

**MADZIVIRE ENTERPRISES (PVT) LTD****Versus****SCHWEGGMAN FAMILY TRUST**

IN THE HIGH COURT OF ZIMBABWE

NDOU J

BULAWAYO 8 MAY 2005 AND 8 FEBRUARY 2007

*C P Moyo*, for the applicant*K Ncube* for the respondentOpposed Application

**NDOU J:** The applicant seeks the confirmation of a provisional order issued by this court on 1 April 2006. The substance of the application is that the applicant seeks an order preventing the renovation of the leased premises pending the determination of the application between the parties in HC 2721/03. In this application I have to deal with the points *in limine* raised by both parties. I will deal with these points in turn.

**Respondent's point in limine**

In brief, the respondent challenges the *locus standi* of Vunganai Mataya to depose to the founding affidavit. As a general rule, I agree that it is necessary for a company's representative to state clearly in his affidavit and exhibit proof that he is authorised to represent the company. He should aver that he has been duly authorised to act for and on behalf of the company and show by company resolution that he was authorised. This is essential in order to bind the company that he represents – *United Associates (Pvt) Ltd v Est Ncube & Ors* HB-29-03; *Unlawful Occupiers of the School Site v City of JHB* [2005] 2 ALL SA 108 (SCA) and *Gurus Mining Corporation v Ncube* HB-8-06. There is, however, an exception to this general rule. This is an example of the exception to the rule. In this case the respondent previously dealt with

the deponent as the applicant's representative in the main application HC2721/03. It is, therefore, not proper for the respondent to challenge the deponent's *locus standi* at this stage –

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X-Ref HC 2721/03

*Air Zimbabwe Corporation & Ors v ZIMRA HH-96-03 and Gurus Mining case, supra.* On

this point the point *in limine* raised by the respondent must fail and it is accordingly dismissed.

**Applicant's point in limine**

In this one, the applicant challenges Titus Ncube's *locus standi* to represent the respondent. From the cross-referenced file it is common cause that Titus Ncube became the sole beneficiary to the respondent on 28 April 2003. Thereafter, the respondent dealt with Titus Ncube as the respondent's representative. Applicant has had dealings with Titus Ncube as a representative of the respondent. This late challenge of Titus Ncube's *locus standi* has no merit – *Air Zimbabwe Corporation* – case, *supra*, and *Gurus Mining* – case – *supra*. Once more, the applicant's point *in limine* must fail and it is accordingly dismissed.

Accordingly, both points *in limine* are dismissed and the matter will be set down for hearing on the merits.

*Majoko & Majoko*, applicant's legal practitioners

*Job Sibanda & Associates*, respondent's legal practitioners