

ACCUMEN MUSEKIWA

Versus

CLIFFORD MUTAMBUDZI

And

VIMBAI MUTUKWA N.O.

IN THE HIGH COURT OF ZIMBABWE
KAMOCHA J
BULAWAYO 22 OCTOBER 2015

Opposed Court Application

Applicant in person
Mr Magodora for 1st defendant
No appearance from 2nd respondent

KAMOCHA J: On 9 August 2014 the first respondent made an application to strike out the applicant's plea on the basis that it was vague and embarrassing. The application was granted and the 1st respondent's plea was accordingly struck out.

The next day which was 10 August 2014 the trial magistrate who is the second respondent issued a writ of execution in favour of the 1st respondent. The trial magistrate seems to have proceeded in terms of Order 16 Rule 16 of the Magistrates' Court (Civil) Rules 1980 which recites that:

“If an exception to or motion to strike out matter from a plea is sustained and no application for amendment is made, or having been made, is refused, the court may, if the plea then discloses no defence, give judgment for the plaintiff.”

It is common ground that when the writ of execution was issued no application to amend had been made by the applicant to say he intended to make such application to amend.

Applicant wanted to amend when the judgment had been granted and a writ of execution had been issued. The matter was indeed *res judicata*.

Secondly the amount involved is a refund of \$10 000,00 which respondent had paid to applicant. Applicant had also expressly consented in the Deed of Cession to the jurisdiction of the Magistrates' Court.

Applicant does not have a *bona fide* defence.

The grounds for review are devoid of any merit. In the premise this application fails and is dismissed with costs.

Magodora & Partners, 1st defendant's legal practitioners