

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: The applicant filed a notice of intention to bar against the 1st, 3rd, 5th, 6th and 8th Respondents on 16 February 2011 which notice was served on Joel Pincus Konson and Wolhuter on the same day. The Respondents therefore had until close of business on 23 February 2011 to file a plea or other answer to the applicant's claim.

On 23 February 2011, before the *dies inducae* had expired, the said Respondents filed an exception to the applicant's summons and declaration. That notwithstanding, the applicant purported to bar the Respondents on 24 February 2011. The purported bar was not completed or signed as the last part of Form 9 was left blank.

JUDGMENT No. HB 58

Case No. HC 598/11

Ref HC 4/11

The purported bar is invalid by reason that it was filed after an answer to the claim had already been filed and it is also defective. Therefore there is no bar operating against the Respondents.

The applicant has made an application for an order declaring that the Respondents are barred and that the exception be dismissed for that reason. There is no merit in the application. Heads of argument for the exception have been filed and an application for set down made. The matter is therefore ready for argument and should proceed accordingly.

In the result, the application is 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