

REFORMED CHURCH IN ZIMBABWE
versus
LENS INVESTMENTS (PRIVATE) LIMITED

HIGH COURT OF ZIMBABWE
ZHOU J
HARARE, 16 March 2017

Application for Summary Judgment

A Muchandiona for the applicant
E. T Muhlekiwa for the respondent

ZHOU J: This matter came before me as an opposed application for summary judgment. On 16 March 2017 which was the date on which it was set down for argument this Court granted the following order:

“IT IS ORDERED THAT:

1. Summary judgment be and is hereby entered in favour of the applicant against the respondent in Case No. HC 9311/16 as follows:
 - (a) For an order for the ejection of the respondent and all persons claiming occupation through it from the applicant’s immovable property at No. 20 Findowrie Drive, Greendale, Harare; and
 - (b) For payment of the costs of this application.
2. The claim for holding over damages in Case No. HC 9311/16 shall proceed to trial.”

A copy of a letter written by Mr R. Mahuni, a partner in the legal firm which represented the respondent in this matter, has been placed before me. The letter is dated 5 April 2017 and has an “urgent” sticker. The Registrar’s stamp shows that it was delivered on 6 April 2017. The record was, however, only placed before me on 16 May 2017. The material portions of the letter read are follows:

“The above matter refers.

We request that you place this letter before the Honourable Justice Zhou who presided over the court application for summary judgment in this matter.

We urgently request for the reasons for judgment as we have instructions to note an appeal in this matter to the Supreme Court of Zimbabwe.”

The request for a written judgment for the purposes of an appeal represents a gross abuse of the procedures of this Court by Mr R. Mahuni for the following reasons. When the matter was set down for hearing Mahuni Gidiri Law Chambers, the law firm in which Mr Mahuni is the senior partner, had not filed heads of argument for the respondent. The respondent was accordingly barred in terms of the rules of this court. Mr *E. T. Muhlekiwa*, a legal practitioner from that law firm appeared on behalf of the respondent and made the following submissions which I recorded:

“The respondent’s heads of argument were not filed. I also note that I have no right of audience. Having considered the matter, it would be a disservice (to client) to seek upliftment of the bar because the applicant’s case is unassailable.”

The above concession was properly made when regard is had to the merits of the case. To that submission, Mr *Muchandiona* for the applicant responded as follows:

“The concession is properly made. He (the respondent’s legal practitioner) has properly discharged his ethical duty to the court.”

In the light of the above developments the applicant, through its legal practitioner, moved for judgment in terms of the draft order, which was duly granted.

In the face of the facts set out above, it is difficult to understand the letter addressed to the Registrar seeking the reasons for the judgment. It is clear that the judgment was granted on the basis that the respondent was barred. It was therefore a default judgment although the respondent’s legal practitioner was in attendance and made the submissions recited above. Mr *Mahuni*’s conduct reflected in the letter dated 5 April 2017 therefore raises very serious ethical issues in respect of which an investigation is warranted. A diligent legal practitioner in his position would have sought and received a briefing from the legal practitioner from his law firm who attended to represent the respondent. An omission to do that would amount to lack of diligence. On the other hand, if he was briefed about what transpired in court but nonetheless proceeded to write the letter on the ground that he “has instructions” to appeal against a judgment which was granted on the basis that his client was barred then clearly he is abusing the procedures of this court. He, as a legal practitioner, should know better on how to deal with a judgment given in those circumstances.

For the above reasons, it seems to me that this is an appropriate matter for the court to censure the legal practitioner, Mr Mahuni, for his conduct. If he has charged his client for writing the letter of 5 April 2017 he should seriously consider whether it is appropriate for him to recover a fee (or retain it, if he has already been paid) for that disservice.

In the result, the Registrar is hereby directed to place a copy of this judgment before the Council of the Law Society of Zimbabwe through its Executive Secretary for an inquiry into the conduct of Mr Mahuni.

Danziger & Partners, applicant's legal practitioners
Mahuni Gidiri Law Chambers, respondent's legal practitioners