

NMB BANK LIMITED
versus
WILLIAM BILLY CHIDYAUSIKU

HIGH COURT OF ZIMBABWE
TAGU J
HARARE, 17 May 2017 & 6 September 2017

Application for summary judgment

K Kanyemba for the applicant
N Bvekwa, for the respondent

TAGU J: This is an application for summary judgement. The facts are that the applicant lent and advanced some money to Coldrac Products (Pvt) Limited in the sum of \$1 500 000.00 and one David Govere stood as surety and co-principal debtor. Coldrac Products (Pvt) Limited failed to service the debt leading to the bank obtaining judgment against it. On 15 July 2013 the applicant instructed the Sheriff to sell in execution Stand Number 52 Hessel Drive, Borrowdale, being the then registered property of David Govere. The house was to be sold by the Sheriff by public auction, however, it failed to attract a reasonable price resulting in the applicant offering to purchase the property and reduce the debt. Subsequently, the Sheriff transferred the said property to the applicant on 2 February 2015. The applicant discovered that the respondent William Billy Chidyausiku was in occupation of the said property in terms of a lease agreement that was to expire on the 31st December 2015 and would not render vacant possession to the applicant. William Billy Chidyausiku was paying \$1000.00 per month as rentals to David Govere. The applicant then gave notice to the respondent to vacate the property. When the respondent could not vacate the property the applicant issued summons against the respondent for eviction of the defendant and all those claiming occupation through him. The applicant also applied for holding over damages at the rate of \$1000.00 per month the amount respondent was paying to David Govere as rentals as well as costs of suit. The

respondent entered appearance to defend. The applicant then made this application for summary judgment on the basis that the defendant does not have a bona fide defence to its claim and have only filed an appearance to defend only to waste court's time and delay proceedings.

David Govere by power of Attorney granted by the respondent is now opposing the application for summary judgment on the basis that the sale of the property was not properly conducted and that he should have been cited as a party.

It is trite law that where a respondent who clearly has no bona fide defence to a claim has entered an appearance to defend in order to buy time, the applicant's recourse is to apply for Summary Judgment to be granted without having to go through the lengthy and costly process of a trial. See *Majoni v Minister of Local Government and Anor* 2001 (1) ZLR 143 (S) where the court stated that-

“...the quintessence of this drastic remedy is that the plaintiff, whose belief is that the defence is not *bona fide* entered solely for dilatory purposes should be granted immediate relief without the expenses and delay of trial...”

In order for a respondent in an application for summary judgement to successfully resist the application, he must show that he has a good prima facie defence in terms of r 66 (1) (b) of *the Rules of the High Court 1971*. He should not just raise mere denials. See *Kingstones Ltd v LD Ineson (Pvt) Ltd* 2006 (1) ZLR 451 (S).

In the present case the respondent did not personally oppose the application. He did so through the former owner of the property. In my view the property was property transferred to the applicant through due process of the law. The former owner David Govere has hijacked the case. The respondent has no defence to the applicant's case. The applicant is now the registered owner of the property and has the right to evict the respondent. As far as holding over damages these are well ascertainable on the basis that holding over damages are based on the rental amount the respondent has been paying to the former owner.

In the result summary judgment is granted and the following order is made-

IT IS ORDERED THAT

1. An order for eviction be and is hereby granted for the eviction of the Respondent and all those claiming occupation through him from stand 52 Borrowdale Brooke Township of Brooke Estate also known as 52 Hessel Road, Borrowdale, Harare.

2. Respondent pays holding over damages at the rate of \$1 000.00 per month from 13 March 2015 to date of eviction.
3. Costs of suit on a legal practitioner and client scale.

Gula-Ndebele & Partners, applicant's legal practitioners

Bvekwa legal practice, respondent's legal practitioners.