

GRETA LANGA

Versus

ANNIE MOYO (NEE LANGA) & TWO OTHERS

IN THE HIGH COURT OF ZIMBABWE
CHEDA J
BULAWAYO 26 MARCH & 20 MAY 2004

C P Moyo for applicant
J Dhlamini for respondent

Judgment

CHEDA J: This is an application for rescission of a judgment granted in default by this court on 6 May 2003 under case HC 813/03 whereupon her application under case HC 2795 was dismissed with costs.

At the hearing respondent raised a point in *limine* on the basis that applicant in as much as she applies for rescission of judgment his draft order seeks a different relief altogether. On perusal I also find that this is so. In paragraph 10 she stated

“I pray that the order granted the 1st respondent dismissing my application be rescinded and I be given leave to prosecute the matter to its conclusion and on its merits.”

The draft order is couched in the following terms:

“It is ordered that:

1. The Certificate of Authority dated the 4th January 2002, issued to and in favour of the 1st respondent be and is hereby revoked and cancelled.
2. The wills dated the 7th and 9th October 2000 purportedly made by the late Vynesi Langa be and are hereby declared to be invalid for want of formalities.
3. All awards, benefits and dispositions made in terms of the certificate of authority and in terms of either will be and are hereby ordered to return and restore to the estate any such benefit.

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4. 2nd respondent be and is hereby directed and ordered to deregister House No. Z66 from the 1st respondent's names and register the same in the names of the applicant.
5. 1st respondent pay the costs of this application.”

Mr *Dhlamini*'s objection is based on the following observations:

- (a) that there has been improper pagination of the record
- (b) the amended draft has not been filed, and that
- (c) the filed copy seeks a different relief.

Mr *Moyo* has argued that this anomaly can be cured by the filing of the amended draft. This, in fact, is true and acceptable.

However, even the amended draft order was not filed. The application is not properly paginated in that the pages referred to in the index refer to completely different documents in the record.

These anomalies in particular, the discrepancy in the draft order in relation to the averments in the application pose a difficulty as to what exactly is being sought by applicant. The application in addition to being clear must also be directly relevant to the draft order filed.

In my view it is important for the draft order to show exactly what relief is being sought by applicant. According to Mr *Dhlamini* applicant through her legal practitioner was made aware of the contradiction in the application and draft order as far back as October 2003, but took no steps to regularise her error. Surely she can not be heard to ask for a further postponement on the trial date. Mr *Dhlamini* has a valid argument.

I find that the failure by applicant to file a relevant draft order renders this application invalid and therefore fatally flawed.

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The application on a point in *limine* is therefore upheld and the application is dismissed with costs.

Messrs Majoko & Majoko applicant's legal practitioners
Lazarus & Sarif respondent's legal practitioners