

AFRICAN CENTURY LIMITED
versus
MCDOWELLS INTERNATIONAL (PRIVATE) LIMITED
(under Judicial Management)
and
BLESSING MASHANGWA

HIGH COURT OF ZIMBABWE
ZHOU J
HARARE, 8 December 2017 and 18 December 2017

Urgent Chamber Application

H Mutasa, for the applicant
A Marara, for the 2nd respondent

ZHOU J: The applicant instituted the instant application seeking an order that the first respondent holds in trust sums of money which are due to the second respondent by the first respondent.

The draft order does not specify the amount to be retained in trust. The basis of the application is that the applicant has a judgment debt owed to it by the second respondent which judgment has not yet been satisfied. The applicant has instituted a separate court application, Case No. HC 11223/17, for the debt owed to the second respondent by the first respondent to be attached. The relief being sought *in casu* is thus meant to be temporary pending determination of Case No. HC 11223/17.

The insurmountable difficulty which the applicant has is that it is seeking to protect a judgment debt which is not clear from the papers filed. The order of this court simply stated as follows: “Default judgment be and is hereby granted against the 1st and 3rd defendants only.” Pursuant to that judgment the applicant caused a writ of execution to be issued for the attachment of goods to satisfy a judgment debt which is recorded as US\$47 111-55. The Notice of Seizure and Attachment also reflects that figure as the capital debt and costs. In the affidavit filed in the instant application the applicant is disputing the figure even though it is the one that caused that figure to be inserted in the writ execution. The figure is also reflected in the summons. The applicant’s explanation is that there was an amendment of the summons so that

the amount due should be US\$225 588-87 rather than the amount which appears in the writ of execution issued at the instance of the applicant.

On the papers placed before me the relief being sought cannot be granted because the judgment debt is not stated with certainty in any of the papers. Other than appearing in the founding affidavit, the sum of US\$225 588-87 does not appear anywhere else as the judgment debt. Mr *Mutasa* for the applicant made the submission that I could still grant the order on the basis of the sum of US\$47 111-55 which is in the writ of execution and the notice of seizure and attachment. That is a startling submission considering, firstly, that the applicant itself does not accept that figure to be accurate and, secondly, because there would be no legal ground to proceed on that basis in the absence of an order showing the sum of US\$47 111-55 to be the amount due. A writ of execution is not proof of the judgment debt. It is the order of this court which should reflect the debt. The writ of execution should merely reproduce the debt as reflected in the judgment or order.

In view of the foregoing, the relief sought cannot be granted.

In the result the application is dismissed with costs.

Gill, Godlonton & Gerrans, applicant's legal practitioners
Mutamangira & Associates, 2nd respondent's legal practitioners