to the effect that the appellant having been barred in the court *a quo* for failure to file his heads of argument, had no right of audience before this court.

She submitted that consideration by the court *a quo* of the merits of the matter, did not alter the legal position, that in fact the judgment *a quo* was given in default. Counsel relied for these contentions on a judgment of this court, *Zvinavashe v Ndlovu* 2006 (2) ZLR 372 (S) where the following was stated at pg 375;

“for the avoidance of doubt, it is declared that the giving of reasons for the default judgment in question by the court *a quo* was unnecessary and consequently of no force or effect. It does not convert the default judgment into a judgment on the merits”.

None of the authorities cited by the appellant contradict this position. Since it was a default judgment, the proper course of action was for the appellant to have obtained a rescission thereof in the court *a quo*. Accordingly, this matter is not properly before us and it is our unanimous view that it should be struck off the roll.

Notwithstanding that the point in *limine* was a point of law which could be raised at any time, our view is that each party should bear its own costs. This is because the point was raised for the first time at this hearing, without any prior notice having been given to the appellants.

In the result, it is ordered as follows:

- (1) The point in *limine* is upheld.
- (2) The appeal be and is hereby struck off the roll.
- (3) Each party is to bear its own costs.

HLATSHWAYO JA: I agree

ZIYAMBI JA: I agree

Mavhiringidze & Mashanyare, appellant's legal practitioners
Mapendere & Partners, 1st respondents' legal practitioners.