

MEKIYA NYATHI

Versus

JOYCE MUVEZWA

And

B TADERERA

And

SENDRA TADERERA

And

REGISTRAR OF DEEDS

IN THE HIGH COURT OF ZIMBABWE
KAMOCHA J
BULAWAYO 22 & 25 JANUARY 2007

G Nyathi, for applicant
H Shenje, for 2nd and 3rd respondents
No appearance from 4th respondent

Opposed Court Application

KAMOCHA J: After hearing both legal practitioners I granted the order sought and indicated that my reasons would follow. These are they. The respondents in this matter were seeking an order in the following terms:

“It is ordered:-

- (1) that leave be and is hereby granted for the 3rd respondent to file supplementary affidavits (sic) in the main application case number HC 2693/02;
- (2) that the bar operating against the 2nd respondent be and is hereby uplifted or removed;
- (3) that the papers in this matter shall form and be part of the record for the main application; and
- (4) that the costs in this matter shall be costs in the main application.”

On 12 November, 2002 the applicant sought and was granted a provisional order whose interim relief was as follows:

Judgment No. HB 11/07

Case No. HC 1291/03

X-Ref 2693/02

“That pending the determination of this application by the court:-

- (a) The first, second and third respondents be and are barred from selling and/or transferring in any way the 1st respondent’s right, title and interest to stand number 35 Plumer Road, North End, Bulawayo to any party pending the determination of this matter.”

The 3rd respondent opposed the urgent application and deposed to an affidavit wherein she stated that she had authority to depose to the affidavit on behalf of the 1st and 2nd respondents. The applicant, in his replying affidavit, pointed out that what the 3rd respondent had done was improper. She had not provided any evidence to show that she had indeed been authorised by the other two respondents. She had no power of attorney from the 1st respondent to represent her and neither did she have any supporting affidavit from the 2nd respondent stating that he had authorised her and that he associated with her averments.

The respondents are blaming the failure to do so on their erstwhile legal practitioner whom they accused of inefficiency. The 3rd respondent had also alleged in her opposing affidavit that the 1st respondent who is her mother had suffered a very severe stroke which left her so ill that she could not walk, talk or understand and manage her own affairs. She, therefore, needed a *curator bonis* to manage her affairs. She was so incapacitated that she could not enter into any binding contractual obligation.

The 2nd respondent who had been cited in the urgent chamber application did not file any opposing papers despite the allegations made by the applicant in his founding affidavit.

After dismissing their previous legal practitioner they engaged their present one on 11 June 2003. He appreciated the irregularities in the opposing papers of the

respondents. He approached this court on 14 November 2003 on behalf of the respondent and obtained this order:-

“It is ordered that:-

1. the matter be and is hereby postponed sine die for respondents to deal with their application in HC 1291/03 first but not later than 30 days; and
2. that 2nd and 3rd respondents to pay costs of this application.”

Judgment No. HB 11/07

Case No. HC 1291/03

X-Ref 2693/02

On 8 December 2003 respondents' legal practitioners wrote to the Registrar of this court requesting for case number HC 1291/03 to be set down. But due to shortage of Judges at the Bulawayo High Court the matter could only be set down for a hearing today.

The 3rd respondent seeks to file a power of attorney from her mother authorising her to act on her behalf. While the 2nd respondent seeks to file his supporting affidavit with its annexures. The respondents are unlucky in that the legal practitioners they have been engaging have handled their case in a perfunctory fashion. They have made elementary mistakes. The erstwhile legal practitioner failed to record opposing affidavits from people who had been cited in a contest. While the present one failed to use the correct form for a court application. In my view, this is not a proper case where the litigant should be visited with the inefficiency of his legal practitioner.

The applicant will suffer no prejudice if the court condones the irregularities. Yet an injustice could occur if condonation is not granted.

I am inclined to grant the application because it was the fault of the legal practitioner that this was not done. The applicant will be afforded the opportunity to respond to allegations raised by the respondents' additional papers. No prejudice will be occasioned by granting the application. The respondents should, however, bear the costs of this application.

In the result, I would grant the application in terms of the draft save that the respondents shall bear costs for this application.

Shenje & Co, applicant's legal practitioners
Sansole & Senda, respondent's legal practitioners