

ALARGONIA FARM (PVT) LTD
versus
SAIWIT HOLDINGS (PVT) LTD
and
ALESTAR ZIYANGA
and
SHERIFF OF ZIMBABWE

HIGH COURT ZIMBABWE
MWAYERA J
HARARE, 31 November 2016 and 25 January 2017

Urgent Chamber Application

TSTD Dzvettero, for the applicant
R. Stuart, for the 1st respondent

MWAYERA J: On 31 November 2016 I dismissed with costs the application brought before me by the applicant. The applicant's counsel by letter dated 25 November 2016 requested for written reasons for my disposition. The reasons are captioned herein. The applicant approached the court through the urgent chamber book seeking the following order:

"TERMS OF FINAL ORDER SOUGHT

That you show cause why an order in the following terms should not be granted:

1. The execution of the judgment of this court granted under case HC 8687/16 shall be stayed pending determination of the applicant's application for rescission of default judgment HC 11030/16.
2. Cost of the application shall be paid by opposing respondents

TERMS OF THE INTERIM RELIEF SOUGHT

Pending the return day, it is hereby ordered that:

1. The 1st respondent be and is hereby ordered not to instruct the 3rd respondent and or his lawful deputy to proceed with the removal and/or execution of the applicant's property in terms of the default judgment in HC 8687/16.
2. The 3rd respondent and/or his lawful deputy be and is hereby ordered to stop execution pursuant to default judgment HC 8687/16."

The brief background of the matter is that on 12 October 2016 a default judgment was

granted against the applicant in case HC 8687/16. A writ of execution was issued and property was attached..

The applicant instituted interpleader process pursuant to the writ of execution. The applicant defaulted prosecuting the interpleader and the interpleader was dismissed leaving the warrant of execution intact. On 25 October 2016 the Deputy Sheriff and the first respondent proceeded with the notice of seizure. It was then that the applicant filed the present application for stay of execution. The applicant filed the urgent application for stay of execution simultaneously with an application for rescission of the default judgment. The applicant argued that the interpleader default was occasioned by his erstwhile legal practitioners Sakala, Saidi and Company who failed to prosecute the interpleader as per instruction. No evidence was attached to confirm that the interpleader was dismissed because of none attendance or negligence of Sakala, Saidi legal practitioners.

The applicant claimed property attached was its property Alargonia Farm Pvt Ltd and not property of Alestar Ziyanga who from the papers filed of record is a shareholder and director of the applicant. The applicant did not pursue its rights as per the interpleader action but only approached the court on 28 October 2016 upon realising seizure of property was imminent. The urgency that is contemplated by the rules of this court is urgency which warrants a matter being given preferential treatment in justifiable circumstances. Such urgency is not gauged by the imminence of the day of reckoning but by taking action when the need to act arose.

The applicant was aware of the initial default judgment but did not take steps to avert the obvious execution. When execution occurred the applicant then filed an interpleader application which was not prosecuted leading to a default order and notice of seizure. The applicant's abstention from action until execution was being effected is certainly not the urgency contemplated by the rules of this court. It is apparent, as early as beginning of October 2016 the applicant was aware of its predicament but refrained from taking action. Such conduct displays self-created urgency because it is deliberate and careless abstention from action until last minute. Requirements of urgency have been outlined many times by this court and self-created urgency is not included. See *Dilwin Investments (Pvt) Ltd v Jopa Engineering Company Pvt Ltd* HH 116/98, *Kuvarega v Registrar-General and Anor* 1998 (1) ZLR 188, *Dexprin Investments (Pvt) Ltd v Ace and Investment Pvt Ltd*.

All the cases make it clear that a matter is viewed as urgent if the applicant on his own part treats the matter as urgent. In other words it is clear that where a part waits for doomsday or day of reckoning to arrive without a reasonable explanation then the matter cannot be accorded the urgency status as provided for by the rules of this court. The sentiments echoed by HUNGWE J, that a matter is not urgent in circumstances where clearly the applicant seeks to delay the day of reckoning by filing an application which does not fall under the urgent realm are apposite. In *Independent Financial Services v Colster* 2003 ZLR 494 HUNGWE J stated:

“.... A matter is not urgent merely because property has been attached. That is self-created urgency born out of dilatory manner in which a part concludes its affairs. It cannot be a good reason to stay satisfaction of a lawfully due debt as here.’

These words ring true in this application where the applicant seems bent on frustrating the ends of justice on a due debt under the realm of urgency.

The application does not meet the requirements of urgency and it is accordingly dismissed with costs.

Antonio & Dzvettero, applicant’s legal practitioners

Matinadzo & Warhurst, 1st respondent’s legal practitioners