

L W GRUNSHLOSS t/a FAMILY CHOICE

And

FAMILY CHOICE MOVABLE ASSET MANAGEMENT (PTY) LTD

Versus

RUDO ROSELINE JULIUS

And

THE DEPUTY SHERIFF OF THE HIGH COURT, BULAWAYO

IN THE HIGH COURT OF ZIMBABWE

NDOU J

BULAWAYO 18 DECEMBER 2006 AND 11 JANUARY 2007

Adv T Cherry for applicants

B Moyo for 1st respondent

Urgent Chamber Application

NDOU J: The applicants seek a provisional order in the following terms:

“1. **Final Relief Sought**

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

(a) That the order of court made under case No. HC 2049/06 in favour of the first respondent attaching the property of the first applicant should not be set aside and the vehicle attached pursuant to the writ issued in terms of the said order released from attachment and be returned to the second applicant.

(b) That the second respondent be ordered to deliver the property attached pursuant to the said writ to the second applicant or their duly authorised agent. For the sake of clarity the property is:

One truck registration No. N 7328 T

One truck registration No. N 7461 T

Four trailers: N 6288T; N 6289T; N 7359T and N 7360T

(c) That the first respondent pay the costs of this application including the charges raised by second respondent incurred in the executing of the writ and those charges incurred in the removal and storage of the said vehicles and trailers.

2. Interim Relief

Judgment No. HB 2/07

Case No. HC 2782/06

X:Ref HC 2049/06; 2242/06 & 2458/06

Pending the confirmation or discharge of the order sought in paragraph one, this order shall serve as an interim order requiring the first and second respondents forthwith to comply with and give effect to the provisions of sub para (a) and (b) of para 1.”

The background facts of the matter are the following. The 1st respondent is the surviving spouse of the late Wilford Julius. The latter was involved in a road accident whilst driving a Mercedes Benz motor vehicle registration number 523-462F along Gwanda-Bulawayo road at 54.4 kilometre peg. The other vehicle involved in the accident was driven by Tauno Ngipangelwa a Namibian national who gave his employer and owner of the truck he was driving as Family Choice Company of Namibia. Tauno Ngipangelwa was driving a MAN haulage truck registration number N 3358T towing trailers with registration numbers N 34101T and N 3415T. Wilford Julius died on the spot as a result of the said accident and the Mercedes Benz he was driving was damaged beyond repair. Under case number HC 2242/06 the 1st respondent, her two minor children Yolanda and Nicolle and the estate late Wilford Julius issued out summons claiming from Tauno Ngipangelwa, Family Choice Transport Company, and R M Insurance Company the following:

- (a) General damages for loss of support in the sum of \$300 000 000,00 (with interest thereon calculated at the prescribed rate).
- (b) Estate of Wilford Julius, replacement costs of the Mercedes Benz or alternatively, the value of the said vehicle at the time of judgment.
- (c) Costs of suit.

Before serving the summons, the 1st respondent launched an application under case number HC 2049/06 against the 1st, 2nd and 3rd defendants. These three defendants are *pregrini*. In the application the 1st respondent sought an order for attachment of the above-mentioned vehicles to found and confirm jurisdiction. The order was granted on 18 September 2006. Pursuant to this order, a writ of execution was issued on 12 October 2006. On 19 October 2006 the above-mentioned two trucks and four trailers were attached by the Deputy Sheriff, Bulawayo. The application in this matter was issued on 4 December 2006 under a certificate

of urgency. There is no explanation why the application was not issued in October soon after the attachment. *Advocate Cherry*, for the applicants, proffered some form of explanation for the delay. This was done from the bar. The legal practitioner who filed a certificate of urgency in support of the application did not bother to explain the cause for the delay. Neither did the applicants do so in their founding affidavits.

Mr *Moyo*, for the 1st respondent has raised a point *in limine* on the issue of urgency. In *Musunga v Utete & Anor* HH-90-03 MAKARAU J (as she then was) had this to say on the question of urgency:-

“It is trite that no litigant is entitled as of right to have his or her matter heard urgently ... The test for urgency as provided for under the rules is that the matter must be so urgent and that the risk of irreparable damage ... so great that the matter cannot proceed within the normal time frame provided for in the rules ... To assist the court in assessing the urgency of the matter legal practitioners, as officers of the court, are required to give their honest opinion of why they consider the matter urgent. In my view, the purpose of the certificate is not to repeat the facts of the matter as contained in the affidavits but to highlight the urgency of the matter and to give conclusions as to why there will be irreparable harm to the applicant of the application is not treated outside the normal time frame ... The practitioner gives assurance not only on the strength of his/her own honour and name” - see also *Kuvarega v Registrar General & Anor* 1998 (1) ZLR 188 (HC) and *Granspeak Investments (Pvt) Ltd v Delta Operation (Pvt) Ltd & Anor* 2001 (2) ZLR 551 (HC).

As alluded to above, the applicants have not even bothered to explain why they did not act from October to December. They did not allege irreparable harm they would suffer if the matter is not dealt with urgently. They displayed a cavalier approach towards this aspect of urgency. It seems to me that from the papers, the urgency stems from deliberate or careless abstention from action. This is not the type of urgency contemplated by the Rules – *General Transport & Engineering (Pvt) Ltd & Ors v Zimbabwe Corp (Pvt) Ltd* 1998 (2) ZLR 301

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(HC); *Silvers Trucks (Pvt) Ltd & Anor v Director of Customs & Excise* 1999(1) ZLR 490 (H)

and *Williams v Kroutz Investments (Pvt) Ltd & Ors* HB-25-06.

Accordingly on the point *in limine*, the application is not urgent. The application is dismissed with costs on the legal practitioner and client scale.

Joel Pincus, Konson & Wolhuter, applicants' legal practitioners
Dube & Partners, 1st respondent's legal practitioners