

JAMES CHIPADZE
and
TONDERAYI MUTEMA
and
TAURAI HODZI
and
EARNEST CHIMHANDA
and
KAMPIRA CHABVUNDURA
and
JOSHUA MUREWA
and
GABRIEL KANYIMO
and
BONGA KASAWAYA
versus
MUGODHI APOSTOLIC FAITH CHURCH
and
THE MESSENGER OF COURT – BINDURA

HIGH OF COURT OF ZIMBABWE
CHIKOWERO J
HARARE, 23 May 2018

Urgent Chamber Application

N Mugiya, for the applicants
T.R Madzingira, for the 1st respondent
2nd respondent in default

CHIKOWERO J: On 23 May 2018, after hearing argument from both counsel, I upheld the first respondent's preliminary point. I accordingly dismissed the application with costs.

I delivered a brief *ex tempore* judgment.

When I finished giving the reasons for judgment, Mr *Mugiya* asked me when he could obtain those reasons, reduced to writing.

The present constitute my reasons for finding that the application for stay of execution ought to have been filed out of the Mutawatawa Magistrates Court and not the High Court of Zimbabwe.

The basis of the application is a warrant of execution against property, under case number CG 03/16, issued by the Clerk of Court, Mutawatawa Magistrates Court, on 17 May 2017.

Pursuant thereto, an attachment was then effected against first applicant's property.

The parties thereafter filed a Deed of Settlement in that court.

Applicants claim to have satisfied all their obligations in terms of that Deed of Settlement.

On 16 May 2018 second respondent served a notice of removal, earmarking such removal for 21 May 2018.

This prompted applicants to file this application, praying for the following interim relief:

“1. The removal of the attached property by the first and second respondents against the applicants be and is hereby stayed pending the finalisation of this matter.”

I remained unpersuaded that this court's inherent jurisdiction means it should hear matters which, like this one, ought to be heard by the magistrates court.

Equally, I remained unmoved that this court's jurisdiction to supervise magistrates court and other subordinate courts and to review their decisions means it must usurp the functions of the magistrates court. Although not cited, Mr *Mugiya* was clearly referring to s 171 (1) (b) of the Constitution of Zimbabwe Amendment (No. 20) Act, 2013.

It was common cause that no application for stay of execution was filed with the clerk of court Mutawatawa Magistrates Court, and hence no decision was made thereon by that court. Consequently, there was nothing for this court to relate to by way of either appeal or review.

Applications arising from execution of warrants issued out of the magistrates court are clearly for that court to determine. The magistrates court has its own rules dealing with such issues.

Rules of the High Court cannot be used to determine issues relating to execution of warrants of execution against property issued out of the magistrates court.

I subscribe fully to the position that this court should not entertain matters, at first instance, which clearly inferior courts should be seized with. Inferior courts are there for a purpose. In this regard, I can do no better than refer to the words of CHIGUMBA J in *Delta Beverages (Pvt) Ltd v Freedom Chimuriwo & Clerk of Magistrates Court for the Province of Mashonaland in Harare N.O & Messenger of Court* HH 600/14 at pp 9 and 10:

“What then should have been applicant’s first port of call in these circumstances? Clearly the Magistrates Court itself, the purveyor of a warrant of execution which was not based on its own judgment as provided by its governing act, or its rules. ... applicant ought to have applied for stay of execution out of the magistrates court, simply because it had issued the warrant of execution. There was no legal basis on which applicant approached the High Court.”

and

“As long as the High Court continues to entertain any and all applications that legal practitioners in their wisdom continue to file in this court, there will always be a siege mentality caused by multiplicity of actions, increasing litigiousness, and the desire to shop for different fora in a bid to obtain certain desired results. The High Court in my view ought to be careful not to unnecessarily usurp the jurisdiction of the Labour Court.”

These observations apply with equal force *in casu*, although the Labour Court is not involved.

For completeness’ sake, I found it unnecessary to be detained by this court’s provisional order in the matter of *James Chipadze v Mugodhi Apostolic Faith Church and the Messenger of Court Bindura* HC 4067/18 Ref CIV ‘A’ 264/16 Ref 5388/17, Ref 1862/17. That provisional order, *per* MABHIKWA J, was alleged to have been disobeyed. It was attached to the application. It was the basis for seeking the second leg of the interim relief. The same was couched as follows:

“2. The first and second respondents are ordered to comply and respect the order in HC 4067/18 until it is discharged or set aside in terms of the law.”

It suffices to say that I was not seized with an application for contempt of court in respect of the provisional order granted in HC 4067/18.

These, then, are my reasons for upholding the point *in limine* and consequently dismissing the application with costs.

Messrs Mugiya & Macharaga, applicants' legal practitioners
Messrs Madzingira & Nhokwara, 1st respondent's legal practitioners