

PUWAYI CHIUTSI
versus
THE SHERIFF OF THE HIGH COURT
and
ELLIOT RODGERS
and
REGISTRAR OF DEEDS
and
BARIADIE INVESTMENTS (PVT) LTD

HC 11349/17

ELLIOT RODGERS
versus
MC DUFF MADEGA N.O.
and
PUWAYI CHIUTSI

HC 2650/18

HIGH COURT OF ZIMBABWE
MATHONSI J
HARARE, 27 September & 3 October 2018

Opposed application

T Zhuwarara, for the applicant
T Biti, for the 2nd respondent

MATHONSI J: This judgment disposes of 2 applications. HC 11349/17 is an application made by Puwayi Chiutsi (Chiutsi), a legal practitioner and officer of this court and as such occupying a very privileged position in the justice delivery system, for an order setting aside the confirmation of the sale in execution of his house in Highlands Harare in pursuance of a judgment of this court granted on 4 November 2014 in favour of Elliot Rodgers, a former client of Chiutsi, in the sum of \$70 000-00. In HC 2650/18 is an application for a declaratur brought by Elliot Rodgers against the Sheriff of this court and Chiutsi entreating this court to declare that once the Sheriff has issued a determination in terms of r 359 (1) of the High Court Rules, 1971, the Sheriff is obliged to pass transfer in terms of r 361.

The parties agreed to argue the two matters at the same time as they are intricately related and that both be disposed of by one judgment. I write this judgment with 10 court

records, including 8 others which are referred to in the 2 applications, all of which have either been brought by Chiutsi himself or have been instigated by him seeking to frustrate the execution of the judgment granted in favour of his former client. Mr *Biti* who appeared for Rogers submitted that there are in fact a total of 15 such applications and 2 Supreme Court appeals. The only common thread permeating through them being that Chiutsi has lost all of them including the 2 Supreme Court appeals with costs at the superior scale except in one application.

It is a searing indictment to the legal profession of this country as a whole and the Law Society of Zimbabwe in particular, which is the administrative body reposed with the responsibility of regulating the conduct of legal practitioners in this country, in light of the undisputed allegations levelled against Chiutsi, that he is still practising law. Not only that, he is in fact a senior legal practitioner entrusted, not only with the running his own law firm, but also with the employment and mentorship of budding young lawyers. How does an accusation of theft of large sums of trust money given to a certified legal practitioner in his capacity as a conveyancer sit well with such a legal practitioner and the entire profession? How does such a legal practitioner, exhibiting not a jot of shame or contrition, contest anything and everything brought to court in an effort to right the wrong he has committed (with pan intended) without even attempting to construct a meritable case? How such a person is allowed to bring endless and indeed frivolous applications going into double digits, designed to achieve nothing else but to protect his booty is the mystery of our lifetime. More importantly, how and indeed why is such a legal practitioner still enjoying pride of space among the rank and file in the noble profession? He continues freely traversing the country masquerading as a legal practitioner. It is disgraceful.

The facts of this matter, as skilfully presented in the affidavits of Rodgers, read like a soap opera or a script from an American television legal drama and certainly nothing near reality. Regrettably it is real. Sometime in 2012 Rodgers sold a piece of land in Mount Pleasant for a purchase price of US \$266 000-00. He instructed Chiutsi to attend to the conveyancing aspect of that transaction which exercise entailed the payment of the purchase price into the trust account of Chiutsi's legal practice, which goes under the style P. Chiutsi Legal Practitioners of Harare.

Although conveyancing instructions were given to Chiutsi in mid 2012 and the purchase price paid to him in August 2012 it was not until 10 September 2013, more than a year later, that he achieved the otherwise simple and indeed clerical task of registering the

transfer. Meanwhile, about February 2013 Chiutsi had only paid a sum of \$150 000-00 of the purchase price to Rodgers leaving a balance of \$116 000-00. He later tried to appropriate most of it as his fees despite him being entitled to a small fraction of that in terms of the conveyancing tariff. It is that action which triggered the litigation which has unfolded over the past 5 or 6 years. The bottom line being that Chiutsi did not remit the full purchase price paid to him in trust for onward transmission, less statutory deductions, to Rodgers. Despite being ordered by this court to pay, a court order granted by consent, he has not paid meaning that he converted the money to his own use.

As the debt remained unpaid execution was levied. The Sheriff's forays against Chiutsi's movable property yielded negativity and he submitted a *nulla bona* return. As a result, instructions were given to the Sheriff to proceed against Chiutsi's immovable property being the Remainder of Subdivision C of Lot 6 of Lots 190, 191, 193, 194 and 195 Highlands Estate of Welmoed, also known as 41 Edgewan North Highlands, Harare (the house). This happened after execution against Chiutsi's movable property had been frustrated by endless unsuccessful interpleader proceedings as real and imagined individuals including his wife Clara, lay claims against the properties. The house was eventually sold by the Sheriff on 15 September 2016 with Bariadie Investments being declared the highest bidder at the sum of \$270 000-00.

Naturally Chiutsi objected to the sale in terms of r 359 (1) on a number of grounds chief among which being that he had filed an application in HC 8122/17 which was still pending and therefore in terms of r 348A (5d) the Sheriff could not take any further steps regarding the sale. In strongly worded and inappropriate language he accused the Sheriff of conducting "some clandestine consultations with the Judge who dealt with the matter. As it turns out case number HC 8122/17 is a chamber application for condonation of the late filing of a r 348 A (5a) application. That provision allows an execution debtor whose dwelling has been attached to make an application in terms of subrule (5b) for the postponement or suspension of the sale. The application should be made within 10 days and apparently Chiutsi had not complied. The application in question was opposed and the record shows that it was not prosecuted.

In his objection to the Sheriff Chiutsi also made reference to case number HC 8675/17, an application which he made in terms of r 449 (1) (b) and (2) seeking an order declaring the sale of 15 September 2017 invalid. It was opposed and again never prosecuted. He argued that it was irrational for the Sheriff to proceed with the sale. He also challenged

the validity of the sale on the ground that the property had not been advertised in terms of the rules, that the Sheriff had not complied with r 348 A (2) in that he had not given notice to the Secretary for Local Government and that the property had been sold at an unreasonably low price. The price was unreasonably low because on the date of the sale there was panic buying of goods by members of the public and that the price for which the property was sold was only equivalent to US\$150 000-00. He did not elaborate.

The Sheriff heard the objection and on 29 November 2017 he dismissed it. Chiutsi would not relent. He filed an application in HC 11349/17 Form 29 of which states that it is made in terms of r 359 (9) presumably meaning subrule (8) because it is the latter subrule which allows any person aggrieved by the decision of the Sheriff to confirm the sale in terms of subrule (7) to apply to this court by way of a court application to have the decision set aside. Surprisingly, although Chiutsi maintains in his founding affidavit that the application is in terms of r 359, he goes on to say that this in fact an application for review and sets out the grounds for review in para 9 of the founding affidavit, a total of 23 of them.

In summary, he accuses the Sheriff of having “a personal relationship” with Rodgers, suggesting corruption and of making “incoherent and illogical findings”. He also accuses the Sheriff of failing to control the proceedings during the hearing and being “intimidated” by Rodger’s counsel and having pre-determined the matter among a raft of other accusations. The sale should not have been confirmed because he was already challenging the attachment of the house in HC 649/17. That was another opposed application for the setting aside of the attachment of the house on the ground that the *nulla bona* return was fraudulent. While making that claim, other than alleging that it is Rodger’s lawyers who instructed the Sheriff to issue it, Chiutsi did not point to any movable property of his available for attachment to satisfy the judgment as would impugn the *nulla bona* return. It is an application that has been left hanging but whose existence has been used as an excuse to challenge the sale.

Chiutsi also complained bitterly about being deprived an opportunity to make representations to the Secretary of Housing in terms of s 15 (2) of the Housing and Building Act [*Chapter 22:07*]. He was prevented from doing so because the Sheriff did not notify the Secretary of the attachment of the house. That accusation is unfounded because, by letter dated 12 July 2017, the Sheriff notified the Secretary in terms of r 348 A that the house had been attached in execution of a judgment of the court. All that Chiutsi was required to do was to make representations to the Secretary. The fact that a copy of the letter in question was

made available to him late did not prevent him from approaching the Secretary if he so wished.

What is however a strain to the mind is that a complaint about that is being made by a person of the standing of Chiutsi in the first place. The state set up a National Housing Fund in terms of s 14 of the Housing and Building Act [*Chapter 22:07*] for the purpose assisting genuine cases of indigency and inability to settle debts by the less privileged citizens of this country who end up losing dwelling houses to execution. What Chiutsi is saying is that he was a candidate for such assistance in terms of which the Secretary should have settled the execution creditor's claim from the National Housing Fund. Without interfering with the prerogative of the Secretary to settle claims from that fund I find it extremely difficult to fathom the use of such a noble fund to satisfy or settle a claim arising from the facts of this matter wherein a practising lawyer entitled to charge quite high fees, in terms of his seniority, would be a beneficiary of a fund such as that provided for in s 14 of that Act.

What is even more repugnant are the circumstances under which the debt arose, from an embezzlement of trust funds entrusted to Chiutsi as a conveyancer by an innocent client. Out of what may rank as unbridled greed, he then appropriated a large sum of \$116 00-00 of trust funds for his own use as a result of which the judgment sought to be executed was made. In my view, it would be the height of turpitude to use the National Housing Fund set up in terms of the Housing and Building Act as insurance cover for corruption and pilfering by lawyers unable to resist temptation or to practise law in an honest and noble manner. How can a lawyer who is shown to have misappropriated trust funds in the most despicable manner seek to shelter under a National Housing Fund designed for genuine cases of inability to pay? It is unthinkable that someone would want to continue perpetuation this strange sense of entitlement, not only to a client's money but also having been caught with his hands deep inside the cookie jar, he regards himself as being entitled to have his misdemeanour's paid for by the state from tax payers' money.

The Sheriff heard the objection to the sale which was made in terms of r 359 (1), a rule which allows any person who has an interest in the sale to request the Sheriff to set it aside on the ground that the sale was improperly conducted or that the property was sold for an unreasonably low price or on any other good ground. In other words a party requesting the Sheriff to set aside a sale in terms of r 359 (1) is confined to the grounds for making the challenge as are permitted by that rule. By the same token, when considering whether to set aside or confirm the sale upon such a request, the Sheriff is confined to considerations set out

in that rule. See *Marfopoulos v Zimbabwe Banking Corporation Ltd & Ors* 1996 (1) ZLR 626 (H) in which the point is made with silky eloquence that the rules concerning the sale of properties in execution are meant to strike a balance between the need to protect a judgment debtor who may be unfairly hounded to insolvency and homelessness on the one hand and the need to ensure that the judgment creditor who has been forced to go to court to obtain satisfaction of his debt secures just relief. It is also crucial to ensure the reliability and efficacy of sales in execution are upheld.

Those are the principles which guide the Sheriff when considering a request to set aside the sale. His task was made much the more difficult by Chiutsi electing to throw everything into the fray with reckless abandon and without regard to the grounds set out in the rules. In the end quite a lot of extraneous issues were raised which weakness continues to afflict the judgment debtor's efforts even in the present application. In my view the Sheriff admirably perceived the issues that fell for determination and correctly captured the grounds relied upon by Chiutsi as that:

- (a) The sale ought to have been stopped in terms of r 348A;
- (b) The house was not properly advertised;
- (c) There was no compliance with r 348 A (2) relating to notification to the Secretary of Local Government ; and
- (d) The property was sold at an unreasonably low price.

In his ruling dated 29 November 2017 the Sheriff impressively dealt with those grounds and rejected them. He drew the conclusion that the sale could not be stopped in terms of r 348 A because Chiutsi had filed his application out of time without condonation. In the absence of condonation there was no application at all and therefore the sale could not be stopped. Regarding the advertisement of the sale the Sheriff noted that it was properly made in terms of the rules and that even the issue of the notice (Chiutsi had argued that the sale was advertised the very same day it was scheduled to take place), the Sheriff noted that the argument was of no moment especially as the sale did not occur on that date but was postponed to a later date.

I have already alluded to the third ground that of notice to the Secretary of Local Government. The Sheriff's view was that indeed notice had been given in accordance with the rules. Although the Secretary was notified she or he did not offer to satisfy the value of the judgment from the National Housing Fund. The matter ended there. On the house being sold for an unreasonably low price the Sheriff noted that Chiutsi had not proved that

assertion. He did not attach any evidence to show that the price was unreasonable. He was mindful that his was a forced sale which invariably attracts a lower price than would be achieved through any other sale.

Chiutsi opted to make the application to set aside the Sheriff's decision to confirm the sale in terms of r 358 (8). In typical Andy Capp style, that cartoon character with a knack for falling into the same canal every night on his way home after a heavy drink, Chiutsi fell into the same trap of throwing in every conceivable argument he could find. These included grounds like recusal which were never placed before the Sheriff, whose decision is sought to be impugned. It cannot be challenged on grounds not placed before the Sheriff in the first place.

It has been stated that like any other decision or proceedings, the decision by the Sheriff to confirm a sale of an immovable property can be taken on review before this court which has review jurisdiction in terms of s 27 of the High Court Act [*Chapter 7:06*]. In my view however, where the judgment debtor elects to approach the Sheriff seeking to set aside the sale in terms of r 359 (1) such a judgment debtor would seem to have an election to approach this court either on review in terms of Order 33 of this court's rules or to make an application to this court in terms of r 359 (8) to set aside the decision of the sheriff to confirm the sale in terms of subrule (7) of r 359. Where however the judgment debtor elects to proceed in terms of Order 33 by an ordinary review, such a debtor cannot at the same time seek to rely on the grounds for challenging the sale set out in r 359 (1) like the unreasonableness of the price achieved by the sale. He or she would have to rely on the ordinary review grounds set out in s 27 of the Act and other common law grounds. Of course an approach in terms of r 359 (8) is not and cannot possibly be available to one who has not requested the Sheriff to set aside the sale in terms of r 359 (1). That one's only recourse is an ordinary review application.

It occurs to me that a judgment debtor cannot combine grounds for reviewing the Sheriff's decision set out in r 359 (1) and ordinary review grounds as appear in s 27 and the common law. In the words of MAKARAU J (as she was then) in *Chiwadza v Matanda & Ors* 2004 (2) ZLR 203 (H) at 206:

“The approach to this court after a sale in execution has been confirmed and in the absence of a prior approach to the sheriff in terms of the rules is in my view to be based on the general grounds of review as provided for at common law. These would include such considerations as gross unreasonableness, bias and procedural irregularities but cannot include such grounds as an unreasonably low price or that the sale was not properly conducted as provided for under the rules unless such can be subsumed in the recognized grounds of review at common

law. It is my further view that this, which presents itself to me as the second approach, only obtains after confirmation of the sale but before transfer is effected to the purchaser”

Unfortunately the applicant has filed what appears to be a hybrid application which purports to be one made in terms of r 359(8) including grounds like an unreasonably low price. He has however proceeded to list grounds for review in his Form 29 as required by r 257 as if this is a review application in terms of Order 33. He has gone on to set out grounds which include bias not provided for in r 359 (1) and not even argued before the Sheriff. It is just a maze of confusion. I accept, as stated by DUBE J in *Nyadindu & Anor v Barclays Bank of Zimbabwe & Ors* 2016 (1) ZLR 348 (H) at 353 F-H,

“The procedure envisaged by rule 359 is that of a review of the decision of the Sheriff by this court. The court is required to look at the objections raised and test the decision of the Sheriff. Rule 359 (8) limits the grounds upon which this application may be brought to those raised in terms of r 359 (1) as objections. The High Court sitting as review court, cannot enquire into questions that were not raised initially as objections and deliberated on by the Sheriff. A party who has failed to raise an objection at the time he challenged the decision to accept a bid price with the Sheriff cannot raise the objection in an application to set aside the sheriff’s decision to confirm a sale.”

It means that those grounds not raised before the Sheriff and therefore not considered by him in his decision to confirm the sale which is sought to be set aside cannot be raised for the first time before the court. In any event my view is that the only meaningful ground worth further consideration is that relating to the price. Discussing the issue of the price in *Morfopoulos v Zimbabwe Banking Corporation Ltd & Ors Supra* , at 633 C – E GILLESPIE J said:

“The price achieved is therefore itself taken as a reliable indication of value. For these reasons there is recognised an onus upon the challenger to prove that the price so achieved is unreasonably low. A litigant wishing to discharge this burden must be fully prepared with properly supported valuations of the property under consideration. These valuations must reflect the upper and lower limits of the suggested market price, so that the court might make a proper determination whether the price achieved is unreasonable, that is to say that it is substantially lower than would reasonably be anticipated, given the expected range of prices, See *Zvirawa (supra)* at 17 D-E. The valuations that are commonly produced in such matters frequently tend nowadays to essay an assessment of a forced sale value. This is itself of some assistance to the court, in that one is by such an opinion assisted towards a finding as to whether or not the price achieved is what one would expect on a forced sale or unacceptably disproportionate even to such lowered expectations”

See also *Zvirawa v Makoni & Anor* 1988 (2) ZLR 15 (S) at 18 D –E; *Success Auto (Pvt) Ltd & Ors v FBC Bank Ltd & Anor* HH 157-15 (unreported)

The policy of the law on these sales is that sales in execution cannot be undermined by ill refined and non-specific averments as the ones made by Chiutsi. The rights of third parties who would have purchased properties from the Sheriff should also be protected and

cannot be defeated by fanciful arguments as the ones made by Chiutsi relating to the rate of exchange between the bond notes and the United States dollar which did not make sense at all. It is not even clear how the issue of that rate comes into it when he does not even suggest that the third party paid the Sheriff in bond notes. He has not even attached any alternative valuations to suggest that the house is capable of being sold at a higher auction price or that the sum of \$270 000 for which it was sold is unacceptable. I conclude therefore that there is no merit in the application.

That brings me to the second leg of the dispute, the application brought by Rodgers for a declaratur. It is an application premised on r 361 requiring the Sheriff to give transfer of the property to the purchaser immediately after confirming the sale. Rodgers takes the view that in light of the Sheriff having confirmed the sale, he was obliged to give transfer to the purchaser. Initially the Sheriff gave instructions for transfer to be effected but rescinded those instructions after receiving Chiutsi's application made in terms of r 359 (8). The application is opposed by Chiutsi whose opposing affidavit is legendary by its brevity. Apart from unnecessarily quoting r 359 (8) verbatim, he only makes 2 sentences in opposition, namely paragraph 6 thereof that:

“6. Ad Paragraph 82 -105

The Sheriff's decision is not final when it relates to confirmation of a sale in execution of an immovable property”

He then states in para 8 of the opposing affidavit:

“8. The sheriff's decision is thus not final it is subject to this Honourable Court's confirmation.”

Litigants should not oppose applications as a matter of routine even when they have nothing to say.

The step-by-step procedure for undertaking a sale of immovable property by the Sheriff is contained in Order 40 of the rules. It culminates in r 361 which reads:

“Immediately after the sale has been confirmed and the conditions of sale complied with, the Sheriff shall proceed to give transfer of the property to the purchaser against payment of the purchase money.”

The rest of the rules deal with distribution of the proceeds of the sale and the power of the Sheriff to effect transfer of the property to the purchaser. There is nothing in the rules suggesting that a r 359 (8) application precludes the Sheriff from giving transfer as required by r 361. In fact the Sheriff himself acknowledged as such in his report submitted in response to Rodgers' application. He however gave a reason for the practice of not

proceeding with transfer once an application for setting aside the sale is made. His report reads in part:

“6. We agree that we declined to proceed with the transfer because of the filing of the court application for setting aside of sale in terms of r 359 (8). We are aware that the rules are silent on whether transfer should proceed or not in such circumstances.

7. The practice that has always been followed is that we do not proceed with transfer of the immovable property once served with a court application for setting aside of sale.

8. The practice is informed by the following basis that we have had several cases which proceeded with transfer and distribution of funds and the court went on to set aside sales and thus requiring us (to) reverse the judicial sale and retrieve funds which would have been distributed pursuant to transfer.

9. The practical challenges that are caused are that once an order setting aside a sale is given the Sheriff would not be in a favourable position to refund the full purchase price and other costs such as Capital Gains Tax because funds would have been distributed to the instructing attorneys and relevant authorities, who often refuse to refund such funds.”

The practice adopted by the Sheriff accords with common sense and good order. In fact in a jurisdiction such as ours where even conveyancers like the one who forms the subject of the present litigation appear to hold sway, it is imperative that the proceeds of judicial sales be handled with Solomonic wisdom and extreme care lest fresh and endless litigation erupts after the sale.

I have previously expressed a similar view, albeit in respect of movable property placed under attachment and due for removal. See *Chihota v Munyariwa & Ors* 2014 (2) ZLR 206 (H) at 209 B – C. In other words it accords with logic to stay further action in execution of a judgment to allow for a full and thorough investigation of any claim tending to impact on the process of execution in order to avoid a multiplicity of actions.

Mr *Biti* for the applicant in the second matter (Rodgers) submitted that once the Sheriff has dismissed a request to set aside the sale made in terms of r 359 (1) and confirmed the sale r 361 gives him no room to manoeuvre but that he has to give transfer. It is only the court, upon an appropriate application being made for suspension of execution, which can stop transfer. While that is a correct reading of the rules, I take the view that there is another overriding responsibility thrust upon this court to regulate its own process. It would be inappropriate to grant a declaratur as sought by Rodgers as it would open flood gates of chaos in the process of judicial sales not easy to contain.

In terms of s 14 of the High Court Act [*Chapter 7:06*], at the instance of any interested party this court may inquire into and determine any existing, future or contingent

right or obligation. The circumstances under which this court grants a declaratory order are well settled. The approach of the court involves a 2 stage inquiry during the first of which the court enquires whether the applicant is an interested person in the sense of having a direct and substantial interest in the subject matter of the suit which could be prejudicially affected by the judgment of the court. The second stage of the inquiry involves the decision by the court, notwithstanding the finding in the first stage that the applicant has a direct interest, whether or not the case in question is a proper one for the exercise of its discretion under s 14. See *Munn Publishing (Pvt) Ltd v Zimbabwe Broadcasting Corporation* 1994 (1) ZLR 337 (S) at 343 F – 344 A – E. *Gama N.O v Mpofu & Ors* 2016 (1) ZLR 496 (H) at 498 E – G.

Discussing what constitutes a proper case for the grant of a declaratory order WILLIAMSON J concluded in *Adbro Investments Co Ltd v Minister of the Interior & Ors* 1961 (3) SA 283 (T) at 285 C;

“I feel that some tangible and justifiable advantage in relation to the applicant’s position with reference to an existing, future or contingent legal right or obligation must appear to flow from the grant of the declaratory order sought.”

See also *Johnsen v Agricultural Finance Corp* 1995 (1) ZLR 65 (H). *Reinecke v Incorporated General Insurance Ltd* 1974 (2) SA 84 F (A).

It occurs to me that this is not a case in which I should exercise my discretion in favour of granting a declaratory order. Apart from the advantages which would accrue to Rodgers, or is it the purchaser of the immovable property, by virtue of pronouncements made by the courts that where a sale of the property has not only been confirmed by the Sheriff but transfer effected by him to the purchaser against payment of the price ,it would be even more difficult to overturn that sale, there does not appear to be any earth-shattering advantage to Rodgers to have transfer passed to the purchaser pending the determination of the r 359 (8) application or any appeal thereof. This is because confirmation of the sale by the Sheriff on its own triggers reluctance on the part of the court to set aside the sale. In this case I do not intend to do so anywhere. See *Lalla v Bhura* 1973 (2) ZLR 280 (G); *Mapedzamombe v Commercial Bank of Zimbabwe* 1996 (1) ZLR 257 (S) at 260 D.

Mr *Biti* submitted that in view of Chiutsi’s propensity to appeal any judgment without the slightest chance of success as he has done previously do the prejudice of his client, I must grant an order that an appeal against this judgment shall not suspend the judgment. This obtains from the inherent power of this court to regulate its process and to protect it from abuse. Mr *Zhuwarara* for Chiutsi did not oppose that request. In fact Mr *Zhuwarara* opted not to make submissions at all for professional reasons. The conduct of Chiutsi throughout

this sordid affair is one not for the faint hearted and certainly cannot be defended by any self-respecting legal practitioner, let alone an advocate of this court.

Chiutsi has torn into smithereens every rule of ethics and professionalism on which those that occupy the privileged position of practicing law pride themselves with. Not only has he conducted himself in a dishonourable and unworthy manner by misappropriating trust funds, he has not shown any contrition at all as he has stood neck to neck and eye-ball to eye-ball with a client from whom he snatched a large sum of money for a lengthy period of time as he employed every trick in the book to avoid paying what he unlawfully took from a client. He has been an unwelcome but very regular visitor to the precincts of this court with countless but frivolous applications which he has disdainfully pursued with no other intention but to perpetuate an injustice.

There is merit in the application made by Mr *Biti*. This court has to protect not only its integrity but also the good name of the profession that has endured a battering of gigantic proportions at the hand of one of its own who appears to have completely lost self-respect and the respect of the profession and indeed the courts. The order to be made must come with a signature award of costs on a legal practitioner and client scale.

In the result, it is ordered that

1. The application for the setting aside of the decision of the Sheriff to confirm the sale in execution made in HC 11349/17 is hereby dismissed.
2. The application for a declaratur in HC 2650/18 is hereby dismissed.
3. Puwayi Chiutsi, the applicant in HC 11349/17 and the 2nd respondent in HC 2650/18, shall bear the costs of suit on a legal practitioner and client scale.
4. This order shall not be suspended by any appeal by either party but shall remain in force notwithstanding such appeal.

P Chiutsi Legal Practitioners, applicant's legal practitioners
Tendai Biti Law, 2nd respondent's legal practitioners