

SETHA SEVEN DUBE

Versus

JOE SOLLY HELFER

And

DEPUTY SHERIFF

And

OFFICER IN CHARGE (ZRP), BULAWAYO

IN THE HIGH COURT OF ZIMBABWE

MDOU J

BULAWAYO 11 JANUARY 2007

G Nyoni, for applicant

N Fuzwayo, for 1st respondent

Judgment

NDOU J: The applicant seeks an interdict to stop 1st respondent from selling or disposing of a Nissan CBB truck registration number 501-265C. The truck is subject matter of the application in HC 892/05. 1st respondent has raised a point *in limine* in that the applicant did not file a founding affidavit. It is common cause that founding affidavit was filed by the applicant's legal practitioner of record. The reason given for such an unusual procedure is that the applicant resides in Plumtree. Plumtree is just around 100 kilometres from this court. Going through the founding affidavit I am in agreement with the 1st respondent that it was improper for the legal practitioner to depose to the founding affidavit on behalf of the applicant.

The legal practitioner has no personal knowledge of the kind of averments he makes. The contents of his affidavit are mainly hearsay.

Further, the Power of Attorney on which the legal practitioner relies upon for his authority does not authorise him to institute this application. He needed to have proper and specific authority to commence these proceedings. His affidavit being improper, must be expunged from the record. Once the affidavit is so removed, the whole application falls away.

Judgment No. HB 4/07

Case No. HC 1215/05

X-Ref HC 892/05

Accordingly, the application is dismissed with costs on the legal practitioner and client scale.

Majoko & Majoko, applicant's legal practitioners

Calderwood, Bryce Hendrie & Partners, 1st respondent's legal practitioners