

ALSHAMS GLOBAL BVI LIMITED
versus
KINGSTONS HOLDINGS (PRIVATE) LIMITED

HIGH COURT OF ZIMBABWE
MANGOTA J
HARARE, 2 July, 2013

Advocate L. Uriri, for plaintiff
E.R. Samkange, for respondent

MANGOTA J: On 24 October, 2012 plaintiff obtained provisional sentence against the defendant.

On 25 October, 2012 defendant entered appearance to defend.

On 7 November, 2012 defendant filed its plea to the plaintiff's application.

On 31 May, 2013 defendant applied for a Pre-Trial Conference date and it filed with the court issues which it considered were relevant to the case. The Registrar of this court referred the record to me for dealing.

On 2 August, 2013 the parties appeared before me for a Pre-Trial Conference. It was on the mentioned date that the plaintiff raised a procedural issue. It argued that the Pre-Trial Conference was improperly before the court as, according to it, the defendant had not complied with r 28 of the rules of this court. The defendant argued to the contrary. The court and the parties agreed that counsel for the parties hand into the court written submissions in support of their clients' respective cases. Those were duly handed in and I went through them, each in turn. I remained alive to the fact that it is not the duty of a Pre Trial Conference Judge – which I am in respect of this case - to make decisions which go to the merits of the case. That duty remains with the trial Judge. I remained satisfied that, in terms of r 182 of the rules of this court, my mandate, as a Pre-Trial Conference Judge, is to assist the parties who are before me to :-

- crystallise as well as define issues with which a trial judge will be seized when the matter goes for trial and, where possible.

- persuade the parties to reach a settlement.

I became aware, from my reading of the parties submissions, that what the plaintiff raised constitutes a real issue which, together with others, must be referred to a trial judge when the matter goes to trial. The point, in my view, can be raised as a preliminary issue upon which the success, or otherwise, of the parties' case remains anchored. The issue can, at best, be couched along the following words:-

“whether, or not, the defendant violated rule 28 of the rules of this court”

The submissions which the parties made are in the record. Those will assist the trial judge to make an informed decision on the matter.

I, accordingly, direct that, in addition to the mentioned issue as read together with the defendant's issues which are already filed of record,

- The plaintiff submits its issues to the court upon or before Friday, 18 October, 2013 - and
- Both parties attend a Pre-Trial Conference before me in my chambers at 10.00 am of Tuesday 22 October, 2013.

Uriri Attorneys At Law, plaintiff's legal practitioners
Messrs Ventura & Samkange, defendant's legal practitioners