EAGLE ITALIAN LEATHER (PVT) LTD
and
MINISTRY OF LANDS, AGRICULTURE, WATER
CLIMATE AND RURAL SETTLEMENT
and
NOBERT NJAZI
versus
LOWVELD LEATHER PRODUCTS
and
REGISTRAR OF DEED N.O

HIGH COURT OF ZIMBABWE
CHITAPI J
HARARE; 4 June 2025

Opposed Court Application

A Jakarasi, for the 1st and 2nd applicants
P Chibanda, for 2nd applicant
R I Musariri, for the 1st respondent

CHITAPI J: The parties are as listed in the heading. The first applicant is Eagle Italian Leather (Pvt) Ltd a duly incorporated company in terms of the laws of Zimbabwe. The second applicant is described as Ministry (sic) of Lands, Agriculture, Water, Climate and Rural Settlement. The second applicant is then described in para 22 of the declaration

> "The second applicant is the Ministry of Lands, Agriculture, Water, Climate and Rural Settlement in its official capacity as an organ of the State administering and handling all state Land and vested with rights over the land in question...."

The third applicant Nobert Njazi is a male adult. He is described in para 2.3 in the following terms:

> "The 3rd Applicant is Nobert Njazi, a Zimbabwean with majority status and a beneficiary and holder of a lease agreement with fourth Respondent over a portion of land under the same farm which first applicant is conducting its business and is specified in the lease agreement which is attached herewith in his affidavit. His address for service is same as first applicants."

The first respondent is lowveld Leather Products (Pvt) Ltd. The first respondent is described in the declaration as:

> "First respondent is Lowveld Leather Products (Pvt) Ltd purportedly a *juristio* person and a beneficiary which lost real and personal rights over the piece of land held under deed of transfer 0007727/97 through a court order in 2002 and later unlawfully and

> erroneously challenged sale in execution of the land under case number HC5530/19 yet the land it claimed rights on is state land: it had been acquired."

The third respondent is the Registrar of Deeds and is alleged to have wrongfully cancelled an endorsement over title to the land in question at the instance of the first respondent or that in doing so he wrongly relied on an authority which did not direct that there be cancellation of the endorsement noted on Deed of Transfer 0007727/97.

The first applicant set out in para 3.1 of the founding affidavit what is said to be the nature of this application as follows:

> "3 NATURE OF THE APPLICATION
> 3.1 This is an application for a declaratory relief brought in terms of section 14 of the High Court Act [*Chapter 7:06*] and (sic) read together with s 72(4) of the Constitution of Zimbabwe on the premises that first applicant enjoys personal rights awarded to it by second applicant vested with all the right in the land. These rights are under threat from actions of first respondent which is bent on hijacking the business of first applicant using an order granted erroneously on 24 February 2020. I attack hereto and mark as Annexure D(sic)"

The allegations in the above para read very much like allegations that a party makes in an application for an interdict. Be that as it may the draft order to the application reads as follows .

> "WHEREUPON, after reading documents filed of record and hearing counsel:
> 1. Certain fierce of land known as Mlaiye of Roraima and Clifton of Roraima held under Deed of Transfer Number 0007727/97 is state land which was compulsorily acquired by the second Applicant in terms of the Constitution of Zimbabwe published in the Government Gazette under General Notice No 330A of 2001
> 2. Certain piece of land known as Mlaiye of Roraima held under Deed of Transfer Number 000772/97 was itemized in terms of schedule 7 to the former constitution of Zimbabwe,1980, which was retained and protected under section 72(4) of the current constitution of Zimbabwe, 2013 and forms part of land which cannot be delisted.
> 3. First Applicant has a lease agreement with second Applicant under lease No. GL 1596 which is valid and subsiding.
> 4. Third Applicant was awarded subdivision of Clifton of Roraima held under Deed of Transfer Number 0007727/97 in terms of an offer letter under reference LLRR 704 by second Applicant and has rights over the piece of land which are valid and subsiding.
> Consequently;
> 5. That the order granted to first Respondent on 20 February 2020 under case reference HC 5530/19 which first Respondent used to cancel the endorsement of land acquisition of the two pieces of land known as Mlaiye of Roraima and Chilton of Roraima held under Deed of Transfer number 0007727/97 is null and valid.
> 7.Any Respondent who opposes this application to pay costs of suit on an attorney client scale: otherwise each party to bear its own costs."

It is necessary to refer to the order of this court in case No HC 5530/19 dated 24 February 2020 per MANGOTA J. The parties in that case were:

"Lowveld Leather Products (Private) Limited - Applicant Francesco Marconath First Respondent. Minister of Lands, Water, Climate and Rural Resettlement Second Respondent. The Land Commission of Zimbabwe Third Respondent. The Registrar of Deeds N.O fourth Respondent. The first, second and fourth respondents were in default. Only the third respondent was in attendance apart from the applicant.

The court granted judgment to the applicant therein who is the first respondent herein as follows:

> "IT IS ORDERED THAT
> Judgment be and is hereby entered in favour of the applicant against the respondents in the following terms
> 1. An order declaring that there was never any sale of certain two pieces of land situate in the district of Marandellas called Mlaiye of Roraima and Clifton of Roraima held under Deed of Transfer No 0007727/97.
> 2. Order declaring two pieces of land in (1) above, solely belonging to the applicant.
> 3. Costs of suit on a legal practitioner and chent scale against first respondent."

The critical part of the order which impacts on this application the most is para 2 of the above order that the land in issue therein which is the same land in issue herein "solely" belongs to the applicant.

The Minister of Lands, Water, Climate and Rural Resettlement who is the second applicant in this application had default judgment entered against him/her in case No HC5530/19 in terms of the court order as quoted above. The Registrar of Deeds who was the fourth respondent in Case No HC 5330/19 and is the second respondent herein acted in terms of para 2 of the order thereof and cancelled the endorsement on the title to the disputed piece of land. The effect of such cancellation was that the first respondent now held title to the land without any encumbrances as the sole owner with clean title.

The effect of the declaration of the land as belonging "solely" to the first respondent was that the first respondent is at large to exercise ownership rights thereon. The first applicant carries on business on the disputed property by virtue of a lease agreement entered between the first applicant and the second applicant herein dated 11 July 2014. It is a ten-year lease agreement which was effective from 11 July 2014 until10 July 2024. By the time that the application was heard, the lease agreement had on the face of it expired. I record this fact as an observation made upon perusal of the papers filed of record. It is not an issue raised by the parties for the court's determination.

Be that as it may, the first applicant was not a party to case No HC 5530/19. It is however clear that the applicant is a party affected by the order of this court given in case No

HC 5530/19 because as deposed to by the first applicant in the founding affidavit, the first respondent has on several occasion attempted to evict the first applicant thus disturbing the first applicant's operations.

It is noted that in substance the first and second applicants argument is that the court in Case NO HC 5530/19 granted an invalid order to put it mildly. The applicants position is best summed up in para 5.14-5.15 of the first applicants founding affidavit as follows:

> "5.14 It is apparent that first respondent is misusing order HC 5530/19 yet the order was erroneously granted and it is a violation of the Constitution for the following reasons; (own underlining)
>
> 5.14.1 It was granted in the absence of important parties like the second applicant and the first respondent in the matter.
>
> 5.14.2 Material facts were deliberately undisclosed. These include the following; that the land in question is state land. That the land in question was itemized in schedule 7 of the former constitution and protected under section 72(4) of the Constitution, 2013 meaning the land cannot be listed.
>
> 5.14.3 That the time to challenge sale in execution which had been concluded in 2003 had lapsed.
>
> 5.15 The grave consequences and misuse of the order in HC 5530/19 is manifest in the facts that it was listed, at the instance of first respondent to cancel the endorsement of the land acquisition. I attach the deed of transfer showing proof of cancellation and mark it Annexure L"

The second applicant for its part filed "a supporting affidavit" to that of the first applicant. Objection was made to the affidavit on the basis that it was necessary for the applicant to respond as a substantive respondent and not in a supporting role. My view is that the court should consider the substance of the affidavit rather that its form or naming. The first respondent also averred that the second applicant was not properly cited because it should be the Minister and not the Ministry which must be cited. Parties made submissions on the point with a application for amendment to delete the word Ministry and substitute it with Minister being opposed by the first respondent. Counsel cited contra case authorities which say that no amendment should be permitted where a party has been wrongly named and others which say that such an amendment may be granted. The court will at this stage not engage in this argument for the reason that its judgment is informed by a different consideration.

The issue which the court considered to be determinative of the case is the propriety of this application. The first respondent raised the issue that this application was a review

application of the court order in case No HC 5530/19 disguised as an application for a declaratur and consequential relief. The first respondent raised the issue on succinctly in para 2 of the opposing affidavit as follows:

> " **The Application is improper before the court**
> 2. the present application seeks to review this honorable courts decision made under case number HC 5530/19. It is an application for review disguised as an application for a declaratur (sic) and consequential relief. I should hasten to state that the farm/property in respect of which the applicants seek a declaration belong to the first respondent by declaration of this Honorable Court and such order being extant, IG is incompetent for this court to issue another court order which is at cross purpose with the one already issued under case No HC 5330/19. The first Applicant ought to have filed an application for rescission of the said court order or alternatively an application for review. Suffice to mention that this Honorable Court is functus officio in so far as the case number under HC 5530/19 is concerned"

It is common cause that the order in case No HC 5530/19 is the elephant in the room. The order is extant. Its being extant comes with consequences. Section 164(3) of the constitution provides as follows:

> "16.4(3) An order or decision of a court binds the state and all persons and governmental institutions and agencies to which it applied and must be obeyed by them"

The long and short of the quoted provision is that the order of the court in case No HC 5530/19 is good and binding on the court and all parties in that case and I daresay in this case too because a party who is not party to a judgment but is affected by it becomes an interested party whom the law permits to seek the rescission or setting aside of the judgment if the affected person was not a party thereto.

In *casu*, the second applicant in the "supporting affidavit" which I refer to subject to my comments that there is an issue of its propriety averred in para(s) 14-16 thereof as follows:

> "14. It later came to the attention of second applicant that first respondent filed proceedings in case No HC 5530/19 challenging the sale in execution of the pieces of land registered under Deed Number 0007727/97. The application was granted in default of other parties. Subsequently first respondent went with the order and caused second respondent to cancel the endorsement of the land acquisition.
> 15. It is averred that the order in HC 5530/19 was erroneously granted because the land in question did not belong to any of the main parties in the matter. Also the land could not be delisted and cannot be delisted. So any order to that effect or any whatsoever interpretation amounts to a violation of the constitution.
> 16. It is important that there was no representative of the second applicant to explain these issues but be that as it may, the order HC5530/19 cannot be allowed to remain extant as its existence is a violation of the law"

Quite clearly therefore the second applicant appreciated that the order in case No HC 5530/19 was given in default and considers that it was granted erroneously as the court did not have the facts because the land in issue was state land and could not be owned by anyone but

the state. The second applicant therefore must if advised seek the rescission of the judgment. It cannot petition this court to declare that its declaration made in case No HC 5530/19 which order remains extant be declared to be wrong or invalid to do so would be unlawful because the declaration in case No HC 5530/19 means that as far as ownership rights of the property are concerned the same are listed in the first respondent. A declaration to the contrary without rescinding the order in case No HC 5530/19 is incompetent. The procedure in rule 27 of the High Court Rules, 2021was enacted to enable persons who are parties to a case in which default judgment has been granted against them to seek rescission of the default judgment. The second applicant has not done so but opted to join hands with the first and third applicants and seek a setting aside of the default judgment through the procedure of seeking a declaration. It is incompetent to do so.

In relation to the first and third applicants they are parties who are affected by the judgment but were not party to the case. Rule 29 provides for relief in a case where a party is affected by a judgment to which that party was not a party. The rule states

> "Correction vacation and rescission of judgment and orders.
> 29(1). The court or a judge may, in addition to any other powers it or he or she may have on its own initiative or upon the application of any affected party correct rescind or vary-
> (a) An order or judgment erroneously sought or erroneously granted in the absence of any party affected hereby; or
> (b) ……
> (c) An order or judgment grated as a result of a mistake common to both parties
> (2) Any party desiring any relief under this rule may make a court application on notice to all partied whose interests may be affected by any variation sought within one month after becoming aware of the existence of the order or judgment"

The first and second applicants squarely fit into this category. It seems that they may have avoided using the rule because of being out of time. Whichever their reasons, they adopted an incompetent procedure. A declaratur is already in place. The court cannot declare its declaration to be illegal as the court is entitled at law to so declare.

In consequence of the impropriety of the application there is no valid case before the court to determine. The application is accordingly struck off the roll with costs. The costs which are in the discretion of the court are appropriate to grant because the facts of the case show that the applicants knew that they were unhappy with a default judgment but for unexplained reasons seek a declaration as opposed to a rescission as discussed herein.

In the result the application is disposed of as follows:

IT IS ORDERD THAT

1. The application be and is hereby struck off the roll.

2. The first, second and third applicants jointly and severally, the one paying the other to be absolved to pay costs of the application

CHITAPI J:……..

Madzima and Company Law Chambers, applicant legal practitioners
Nyangani Law Chambers, first respondent's legal practitioners