

**TRADEPASS MARKETING SERVICES (PVT) LIMITED**

**T/A OUTREACH FOR JESUS CARPENTERS**

**APPLICANT**

**VERSUS**

**M. FILANNINO AND MARKOU M**

**1<sup>st</sup> Respondent**

**And**

**JOHN POCOCK AND COMPANY (Pvt) LIMITED**

**2<sup>nd</sup> Respondent**

**And**

**ADVOCATE HILDA MAKUSHA MOYO N.O**

**3<sup>rd</sup> Respondent**

**And**

**MR G. NYATHI, OF Sansole and Senda N.O**

**4<sup>th</sup> Respondent**

**And**

**PINEAUS MADZIVIRE Joel Pincus Konson and Wolhuter N.O**

**5<sup>th</sup> Respondent**

**And**

**CLERK OF CIVIL COURT MRS J. MAPFUMO N.O**

**6<sup>th</sup> Respondent**

**And**

**ACTING PROVINCIAL MAGISTRATE P. MSIPA N.O**

**7<sup>th</sup> Respondent**

**And**

**MESSENGER OF COURT N.O**

**8<sup>th</sup> Respondent**

**And**

**MAGISTRATE S. JELE N.O**

**9<sup>th</sup> Respondent**

**And**

**DEPUTY SHERIFF, BULAWAYO N.O**

**10<sup>th</sup> Respondent**

HIGH COURT OF ZIMBABWE

MATHONSI J

BULAWAYO 28 AND 31 MARCH 2011

JUDGMENT

**MATHONSI J:** In this matter the applicant seeks an order declaring that there is a bar operating against the 2<sup>nd</sup> Respondent and that the special plea filed by the 2<sup>nd</sup> Respondent was filed out of time.

On 7 February 2011 the applicant filed a notice of intention to bar which was served on Calderwood Bryce Hendrie and Partners, the legal practitioners of the 2<sup>nd</sup> Respondent that same day. The time during which the 2<sup>nd</sup> Respondent was required to file a plea or other answer to the claim expired on 14 February 2011. The 2<sup>nd</sup> Respondent managed to file a response by close of business on that day in the form of a special plea.

The applicant has argued that the fact that the special plea was served the following day on 15 February 2011 nullified it. I do not agree. The plea was filed on time and its service a day later did not render it invalid. The applicant's attempt to bar the 2<sup>nd</sup> Respondent on 16 February 2011 days after the plea had been filed was an exercise in futility and of no legal consequence.

The applicant has also attacked the merits of the special plea. That is an issue to be determined when the matter is argued. It cannot be raised by a separate chamber application. Heads of argument have been filed and an application for a set down date made. The matter should therefore be set down on the opposed roll and disposed of that way.

I come to the conclusion that the application is without merit. It is accordingly dismissed with costs.

*Joel Pincus, Konson and Wolhuter, 1<sup>st</sup>, 3<sup>rd</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 8<sup>th</sup> Defendant's Legal Practitioners*  
*Messrs Calderwood, Bryce Hendrie & Partners, 2<sup>nd</sup> Defendant's Legal Practitioners*  
*Messrs Sansole and Senda, 4<sup>th</sup> Defendant's Legal Practitioners*