BEAUTY NHARI
versus
SAMSON FARAI ZUNZANYIKA

HIGH COURT OF ZIMBABWE
MANYANGADZE J
HARARE, 28 November 2024

Opposed application

T C Masara, for the applicant
P Mufunda, for the respondent

MANYANGADZE J: After hearing argument in this matter, I handed down an *ex tempore* judgment in which I granted the relief sought by the applicant. These are the full reasons for the judgment.

This is an application for the correction of a court order granted in Case No. HCH 8344/23. The relevant paragraph is paragraph 3 of the order, which reads as follows:

> "1st respondent, his assignees, subtenants, invitees and all those claiming right of occupation through him, is hereby ordered to vacate the property specified in paragraph 1."

The paragraph did not include the extra wording, which is usually made part of such paragraphs, authorising the Sheriff to effect the eviction in the event that the respondent does not vacate the premises in question in compliance with the court order. The wording normally takes the form;

> "….failing which the Sheriff be and is hereby authorised/directed to eject the respondent and all those occupying the said property through him…."

It is the omission of these words or words to that effect, that has created enforcement problems for the applicant. She approached the Registrar of this court with a writ of execution which she wanted issued. The Registrar declined issuing the writ, saying that the court order was not executable. It was not specifically directing the Sheriff to carry out the eviction. This prompted the applicant to file the instant application, wherein she seeks to have the order

corrected by inclusion of the above-cited words, to enable her to execute the order that had been granted in her favour.

In my view, omission of the said wording does not render the court order inexecutable. It is the duty of the Sheriff to enforce orders of the court. That is what the Sheriff's office is by law mandated to do. If an order of court states, in clear and unambiguous terms, that a respondent or defendant vacates premises he is occupying, the Sheriff's assistance is enlisted in the event that the order is not complied with. That is what the Sheriff is required by law to do - enforce court orders.

There is no provision in the rules that prescribes the exact wording the court must use in its order so as to make it executable. It seems it is standard practice to add, over and above the paragraph ordering the respondent to vacate the premises, another paragraph or words within the same paragraph, specifically authorising the Sheriff to eject the respondent. Where the court has clearly, unambiguously and unequivocally ordered the respondent to vacate the premises, that is sufficient for the applicant to proceed to obtain a writ of execution. The wording referred to, it seems, is done out of an abundance of caution. It may indeed be necessary, for the avoidance of doubt, where the eviction order is vague or ambiguous.

However, that is not the question I have been specifically asked to determine. I am simply highlighting the issues that arise from the stance taken by the Registrar. My simple remit in this matter is whether the applicant has competently sought the relief of correction or variation of an order this court granted in her favour, and which she desires to execute.
Correction or variation of court orders is governed by r 29 of the High Court Rules of 2021. The specific rule is r 29 (1) (b), which reads as follows:

> "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 party, correct, rescind or vary –
>
> (a)……
>
> (b) an order or judgment in which there is ambiguity or a patent error or omission, but only to the extent of such ambiguity, error or omission, or
>
> (c)……"

In the instant case, what is sought to be corrected is an omission. It is an omission that is making the order inexecutable, as the Registrar has declined to issue a writ of execution. Consequently, the applicant is unable to take the writ of execution to the Sheriff for enforcement of the court order. The applicant is not seeking a new order which would substitute the current one. There are no changes in the import or substance of the order. The intention is

to execute an order she has obtained. In my view, that makes the relief sought by the applicant permissible and competent at law. See *Mupeni* v *Mupeni* 1993 (1) ZLR 80 (S), *Hopcik Investments (Pvt) Ltd* v *Minister of Environment, Water and Climate Change & Anor* HH 336/16, *Harare Sports Club & Anor v United Bottlers Ltd* 2000 (1) ZLR 264 (H).

The averments by the respondent, both written and oral focus, in the main, on the question of whether the court in HCH 8344/23 correctly applied the law on interdicts. The respondent strenuously contends that that court was wrong in its application of the law, resulting in an order not supported by law. He even goes to the extent of calling the court's order an illegality. According to the respondent, the applicant cannot seek to correct an illegality. This line of argument traverses the merits of the court's decision in HCH 8344/23. It is misplaced and fundamentally flawed. It places this court in the invidious position of reviewing the decision of another judge of the same court. That is certainly not what is envisaged in rule 29 (1)(b). The correction or variation contemplated in that provision does not extend to the substance or merits of the judgment or order, which will result in its substitution with another judgment or order.

If the respondent is aggrieved by the decision in HCH 8344/23, his remedy lies in an appeal against that decision. The instant application is at the enforcement stage. That is what para 3 of the order is all about. The correction sought by the applicant is the logical corollary to paragraph 3. It is a consequence that logically, naturally, and progressively flows from that paragraph. It is not an addition of a new order or alteration of the substance of the existing order. That order remains as it is. What is sought is its enforcement. If the respondent is unhappy with the substance thereof, as already indicated, his remedy lies in an appeal.

In the circumstances, it is my considered view that the application has merit and must succeed. The opposition to the application is misplaced and completely devoid of merit.

In the result, it is ordered that:

1. The application be and is hereby granted.
2. Paragraph 3 of the court order granted under Case No. HCH 8344/23 be and is hereby corrected as follows:

> "The 1st respondent, his assignees, subtenants, invitees and all those claiming right of occupation through him, is hereby ordered to vacate the property specified in paragraph 1, failing which the Sheriff or his lawful deputy be and is hereby authorised to eject the 1st respondent, his assignees,

subtenants, invitees and all those claiming right of occupation through him from the property specified in paragraph 1."

3. The respondent pays the applicant's costs on the legal practitioner and client scale.

Mufunda and Partners Law Firm, applicants legal practitioners
Masara Savanhu Attorneys,respondents legal practitioners