Judgment No. HB 54/07
Case No. HC 767/07

NEW VISION PROMOTIONS

Versus

T GANYA

And

TAFTECH (PVT) LTD

And

TROT TRANSPORT

And

B G MOTORS (PVT) LTD

And

AFROWIDE (PVT) LTD

IN THE HIGH COURT OF ZIMBABWE
KAMOCHA J
BULAWAYO 17 AND 20 APRIL & 10 MAY 2007

S K M Sibanda, for applicant
J Sibanda for respondents

Urgent Chamber Application

KAMOCHA J: In this application, which came under cover of a certificate of urgency, the applicant sought for an order in the following terms:

"It is ordered that:-

(1) the respondent's (sic) be and are hereby ordered to give the applicant vacant possession of stand number 1355 Bulawayo with improvements thereon at number 143 Fort Street, Bulawayo, forthwith within 3 days from the date of this order, by not later than …. 2007.
(2) Should the respondent's (sic) or any persons occupying the said property through the respondents remain on the property after that date, the Deputy Sheriff be and is hereby authorised and directed to evict and remove the respondent's (sic) and their possession from the property forthwith.
(3) That the costs of this application shall be paid, by the respondents jointly and severally at an attorney and client scale including the costs of evicting the respondents from the premises, the one paying the others to be absolved."

When the application was placed before me, I instructed the Registrar to have it served on all parties to the contest and also invited them to make representations. The director of the

3rd respondent filed a notice of opposition and deposed to an affidavit wherein he stated that he had been authorised by all other respondents and referred me to case number 604/07 pending before this court involving virtually the same parties. He particularly referred the court to the resolutions authorising him to depose to the affidavit.

While it is correct that in matter number 604/07 the other respondents authorised the 3rd respondent's director by resolutions and supporting affidavits to depose to an affidavit in that case, it is not clear whether or not they had done so in this particular case. The other respondents did not file supporting affidavits and company resolutions although Mark Nkomo, the director of the 3rd respondent averred that they had authorised him to depose to an affidavit like in the earlier case. Why would Mark Nkomo say they authorised him if they had not done so? The probabilities are that they had done so but erroneously believed that Mark Nkomo's incorporation of their supporting affidavits and company resolutions filed in earlier was sufficient compliance.

Mark Nkomo – hereinafter referred to just as "Mark" complained that there had been inadequate time allowed to respondents to file proper opposing papers but raised five points *in limine* and sought leave of the court to file opposing papers on the merit should the points fail.

I propose to deal with the last point where Mark complains that the legal status of the applicant has not been properly laid out. The complaint is clearly without merit

as paragraph 1 of the applicant's founding affidavit clearly sets out the applicant's legal status.

The first point *in limine* was that an allegation that applicant had used the wrong form for urgent chamber applicants. Mark submitted that such applications should be in terms of Rule 241 and should be accompanied by Form 29B. The applicant was clearly remiss by using Form 29 which is used for opposed court applications. Mark is therefore correct in

submitting that the applicant used a wrong form. The result is that the applicant launched an ordinary opposed court application under cover of a certificate of urgency. That is not what rule 244 envisaged and is clearly improper. An urgent chamber application accompanied by a certificate of urgency should be accompanied by Form 29B as stipulated by Rule 241.

Mark further submitted that the applicant had attached a draft order to its application as opposed to a provisional order pursuant to Rule 247 in Form 29C. It was his view that that irregularity was fatal because no interim relief was sought by the applicant.

It was submitted on behalf of the applicant that the applicant was in fact seeking a final order. That is clearly untenable since the applicant could not obtain a final order without proving its case. There was need for the matter to be properly argued in court before a final order could be granted. It was correctly submitted by Mark, in my view, that it was not clear at all as to which rule this application had been brought in terms of.

Finally, Mark alleged that the certificate of urgency filed in support of the application was defective in that it did not state in what way the matter was urgent. He asserted that the certificate did not fully explain why this matter, which was an

application for eviction should jump the queue of all the matters pending in this court, to be treated as a special matter deserving to be treated as urgent. He went on to argue that the nature of he relief sought could not be classified as urgent and concluded that these proceedings should have been commenced by way of an ordinary action, as there was no urgency at all in this matter.

I am inclined to agree with Mark since I have found no basis for allowing the matter to jump the queue. It is not urgent at all and the application must fail.

Mark had moved that the application should be dismissed with costs on an attorney-client scale. I find no basis for the punitive costs that are being sought. The applicant should bear costs on the ordinary scale. In the result I would issue the following order.

It is ordered that the application be and is hereby dismissed with costs on the ordinary scale.

Advocate S K M Sibanda and partners, applicant's legal practitioners
Job Sibanda & Associates, 3rd respondent's legal practitioners