

HARARE PRODUCE SALES (PVT) LIMITED
versus
EXTANT INVESTMENTS (PVT) LIMITED
and
THERESA GRIMMEL

HIGH COURT OF ZIMBABWE
CHITAPI J
HARARE: 27 February 2025

Opposed Court Application

R. Nyapani, for the applicant
A Dracos, for the first respondent

CHITAPI J: The applicant and the first respondent are duly registered companies in accordance with the laws of Zimbabwe. The applicant avers that it is the owner of a fixed property namely No 45 Spurrier Road, Ardbennie, Harare. It averred that it was confirmed to be owner by judgment of this court in case No. HC 12810/16. It averred that the second respondent illegally sold the said property to the first respondent. The illegal sale was confirmed to be so by judgment HH 532/21 per MANGOTA J in the case *Filannino v Grimmel N.O & 2 Ors* rendered on 29 September 2021. The applicant contends that the first respondent is in illegal occupation of the property without the applicant's consent. The applicant therefore seeks the eviction of the first respondent from the property. The second respondent has not contested the proceedings.

From the papers, the first respondent resists the eviction claim. It averred that there has been no judicial declaration cancelling the sale agreement between it and the second respondent who was the judicial manager of Applicant Company. The first respondent averred that the proceedings which were resolved by judgement No. HH 532/21 concerned an application by applicant for the placement of a caveat on the property. The court granted the relief sought. The first respondent averred that the learned judge's remarks on the invalidity of the sale agreement between the first respondent and the second respondent were *obiter*. The first respondent further

averred that its sale agreement with the second respondent remained valid and was executed by the second respondent executing her powers as the judicial manager.

In the draft order, the applicant prayed for the following relief;

“IT IS ORDERED THAT:

1. The agreement of sale dated 17 June 2019 between the first and second respondents be and is hereby confirmed null and void.
2. The first respondent and all those claiming through it be and is hereby ordered to give applicant vacant possession of and or vacate from 45A Spurrier Road, Ardbennie, Harare within seven (7) days of the granting of this order.
3. In the event that first respondent fails to comply with paragraph 1 above, it is be and is hereby ordered that the Sheriff and or an officer of Zimbabwe Republic Police be ordered to enter the premises known as 45A Spurrier Road, Ardbennie, Harare and remove all of first respondent's belongings to give effect to paragraph 1 above.
4. In the event that first respondent is removed by way of paragraph 2 above, it be and is hereby ordered that the Sheriff shall retain and attach any such property he shall cause to be removed as he deems fit to sell off any expenses incurred by the applicant in fulfilment of the order.”
5. The first respondent pays costs of suit on a legal practitioner and client scale.”

The above facts basically outline what case No. HC 7864/23 is about and the parties positions.

When the matter was called, the first respondent's counsel Mr *Dracos* advised the court that he was praying for a postponement of the hearing and had filed a chamber application under case No. HC 1411/24 for the postponement. The application had not been served at the time of the hearing. The postponement was sought to consolidate this application and an intended suit which would be preceded by the grant of an application for leave to sue.

Mr *Nyapadi* opposed the postponement. He submitted that there was confusion on the part of the first respondent's counsel because on one hand he was orally applying for a postponement yet he had filed an application seeking the same relief. Counsel submitted that one of the applications had to give in to the other. Counsel submitted that the eviction case had little to do with the matter which the respondent intended to file. Counsel submitted that the sale of the applicant's property was unlawful and the first respondent could sue for damages.

The judgment has given time to the respondent to follow on its rights. If it has not done so, then it has itself to blame. The fact that the court took time to consider the application for postponement in fact amounted to the first respondent somehow winning through the backdoor as the matter did not proceed.

It is trite that an application for postponement is not granted on a platter nor for the mere asking. The court has a discretion to grant or refuse a postponement. See *Apex Holdings (Private) Limited v Venetian Blinds Specialists Limited* SC 33/2015. Good cause must be shown for a postponement a postponement and it is not usually refused unless there is a demonstrated prejudice to the other party which cannot be cured by an order of costs.

In *casu*, the respondent had already filed the application HC 1411/24 albeit on the eve of hearing. In order to avoid multiple litigations, it appeared to the court to be justiciable to grant a postponement of the hearing pending the determination of case No. HC 1411/24. It may well be that it has already been determined at the time of writing the judgment. Nonetheless a judgment dealing with the application for postponement must still be made. The following order is made;

IT IS ORDERED THAT:

1. The hearing of case No. HC 7864/23 is postponed pending the determination of case No. HC 1411/24.
2. The respondent shall pay the applicant's wasted costs.

CHITAPI J:

Muza & Nyapadi, applicant's legal practitioners
Gollop & Bank, first respondent's legal practitioners