

MOONRISE BUSINESS TRANSACTIONS (PVT) LTD
T/A MOONRISE MOTOR SPARES
versus
SHUMAYAC AGENCIES (PVT) LTD
and
THE SHERIFF OF THE HIGH COURT
and
SWIFT DEBT COLLECTORS

HIGH COURT OF ZIMBABWE
TAKUVA J
HARARE; 11 May 2025 and 13 June 2025

Court Application to set-aside amended summons and declaration

G Madzoka, for plaintiff
M V Mwatse, for the first respondent
A B C Chinake, for the second respondent
K Mabhandi, for the third respondent

TAKUVA J: This is an application by the first defendant in this matter to set aside the plaintiff's amended summons commencing action and declaration in terms of r 43 of The High Court Rules [2021]. The first defendant prays for the following order;

1. The application to set aside the plaintiff's amended summons commencing action and declaration under case number HC 2548/19 be and is hereby granted.
2. The plaintiff's amended summons commencing action and declaration under HC 2548/19 be and is hereby set aside.
3. The plaintiff shall pay costs on an attorney-client scale.

BACKGROUND FACTS

The plaintiff, first and third defendants are companies duly registered in terms of the Zimbabwean laws while the third defendant is the Sheriff cited in his official capacity. On 28 March 2024, DEME J ordered the plaintiff to file and serve upon the defendants its summons and declaration within 10 days from the date of the order. The plaintiff's however, filed their pleadings on 4 July 2024 which date the first defendants rightfully argues that it is way after the 10-day period. Contrary to this, the plaintiff gives its explanation narrating the series of events that took place after the order was given by DEME J. According to the plaintiff, the order

that was granted on 28 March by DEME J was made available to it on 29 May 2024. It is from this date that the plaintiff states the 10-day period ought to be counted from.

Plaintiff avers that it uploaded the order by consent on IECMS on 2 April 2024. Up to 9 April 2024, the Registrar had not yet advised the parties of the availability of the order. Plaintiff's lawyers followed this up by writing to the Registrar inquiring when the order would be made available to the parties and they were advised that she would inform them upon its finalization. The order was still not uploaded and the plaintiff's lawyer had to write to the Registrar again on 28 May 2024 and on the same day the order was then made available on the 29 May 2024 after payment for the order was made. This said order was however dated 9 April 2024 which issue gives rise to the dispute before this court. On one hand the first defendant is of the view that the plaintiff filed its pleadings way out of time while on the other the plaintiff denies this stating that the 10-day period started from the date the order was made available through the registrar.

ISSUE FOR DETERMINATION

1. Does a court order become effective the time it is issued by a judge or when it is made available to the parties through the Registrar?

The court only has one issue to determine and this will resolve the dispute among the parties. The first defendant is of the view that the plaintiff needed to be condoned before it filed its pleadings. They base this on their argument that the said pleadings were filed out of time. With the introduction of the IECMS however, the common practice of the High Court has been that an order becomes effective when it is made available to the parties through the Registrar. This rational can be supported by the fact that before an order is formally issued by the Registrar, that very matter becomes stagnant and can only proceed after the signed order is uploaded. This enables the court hearing each matter to have a complete and clear picture of what transpired in that particular matter by following the order in which pleadings and all documents were filed. It surely would look amiss if the plaintiff was to start uploading its amended summons and declaration before the order reflected in the system. The court is using its discretion here also considering the fact that the plaintiffs did not just sit and wait until the order was uploaded. This is a party that constantly followed up on the order showing their intent to actually use the order and this effort cannot be overlooked.

It is unfortunate that this order was not issued timely but from the court's point of view, the plaintiff illustrated its efforts in intending to file their pleadings on time. I also note that there

will be no prejudice to be suffered by the first defendant if the pleadings are not set aside as they had actually consented to the amendments before DEME J. The delay by a month or so due to the untimely date of the order's availability could not cause any prejudicial harm to the first respondent to the extent that the pleadings ought to be set aside. The amended summons and declaration are therefore properly before the court and the parties should proceed to have this matter dealt with to finality.

DISPOSITION

Following these considerations, it is ordered that the application be and is hereby dismissed with costs.

TAKUVA J:.....

Chinawa Law Chambers, plaintiff's legal practitioners
Scanlen and Holderness, first defendant's legal practitioners
Kantir and Immerman, second defendant's legal practitioners
Hove and Associates, third defendant's legal practitioners