

PATTERSON FUNGAYI TIMBA  
and  
RENAISSAINCE FINANCIAL HOLDINGS LTD  
versus  
PROFFESSOR C. J. CHETSANGA  
and  
COLLIN KUHUNI  
and  
MONICA MAITIRWA MUKONOWESHURO

HIGH COURT OF ZIMBABWE  
TAGU J  
HARARE 12 SEPTEMBER 2017

### **Civil Trial**

*T Mpofu with Hashiti*, for plaintiff  
*A Mugandiwa*, for the defendants

TAGU J: An appeal has been received by the Supreme Court under SC 713/17 against this court's order delivered on 12<sup>th</sup> September 2017. The Registrar of the High Court has requested this court for reasons for judgment in this matter for the purposes of appeal since no written judgment but an order was made. It is necessary that I give a brief background to this matter.

This case initially came before me on the 19<sup>th</sup> January 2016 as a Special Case. In HC 87/16 I delivered a judgment on the 3<sup>rd</sup> February 2016 whose operative part read as follows-

#### **“IT IS ORDERED THAT**

- 1.1 The defendants are declared validly dismissed from their directorship with second plaintiff pursuant to the Extraordinary General Meeting of 25 January 2012.
- 1.2 The business purportedly undertaken by defendants on behalf of second plaintiff post 26 January 2012 is null and void and of no force or effect.
- 1.3 Defendants are interdicted from continuing to hold themselves out as directors of second plaintiff, and
- 1.4 Costs of suit shall be met by defendants jointly and severally, the one paying the others to be absolved.”

After delivering the above judgment the respondents lodged an appeal to the Supreme Court under SC – 47/2016. The Supreme Court ordered that:

- “(1) The appeals herein be and are hereby partially allowed.
- (2) The judgment of the court a quo be and is hereby set aside.
- (3) The matter be and is hereby remitted to the court a quo for a proper determination of the special case before it.
- (4) Each party shall bear its own costs.”

I duly reconsidered the Special Case whose issue was to determine the legal effect of section 54 of the Banking Act [Chapter 24: 20] in respect of any shareholder that may be the shareholder of a banking institution that has been placed under Curatorship by the Reserve Bank of Zimbabwe, and on the 2<sup>nd</sup> June 2017 I delivered a judgment whose operative part reads as follows-

**“IT IS ORDERED THAT**

- 1.1 Once a Banking institution has been placed under curatorship, the shareholder(s), director(s) and officer(s) powers in relation to the management of the said institution are duly limited to the extent that the appointed curator would by his or her consent permit.
- 1.2 Proceeding with and or commencing any litigation as against the bank placed under curatorship by any party would be or is a legal nullity without the granting of leave by the High Court.
- 1.3 The operation or the doctrine of set off by any creditor as against the bank placed under curatorship is peremptorily suspended.
- 1.4 There is no order as to costs.”

Having had sight of my judgment dated the 2<sup>nd</sup> June 2017 the parties agreed to have the matter set down on the 12<sup>th</sup> September 2017 for trial. At the hearing of the matter the counsels made submissions urging the court to consider the case terminated on the basis of previous judgment. Advocate *T Mpfu* submitted among other things that-

“My lord this is a resolved matter...An answer has been rendered by his lordship, it is consistent with his lordship’s earlier findings which the Supreme Court could not upset although it had been asked to. That answer having been rendered, we are now in the second half where that answer must now terminate the proceedings. But because his lordship has already made findings, the parties have already placed their arguments before Court, there will be no need for me to argue this matter. I point,

draw attention to the submissions that I filed with Advocate *Hashiti*. I draw attention to his lordship's correct judgment and pray that what is now supposed to be done is to use the answer to grant the relief which his lordship had originally granted. My lord those are my submissions and I pray that the Court may order as follows:-

1. The defendants are declared validly dismissed from their Directorship with second plaintiff pursuant to the Extra-Ordinary General Meeting of 25 January 2012.
2. The business purportedly undertaken by defendants on behalf of 2<sup>nd</sup> Plaintiff post 26 January 2012 is null and void and of no force or effect.
3. The defendants shall bear the costs of suit."

Mr Mugandiwa replied as follows...

"...I do agree with my learned colleague that the merits of whether or not the three defendants were validly dismissed as Directors of the 2<sup>nd</sup> Plaintiff were fully ventilated before you. However my lord, I do submit that there is nothing more for you to decide in these proceedings. The issues that were referred to you by way of a special case were disposed of in your judgment of the 9<sup>th</sup> June 2017. The relief now sought by the Plaintiff, which is prayed for by my learned colleague is not an issue before you.

When the parties agreed to proceed by way of a special case, they expressly defined the issue or the issues upon which they sought judgment. Judgment on those issues as I have already submitted was pronounced and the effect of that judgment was to terminate these proceedings. The court is now *functus officio*. Those will be my brief submissions."

May it be noted that I did not deliver any judgment on the 9<sup>th</sup> June 2017. Maybe the respondents collected their copy of the judgment on that day.

Advocate *Mpofu* responded to Mr Mugandiwa by saying-

"... the reason why we are seated in court is to do what the defendants asked the Supreme Court to order this Court to do. It is them, his lordship has access to the transcript, who argued that his lordship was only supposed to answer the question and hereafter, that answer would be used to terminate the proceedings. So it is correct that the answer answers the question, there is no more further answer required, but that answer must now terminate the proceedings in terms of being used to answer the substantive question between the parties and that is what the Supreme Court said...So

it is not true that his lordship is *functus*, because his lordship is not revisiting the question. His lordship is now using the answer to give a final judgment and to terminate the proceedings. My lord those are my submissions.”

After the brief submissions by counsels the court ruled that it will consider this matter closed, the answer being in the previous ruling. In my view the ruling of the 2<sup>nd</sup> June 2017 on its own would not have comprehensively resolved the dispute between the parties hence the case was set for trial on the 12 September 2017. It is not correct to say the court was *functus officio*. The ruling of the 2<sup>nd</sup> June 2017 was merely to determine the legal effect of section 54 of the Banking Act [*Chapter 24.20*] in respect of any shareholder that may be the shareholder of a banking institution that has been placed under Curatorship by the Reserve Bank of Zimbabwe. That ruling was to determine the direction the trial had to take. I therefore agreed with Advocate *T Mpfu* that the answer to the issues before the parties lied in the previous judgment.

Those were the reasons for the order made in the following terms:-

IT IS ORDERED THAT

- a) The defendants are declared validly dismissed from their directorship with second plaintiff pursuant to the Extra Ordinary General Meeting of 25 January 2012.
- b) The business purportedly undertaken by the defendants on behalf of the second plaintiff post 26 January 2012 is null and void and of no force or effect.
- c) The defendants are interdicted from continuing to hold themselves out as directors of second plaintiff.
- d) Costs of suit shall be met by defendants jointly and severally the one paying the other to be absolved.

*Mambosasa*, plaintiffs' legal practitioners  
*Wintertons*, defendants' legal practitioners