

JOBE MATHE & 23 ORS

Versus

JIMMY GAZI & 2 ORS

IN THE HIGH COURT OF ZIMBABWE
NDOU J
BULAWAYO 29 APRIL & 20 MAY 2004

M Ndlovu for applicants
R Moyo-Majwabu for respondents

Judgment

NDOU J: This application is one of the three between the parties. The main matter has been set down for argument in the opposed roll on 21 May 2004. In this particular matter the respondents filed heads of arguments. The heads were not served on the applicants' legal practitioner but on the first applicant's given address. At the time of such service, Mr *Ndlovu* had already assumed agency in the main matter. Respondents' legal practitioner is aware of this fact. He, however, submits that in respect of this particular matter, Mr *Ndlovu* had not assumed agency. In the circumstances he did serve the heads of argument at Lazarus and Sarif Legal Practitioners. Technically, he is correct but before this matter was set down on the unopposed roll, Mr *Ndlovu* addressed a letter to him pointing out that he was indeed representing the applicants even in this matter. The respondents' legal practitioner nevertheless set the matter down as unopposed on the basis that the applicants failed to file their heads of argument as required by the Rules of this Court. In this case I stand guided by what McNALLY JA said in *Sangare v Olivine Industries (Pvt) Ltd* 1988 (2) ZLR 210 (S) at 211E-F-

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“While courts are inclined to frown upon plaintiffs who “snatch at their judgments” the impression must not be gained that the Rules may be flouted with impunity ...”

And further at 213A-B the learned Judge of Appeal said-

“One is naturally reluctant to reach a decision which would result in the giving of judgment against a person without his being heard, when he protests that he has a valid defence.”

This is a balance that I propose to strike between these conflicting interests.

Accordingly, I feel that it is in the interest of justice that this matter be argued on the same date as the other matters between the parties.

I therefore, direct that the matter be argued on 21 May 2004 when the other matters between the parties with costs being costs in the cause.

Lazarus & Sarif applicants', legal practitioners
James, Moyo-Majwabu & Nyoni respondents' legal practitioners