

NATIONAL RAILWAYS OF ZIMBABWE CONTRIBUTORY PENSION FUND

Versus

MEMIZZA INVESTMENTS (PVT) LTD (UNDER CORPORATE RESCUE)

HIGH COURT OF ZIMBABWE
SIZIBA J
BULAWAYO 3 & 5 SEPTEMBER 2024

OPPOSED APPLICATION

Mr T. Chimusaru for the applicant
Mr P. Madzivire for the respondent

SIZIBA J

BACKGROUND OF THE CASE AND ISSUES FOR DETERMINATION

This is an application for leave to continue legal proceedings against the respondent which is a company under corporate rescue. The application is premised upon section 126 (1) of the Insolvency Act (Chapter 06:07). The applicant is the lessor whilst the respondent is the lessee of a property known as Stand 279 and 280 Bulawayo Township, Bulawayo wherein there are buildings commonly known as Suite 102, 1st Floor South Wing, Q. V House, 9th Avenue, Bulawayo. The applicant seeks leave from this court to continue eviction proceedings that it had commenced against the respondent at the Magistrates Court under case number BYO CD 411/24. The applicant alleges that the respondent has breached the lease agreement by subletting the premises after subdividing the place into smaller compartments which structures have been condemned as illegal by the City of Bulawayo. The respondent raised a point *in limine* that the deponent to the founding affidavit being one Tinei Goto has no authority to represent the applicant. At the hearing of this matter, I invited the parties to address me on the point *in limine* and also on the merits of the application so that if the point *in limine* is upheld, the matter would end there but if, on the other hand, the point *in limine* is dismissed, the merits of the case will be considered.

DECISION OF THE COURT

This court holds that the deponent to the founding affidavit has no authority to represent the applicant because there is no board resolution from the applicant which authorizes him to act in its stead in these proceedings. No board resolution was attached to the founding affidavit in the first place and when the deponent's authority to represent the applicant in these proceedings was challenged, no resolution from the applicant's board of directors authorizing the deponent to represent it was provided. The point *in limine* is therefore upheld. The matter is therefore not properly before this court.

THE APPLICABLE LAW

The legal principle that a company acts through resolutions taken by its directors at a properly convened board meeting is well entrenched in this jurisdiction. In *Dube v Premier Service Medical Aid Society and Another* SC-73-19, the court articulated the law as follows at page 14 of the cyclostyled judgment:

“The High Court decision was appealed to this Court. In a decision reported as Madzivire & Ors v Zvarivadza & Ors (supra), at 515, this Court (per Cheda JA) remarked as follows:-

“A company, being a separate legal person from its directors, cannot be represented in a legal suit by a person who has not been authorised to do so. This is a well-established legal principle, which the courts cannot be ignored. It does not depend on the pleadings by either party. The fact that the person is the managing director of the company does not clothe him with the authority to sue on behalf of the company in the absence of any resolution authorising him to do so. The general rule is that directors of a company can only act validly when assembled at a board meeting. As exception to this rule is where a company has only one director who can perform all judicial acts without holding a full meeting.”

The above remarks are clear and unequivocal. A person who represents a legal entity, when challenged, must show that he is duly authorised to represent the entity. His mere claim that by virtue of the position he holds in such an entity he is duly authorised to represent the entity is not sufficient. He must produce a resolution of the board of that entity which confirms that

the board is indeed aware of the proceedings and that it has given such a person the authority to act in the stead of the entity. I stress that the need to produce such proof is necessary only in those cases where the authority of the deponent is put in issue. This represents the current state of the law in this country.”

The Supreme Court of Zimbabwe, as the highest court on non – constitutional matters has not departed from the above stance. It is a resolution by the board of directors in a properly called meeting that confirms one’s authority to act. Such a board resolution can be filed on the onset as an annexure to the founding affidavit in order to defeat any attack to the deponent’s authority that may come by at any stage of the proceedings. This approach is preferable and it will always be followed by a diligent litigant. Where such a resolution has not been filed from the onset, it must be availed to the court whenever the authority to represent a party is denied by the rival party. It will not avail for one to simply argue that his or her opponent must be aware that he or she has always been authorized to act for a litigant from the surrounding evidence or other documentation before the court.

APPLICATION OF THE LAW TO THIS CASE

In the present case, when the applicant filed its application, the deponent to the founding affidavit, being one Tinei Goto, alleged that he was a Property Manager for the applicant in terms of a Management Agreement attached as annexure ‘A’. That annexure is not a Management Agreement but a letter from Night Frank dated September 2023 which was advising the respondent that Rananga Properties (Pvt) Ltd were to be the new property managers with effect from October 2023. The deponent seems to be an employee of Rananga Properties (Pvt) Ltd. When his authority to act for the applicant was challenged by the respondent in the opposing affidavit, he then attached to the answering affidavit the Management Agreement between the applicant and Rananga Properties (Pvt) Ltd as well as a board resolution by Rananga Properties (Pvt) Ltd which authorizes him to institute legal proceedings or appear in court on behalf of Rananga Properties. The said board resolution is dated the 2nd of November 2023. There is no resolution from the applicant which specifically authorizes the deponent to institute legal proceedings in any court on its behalf. The only board resolution before this court is the one which authorizes the deponent to act for Rananga

Properties (Pvt) Ltd, which entity is not before the court. The situation would have been different if the proceedings had been instituted by Rananga Properties (Pvt) Ltd which manages the property and which entity also authorized the deponent to act on its behalf. If the applicant was to disown these proceedings, the situation would embarrass both this court and the respondent as well as the deponent himself. This is why a board resolution from the legal entity which is a litigant becomes a requirement whenever its need, existence or availability becomes an issue in the court proceedings.

In face of the above stalemate, counsel for the applicant took the view that the court should hold that the deponent is authorized to represent the applicant because he signed a discovery affidavit and also gave a synopsis of evidence in the pending action. I do not agree that such documents should be sufficient proof of authority to act for a legal entity. Equally insufficient as well would be the belief or submission that the other party is not being genuine in demanding a board resolution because it has previously dealt with the deponent or person who is alleged to be authorized to represent the legal entity. What the court requires is simply a board resolution from the board of directors where such authority to represent the legal entity concerned is in issue.

CONCLUSION

It is on the basis of the above considerations that this court takes the view that there is no proof that the applicant is part and parcel of these proceedings. The point *in limine* that has been taken by the respondent is accordingly upheld. The result is that the matter is not properly before the court and it is accordingly struck off the roll with costs on an ordinary scale.

Dube – Tachiona & Tswangirai, applicant's legal practitioners

Joel Pincus, Konson & Wolhuter, respondent's legal practitioners