ZIMBABWE ANTI-CORRUPTION COMMISSION
versus
SYDNEY USHE

HIGH COURT OF ZIMBABWE
MAFUSIRE J
HARARE, 22 May 2015 & 15 June 2015

Urgent Chamber Application

N.M. Muzuva, with him *E. Mukucha*, for the applicant
Respondent in person

MAFUSIRE J: This was an urgent chamber application to stay execution pending the determination of an application for rescission of judgment that was said to be pending at the Labour Court. At the end of the hearing I ruled that the matter was not urgent. I then removed it from the roll.

The application lacked detail. It was difficult to pierce the story together. The two officers from the Civil Division of the Attorney-General's office who appeared for the applicant seemed ill-prepared. I struggled to understand the background facts from their papers or submissions. In the end I had to turn to the respondent. At least he had some of the essential facts at his finger-tips.

In brief, here is what I managed to put together from all the documents filed of record and the submissions of the parties.

At all material times the respondent was employed by the applicant. I was not told in what capacity. Some time, probably in 2014, an award was made by an arbitrator against the respondent and in favour of the applicant. I was not told what the award was all about or when exactly it had been made.

Not happy with the outcome before the arbitrator, the respondent appealed to the Labour Court. The applicant did nothing about the appeal. On 6 June 2014 the appeal was granted in default. More than a month later, the applicant applied for rescission of the default

judgment. But the application was out of time. Having made no application for condonation, the application was struck off the roll. That was on 19 February 2015.

The chronology somewhat got confusing. But it seems when the Labour Court allowed the respondent's appeal there was something sounding in money that was also granted in favour of the respondent. He then approached this court for the registration of the Labour Court's award. I was told that initially the applicant had opposed the respondent's registration application. However, the applicant had subsequently withdrawn its opposition. None of this was in the applicant's papers.

On 10 February 2015 the order of the Labour Court was duly registered as an order of this court. In addition, the applicant was ordered to pay the respondent the sum of US$24 532 within five days of the date of that order. The applicant did not pay.

The respondent said that after the registration of the order from the Labour Court, the applicant filed an urgent chamber application for a stay of execution. However that application was withdrawn on 13 March 2015. On 26 March 2015 the respondent wrote to the applicant demanding payment. There was no response.

At some stage the respondent issued a writ of execution to attach the applicant's property. None of the parties knew off-hand when exactly that was. But the respondent remembered delivering copies of the writ to the Sheriff on 17 April 2015. The applicant's property was attached. None of the parties had any idea what property had been attached or when that attachment had been made. The respondent only knew that the Sheriff was supposed to remove the attached property on 23 April 2015 but that he had failed to do so because he did not have a suitable vehicle.

Eventually the applicant proceeded with the instant application. From its date-stamp, it was issued on 13 May 2015. It was predicated on an alleged application for rescission of judgment that was said to be pending at the Labour Court. But it turned out that what was actually pending at the Labour Court was just an application for condonation for the late filing of the actual application for rescission, or to be more precise, an application for leave to file the rescission application out of time.

In the application before me, the applicant essentially admitted being sluggish, either of itself or through its legal practitioners. It was said that the applicant's legal practitioners had been dilatory in advising it of the Labour Court's judgment and that the process of consulting the lawyers had taken a long time.

On the prospects of success, the applicant's basic contention was that the Labour Court had made an elementary error in awarding delictual damages when it had no jurisdiction to do that.

Before me, the applicant's strong argument was that even though the date when the Sheriff was poised to remove the attached property was unknown, it was nonetheless imminent. The attached property was said to be critical to the applicant's operations in fighting corruption and that therefore, if it was sold in execution, the applicant would be crippled in its functions. But probe as I would, both sides were completely blank as to what it was that the Sheriff had attached and was poised to be removed. I then wondered how I could even possibly exercise my discretion, particularly in weighing the balance of convenience, if such basic information was unavailable. But that was not the immediate problem facing the applicant. The immediate problem facing the applicant was to convince me that the matter was urgent, or rather, that it had itself treated it as such. It seems it had not.

In my view, the moment the Labour Court had awarded something to the respondent that was executable, the applicant was at risk. But it was more than a month later that the applicant attempted rescission. When that failed, it was three months later that the applicant went back to the Labour Court for condonation. Admittedly, there had been some developments in between. But none of them was such as to show any urgency on the part of the applicant. Some of those developments were these. The respondent was putting pressure to get paid. He applied to this court for the registration of the Labour Court award. Initially, the applicant opposed the application. Eventually it consented to it. That was on 10 February 2015. So once registered, execution could be carried out at any moment. But it was not until 13 May 2015 that the applicant eventually filed the instant application.

The applicant was lackadaisical. It was sluggard. To bolster the point, I simply wheeled from the archives two well-known judgments. The first was *Kuvarega* v *Registrar-General & Anor*[1]. Therein CHATIKOBO J said[2]:

> "What constitutes urgency is not only the imminent arrival of the day of reckoning; a matter is urgent, if at the time the need to act arises, the matter cannot wait. Urgency which stems from a deliberate or careless abstention from action until the dead-line draws near is not the type of urgency contemplated by the rules."

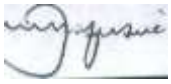
[1] 1998 (1) ZLR 188 (H)
[2] At p 193F - G

The second judgment was *Ndebele* v *Ncube*[3]. Therein McNALLY JA said[4]:

"The time has come to remind the legal profession of the old adage; *vigilantibus non dormientibus jura subveniunt* – roughly translated, the law helps the vigilant but not the sluggard."[5]

It was for those reasons that I dismissed the application with costs.

15 June 2015



Civil Division of the Attorney-General's Office, applicant's legal practitioners

[3] 1992 (1) ZLR 288 (SC)
[4] At p 290
[5] See also *Masama v Borehole Drilling (Private) Limited* 1993 (1) ZLR 288 (SC); *Mubvimbi v Maringa & Anor* 1993 (2) ZLR 24 (HC); *Maravanyika v Hove* 1997 (2) ZLR 88 (HC); *Beitbridge Rural District Council v Russel Construction Co (Private) Limited* 1998 (2) ZLR 190 (SC) and *Kodzwa v Secretary for Health & Anor* 1999 (1) ZLR 313 (SC);