HOSPEL ENTERPRISES (PVT) LTD
and
MOSES MAZHANDE
versus
CITY CENTRE PROPERTIES
and
THE SHERIFF

HIGH COURTOF ZIMBABWE
TAGU J
HARARE, 9 February & 1 March 2017

URGENT CHAMBER APPLICATION

B T Munjere, for the applicants
T Pasirayi with *T Ngara*, for 1st respondent
No appearance, for 2nd respondent

TAGU J: The first applicant is a company duly registered in terms of the laws of Zimbabwe. The second applicant is the Director of the first applicant. The first applicant and the first respondent entered into a lease agreement on 1st January 2011 the terms of which the first respondent leased to the first applicant its premises known as 8th Floor, Goldbridge North, Eastgate, Harare. The second applicant bound himself as a surety and co-principal debtor of the first applicant. The first applicant then accrued rental arrears resulting in the first respondent instituting arbitration proceedings to recover the said arrears and the dispute was referred for arbitration.

On the 26th September 2016 an arbitral award was handed down by the Honourable Arbitrator Susan M Mutangadura in favour of the first respondent. The first respondent applied for the registration of the said award with this Court. On the 4th November 2016 the award was duly registered with this court unopposed in case HC 10451/16. However, on the 25th November 2016 the first applicant filed an application challenging the arbitral award in case HC 12026/16. The application is still pending before this court. Then on the 1st December 2016 the first applicant again filed an application for stay of execution of order HC 10451/16 with this court in case HC 12174/16. This application is again pending before this court. Both applications were served on the first respondent who filed notices of opposition.

What jolted the applicants to file the present urgent chamber application on the 6th February 2017 is the fact that on the 5th December 2016 the first respondent instructed the second respondent to attach first applicant's property and cause its ejectment from the premises in a bid to execute the order in HC 10451/16. After some negotiations the second respondent then served notice of seizure and attachment in a bid to execute HC 10451/ 16 on the 2nd February 2017 giving the ejectment date of the 8th February 2017.

The applicants are now seeking a provisional order in the following terms-

"**TERMS OF FINAL ORDER SOUGHT**

That you show cause to this Honourable Court why a final order should not be made in the following terms:-

1. The removal of the 1st Applicant's property from 8th Floor, Goldbridge Eastgate Harare as well as the ejectment of the 1st applicant from 8th floor, goldbridge Eastgate Harare be permanently stayed.
2. The Respondents shall pay the costs of this application, jointly and severally, the one paying the other to be absolved, on their legal practitioners clients scale.

INTERIM RELIEF GRANTED

Pending the determination of case number 12174/16, the Applicant is granted the following relief:-

1. The 2nd Respondent be ordered not to remove the 1st applicant's property from 8th Floor, Goldbridge, Eastgate, Harare.
2. The 2nd Respondent be ordered not to eject the 1st Applicant from 8th floor Goldbridge Eastgate, Harare.
3. The 1st respondent be ordered to pay costs of this application.

SERVICE OF PROVISIONAL ORDER

The applicants or their Legal Practitioners are hereby granted leave to serve a copy of the order by handing on the Respondent."

It has become fashionable for parties to always want to raise points *in limine* some of which do not dispose of the matter at all but is calculated to delay proceedings. *In casu* the first respondent raised the preliminary point that the application was fatally defective for failing to comply with r 241 (2) of the rules. The first respondent's contention was that the application did not comply with Form No. 29 in that the urgent chamber application was to be served on the first respondent but was served on its legal practitioners. I found nothing wrong with the Form used given the fact that it was the first respondent's legal practitioners who had caused the notice of attachment and removal to be effected on the applicants. The application was therefore served on them and there is nothing defective about it. The second point raised was that the matter was not urgent. What the first respondent failed to realise was that urgency was triggered by the notice of removal and ejectment. I found no merits in the points *in limine* and I dismiss them.

On the merits it is clear that the notice of attachment and ejectment was issued and served on the applicants on the 2nd of February 2016. This was despite the fact that the

respondents were aware that there are two court applications pending before this court dealing with the same case HC 10451/16. I was not persuaded that the warrant of attachment and ejectment dealt with different issues. The first respondent argued that these applications have no merit and were self –serving applications meant to delay and frustrate the first respondent‘s rights in this matter and were filed to create circumstances leading to the current application. I do not agree with such submissions. It was the first respondent‘s desire to execute order HC 10451/16 fully aware that there were two pending matters before this court. In the result the application will succeed as prayed for.

It is ordered that the provisional order is granted as prayed for.

Mazhande Mazhande legal practice, applicants' legal practitioners
Gill, Godlonton & Gerrans, 1st respondent's legal practitioners