UNITED ASSOCIATES

Versus

HIPPO VALLEY ESTATES LIMITED

IN THE HIGH COURT OF ZIMBABWE
KAMOCHA J
BULAWAYO 9 AND 17 JUNE 2010

S Chamunorwa for applicant
J Tshuma for respondent

Opposed Court Application

KAMOCHA J: Applicant is seeking an order in the following terms:-

"It is hereby ordered that:-

1. the agreement of sale between the applicant and the respondent be and is hereby confirmed.
2. the respondent be and is hereby ordered to supply to the applicant 3 000 tonnes of molasses within 4 days of this order being served on it, failing which the respondent is ordered to pay to the applicant the value thereof as at the date of judgment.
3. the respondent be and is hereby ordered to pay costs."

The agreement of sale which the applicant sought to have confirmed was vehemently disputed *ab initio*. While the applicant averred that it entered into an agreement of sale of 4 000 tonnes of molasses on 23 January 2009 the respondent contended that no valid agreement was entered between the parties as one Ndowora, its financial planning manager, had no authority to sale molasses. The deponent to the opposing affidavit Mr Peter Mbozvi was the only one vested with such authority. Upon being told telephonically by Mr Wamambo representing the applicant that an agreement had been entered with Ndowora purporting to represent the respondent – Mbozvi allegedly made it clear that that agreement was void. He said it was void for two reasons:- (a) because Ndowora had no authority to do that; and (b) most importantly the molasses was not available. Mr Mbozvi alleged that Mr Wamambo was aware of that at all material times as he had previously explained to him that what was available was for existing customers who had standing quotas in terms of which the respondent was obliged to deliver certain agreed quantities to such customers per season. The respondent's contention was that the only valid agreement the parties concluded related to the

1 000 tonnes of molasses which was paid for and delivered to applicant. The respondent alleged that the applicant accepted the 1 000 tonnes without demur but the applicant disputes that.

In the light of such material disputes of fact it is not possible to establish on the papers filed whether or not there was any valid agreement of sale in relation of the sale of 3 000 tonnes of molasses.

Similarly it is not possible for this court to award damages, which were not proved, to the applicant. The applicant claims in the alternative, the current value of 3 000 tonnes of molasses without leading evidence to support such claim. It was suggested in argument that such proof can be supplied to the court at a later stage. That is simply untenable.

In the light of the foregoing the application must fail and is hereby dismissed with costs.

Calderwood, *Bryce Hendrie & Partners* applicant's legal practitioners
Scanlen & Holderness respondent's legal practitioners