

RUMTOWERS SECURITY (Pvt) Ltd

Versus

SUPERBAKE BAKERIES (Pvt) Ltd

HIGH COURT OF ZIMBABWE

MATHONSI J

BULAWAYO 22 AND 24 FEBRUARY 2011

Mr Mlala, for the applicant

Mr Nyathi, for the respondent

OPPOSED APPLICATION

MATHONSI J: The applicant instituted proceedings against the Respondent for payment of the sum of US\$3 000-00 for security services rendered during the 3 months of April, May and June 2009 at \$1 000-00 per month. The applicant also sought payment of a further \$3 000-00 in respect of payment in lieu of 3 months notice of termination of the security agreement of the parties by the Respondent.

The Respondent entered appearance and filed a plea raising essentially 2 defences namely that the Respondent had been wrongly cited given that Super bake Bakeries is not a registered company and that the claim for \$3 000-00 in lieu of notice was a claim for damages which could not be made by summary judgment.

This is now an application for summary judgment on the basis that the Applicant's claim is unanswerable and that appearance has been entered for dilatory purposes.

In terms of Order 2A Rule 8C of the High Court of Zimbabwe Rules, 1971;

"Subject to this order, a person carrying on business in a name or style other than his own name may sue or be sued in that name or style as if it were the name of an association, and rules 8A and 8B shall apply *mutatis mutandis*, to any such proceedings."

In *casu*, the Respondent entered into a written contract for security services with the Applicant in the name of "Superbake Bakery." It traded in that name throughout. It can therefore not argue at this stage that the entity in question does not exist. The Applicant is therefore entitled to sue the Respondent in the name of its business.

In terms of Rule 64 an application for summary judgment can be made supported by affidavit stating that in the belief of the deponent there is no *bona fide* defence to the action. Rule 66 allows a party against whom such application has been made to satisfy the court that he has a good *prima facie* defence to the action.

It has been stated that if the defence is averred in a manner which appears in all material circumstances needlessly bald, vague or sketchy, that will constitute material for the court to consider in

relation to the requirement of *bona fides*. *Hales v Doverick Investments (Pvt) Ltd* 1998 (2) ZLR 235 at 238 G and 239 A-B.

In my view there is nothing in the Rules that a claim for damages cannot be made by summary judgment. All the Rules require is for the applicant to aver that there is no *bona fide* defence. The damages of \$3 000-00 being claimed are easily ascertainable on the papers. Clause 11 of the agreement between the parties provides that the agreement could only be cancelled by 3 months written notice to the other party. The Respondent cancelled without giving that notice thereby entitling the applicant to make a claim to be paid \$3 000-00 in lieu of notice.

I am therefore satisfied that the Applicant's claim is unassailable. In the result I make the following order; that

Summary judgment be and is hereby granted in the following terms;

(a) The Respondent is ordered to pay the Applicant the total sum of \$6 000-00 together with interest thereon at the rate of 5% per annum from 13 October 2009 to date of payment.

(b) The Respondent shall be the costs of suit on an attorney and client scale.

Cheda and Partners, Applicant's Legal Practitioners

Messrs Bvekwa Legal Practice, Defendant's Legal Practitioners