

(1) WINSLEY MILITALA N.O.  
(2) QV PHARMACIES (PRIVATE) LIMITED  
(Under Provisional Judicial Management)

v

(1) MUTUAL FINANCE (PRIVATE) LIMITED  
(2) THE MESSENGER OF COURT  
(3) SHINGIRIRAI USHEWOKUNZE

SUPREME COURT OF ZIMBABWE  
HARARE, FEBRUARY 28 & MARCH 06, 2014

*T Mpfu*, for the applicants

*F Mahere*, for the first and third respondents

Before: **CHIDYAUSIKU, CJ**, In Chambers

This is a Chamber application in which the applicants seek an order for an urgent hearing of the appeal in case No. SC 32/14 and that pending the determination of the appeal the first respondent and all persons acting through it should be interdicted from commencing the trading of any business in Shops 1 and 2 Sam Levy's Village, notwithstanding that any renovations and occupation of the premises might have taken place, and that the renovations that are currently taking place should cease forthwith.

The facts of this matter are briefly as follows –

The second applicant was placed under provisional judicial management of the first applicant on 8 January 2014. All the respondents were informed of this fact in writing on 22 January 2014 upon service of a writ of ejectment on the second applicant at its premises, being Shops 1 and 2 Sam Levy's Village. Notwithstanding such written notification of the placement of the second applicant under provisional judicial management, it is alleged that the respondents, and in particular the first and second respondents, proceeded to evict the second applicant from such premises on 24 January 2014. The applicants approached the High Court for urgent relief, based principally upon the *mandamus van spolie*. The application was dismissed on the basis that the second applicant, prior to being placed under provisional judicial management, had on 3 January 2014 consented to a magistrate's court order that it vacate the said premises forthwith.

It was argued before me that the Judge *a quo* did not take into account that on 8 January 2014, when the second applicant was placed under provisional judicial management, all legal processes pending against the second applicant became stayed by operation of law, in particular s 301 of the Companies Act [*Chapter 24:03*].

It was further contended that the placement of the second applicant under provisional judicial management stayed all legal processes against the second applicant and that all legal processes could not have been proceeded with without leave of the High Court and that the eviction of the second applicant was therefore null and void.

After hearing submissions by counsel, I reserved judgment and consulted the Registrar on the earliest available date for the hearing of the appeal. It is common cause that the matter should be heard on an urgent basis. 17 March 2014 is the earliest available date and the appeal has been set down for that date. I instructed the Registrar to issue a direction

for the preparation of the record and that it should be submitted to the Supreme Court by Friday 28 February 2014, upon payment of costs by the applicants. I also directed the applicants to file their heads of argument on or before Thursday 06 March 2014. I further directed the respondents to file their heads of argument on or before Tuesday 11 March 2014.

In light of the fact that the appeal is set down for 17 March 2014, I was of the view that the issue of the interdict be and is hereby referred to the Supreme Court for determination in the event that the Supreme Court reserves its judgment. In that event, the interdict would operate pending the handing down of that judgment. In other words, the applicants should apply to the Supreme Court for an interdict pending the handing down of its judgment if they are so inclined.

Costs in this matter should be costs in the cause.

*G Mlotshwa & Company*, applicants' legal practitioners

*Ushewokunze Law Chambers*, first and third respondents' legal practitioners