

STUMBEL BLOC ZIMBABWE (PRIVATE) LIMITED
versus
MTHABISI NCUBE
and
THE SHERIFF OF ZIMBABWE N.O

HIGH COURT OF ZIMBABWE
TAGU J
HARARE, 2 and 8 February 2023

Urgent Chamber Application

Ms N Munzara, for the applicant
Mr Z W Makwanya, for the first respondent

TAGU J: This case can best be described as an attempt to “close the stables when the horse has bolted”.

This is an urgent Chamber Application seeking the stay of execution of a High Court Order granted on 16th December 2022 under case number HC 5202/22. The urgent chamber application also seeks that the second respondent be interdicted from selling Applicant’s goods that were placed under judicial attachment on the strength of the Court Order in question and the subsequent writ of execution.

The brief Historical back ground of this case is that the first respondent caused Summons for Provisional Sentence to be issued out of this Honourable Court against the applicant in Case No. HC 5202/22 on 3 November 2022. The basis for issuing these Summons for Provisional Sentence was a payment plan proposed by the Applicant through its legal practitioners to relinquish the first respondent’s debt of US\$14 000.00 for goods paid for but not delivered. The first respondent prosecuted the Summons for Provisional Sentence to finality, and was awarded a default ruling. The applicant averred that it was never made aware, neither were its legal practitioners of the litigation. The first respondent proceeded to issue a Writ of Execution that was executed by the second respondent at business premises of the investors, at Koala Park, Seke

Road, Harare. The second respondent proceeded to attach and remove various movable goods from the said premises. Hence the present application.

The first respondent took some points *in limine*. That the matter is not urgent and that the application has been overtaken by events since the goods have already been sold and the issue of stay and or interdict has fallen away.

Without laboring much on the points *in limine*, I have to explain that the second respondent filed a report on the 30th of January 2023, wherein he chronicled what happened in this case, and that he is not an interested party in this matter and shall abide by the decision of this Honourable Court.

What emerged from the Sheriff's Report is that the Sheriff received instructions on the 8th of December 2022 from *Messrs Makwanya Legal Practice* to execute a writ of execution. On the 9th of December 2022 goods were attached and removal was scheduled for 17th December 2022. However, removal did not proceed then because the instructing attorney had not paid removal fees. Removal fees were paid on 6th January 2023 and the attached goods were removed on the 9th of January 2023. On 10th January 2023 the Sheriff receive another letter from instructing attorneys to attach further properties. Further attachment and removal was done on the 10th January 2023. On the 11th of January 2023, *Makwanya Legal Practice* wrote to advise of release of a hyster forklift and it was removed from the list of attached goods on the 16th of January 2023. The sale in execution was conducted on the 27th January 2023, the very same date the present application for stay of execution was filed. Execution took place at 1000-1634hrs at LM Auctions after an advertisement to that effect. The Sheriff was served with the Urgent Chamber Application at 1634hrs after the sale had already occurred at 1000hrs.

The applicant, despite all these developments being brought to its attention, insisted that the court has room to deal with the issue as they seek protection of the molds.

What is clear is that from the issuance of the Summons for Provisional Sentence, to the grant of the Order, the applicant did not take any action. After the grant of the Order and the subsequent events, the applicant did not take any action. It only took action on the day of sale of the attached goods. The Sheriff could not stop the sale because when the Sheriff was served with an urgent chamber application to stay execution at 1634hrs, the property had already been sold at an auction at 1000hrs. The point *in limine* that the matter lacks urgency has merit. So is the point

that the need to stay execution fell away since the goods had already been sold, meaning this court cannot interdict something that has been done lawfully.

For these reasons the court is of the view that the applicant is attempting to close the stables when the horse had bolted. The application must be dismissed on these two grounds.

IT IS ORDERED THAT:

1. The application is dismissed.
2. The applicant is to pay costs on an ordinary scale.

Mlotshwa Solicitors, applicant's legal practitioners
Makwanya Legal Practice, first respondent's legal practitioners.