

SIBUSISO NDLOVU

Versus

ZIMBABWE GRAIN BAG

IN THE HIGH COURT OF ZIMBABWE
CHIWESHE J
BULAWAYO 26 JULY AND 21 NOVEMBER 2002

E E Marondedze for the applicant
D M Campbell for the respondent

Judgment

CHIWESHE J: On 17 April 2002 the applicant was granted a provisional order which reads as follows:

“It is ordered:

That you should show cause to this honourable court why a final order should not be made in the following terms:

Final Court Order sought

1. That the respondent be and is hereby interdicted from executing on the judgment obtained under case number HC 1773/01.
2. That the respondent bear the costs of this application on an attorney-client scale.

Interim Relief granted

That pending the finalisation of this matter, the applicant is granted the following relief.

3. That this order shall operate as an interim interdict pending the confirmation of the order interdicting the respondent from in any way proceeding to execute on the judgment obtained under case number HC 1773/01.”

The applicant now seeks confirmation of this provisional order. The respondent has filed opposing papers. The brief history of this matter is as follows.

Under case number HC 1773/01 the respondent was granted an order for summary judgment in respect of an action in which applicant had defaulted in payments which he had promised to make to the respondent. In that case applicant had been barred in default of heads of argument. He had made an application to uplift the bar. After hearing submissions from both parties my brother SIBANDA J (as he then was) refused the application and proceeded to grant the application for summary judgment.

The applicant then sought rescission of the summary judgment arguing that that judgment was a default judgment which could be rescinded. That application was heard under case number HC 488/02. The decision of the court in that case was to the effect that the application brought should not be one for rescission of judgment but against the decision of SIBANDA J not to uplift the bar in case number HC 1773/01. That being the case the applicant's remedy should be to appeal to a higher court against that decision. Alternatively the applicant could proceed in terms of order number 10 rule 74.

The ruling on case number 488/02 would have decided the fate of the provisional order under consideration. However applicants have lodged an appeal against that ruling, effectively suspending that ruling. The applicant at paragraph 3 of his heads of argument contends as follows:

“That it is the practice of these courts to allow litigation to run its full turn before allowing a party to execute on a judgment, which is still the subject of further litigation between the parties. The balance of convenience requires that the respondent be interdicted from executing its judgment until the Supreme Court has heard the appeal in case number SC-181-02.”

I agree with this view. The applicant has offered to pay security pending appeal. Accordingly it is ordered as follows:

1. That the respondent be and is hereby interdicted from executing on the judgment under case number 1773/01 pending finalisation of the appeal under case number SC 181/02.
2. That the applicant deposits with the Assistant Registrar of this honourable court acceptable security within fourteen days from the date of this order.
3. That costs be costs in the cause.

Messrs Sibusiso Ndlovu applicant's legal practitioners

Calderwood, Bryce Hendrie & Partners respondent's legal practitioners