

TRADEPASS MARKETING SERVICES (PVT) LIMITED

T/A OUTREACH FOR JESUS CARPENTERS

APPLICANT

VERSUS

M. FILANNINO AND MARKOU M

1st Respondent

And

JOHN POCOCK AND COMPANY (Pvt) LIMITED

2nd Respondent

And

ADVOCATE HILDA MAKUSHA MOYO N.O

3rd Respondent

And

MR G. NYATHI, OF Sansole and Senda N.O

4th Respondent

And

PINEAUS MADZIVIRE Joel Pincus Konson and Wolhuter N.O

5th Respondent

And

CLERK OF CIVIL COURT MRS J. MAPFUMO N.O

6th Respondent

And

ACTING PROVINCIAL MAGISTRATE P. MSIPA N.O

7th Respondent

And

MESSENGER OF COURT N.O

8th Respondent

And

MAGISTRATE S. JELE N.O

9th Respondent

And

DEPUTY SHERIFF, BULAWAYO N.O

10th Respondent

HIGH COURT OF ZIMBABWE

MATHONSI J

BULAWAYO 28 AND 31 MARCH 2011

JUDGMENT

MATHONSI J: In this matter the applicant seeks an order declaring that there is a bar operating against the 2nd Respondent and that the special plea filed by the 2nd Respondent was filed out of time.

On 7 February 2011 the applicant filed a notice of intention to bar which was served on Calderwood Bryce Hendrie and Partners, the legal practitioners of the 2nd Respondent that same day. The time during which the 2nd Respondent was required to file a plea or other answer to the claim expired on 14 February 2011. The 2nd Respondent managed to file a response by close of business on that day in the form of a special plea.

JUDGMENT No. HB 57/11

Case No. HC 596/11

X-Ref 4/11

The applicant has argued that the fact that the special plea was served the following day on 15 February 2011 nullified it. I do not agree. The plea was filed on time and its service a day later did not render it invalid. The applicant's attempt to bar the 2nd Respondent on 16 February 2011 days after the plea had been filed was an exercise in futility and of no legal consequence.

The applicant has also attacked the merits of the special plea. That is an issue to be determined when the matter is argued. It cannot be raised by a separate chamber application. Heads of argument have been filed and an application for a set down date made. The matter should therefore be set down on the opposed roll and disposed of that way.

I come to the conclusion that the application is without merit. It is accordingly dismissed with costs.

Joel Pincus, Konson and Wolhuter, 1st, 3rd, 5th, 6th and 8th Defendant's Legal Practitioners
Messrs Calderwood, Bryce Hendrie & Partners, 2nd Defendant's Legal Practitioners
Messrs Sansole and Senda, 4th Defendant's Legal Practitioners