QUARRYING ENTERPRISES (PRIVATE) LIMITED
versus
STONEZIM (PRIVATE) LIMITED
and
REGISTRAR OF THE HIGH COURT OF ZIMBABWE N.O
and
SHERIFF OF ZIMBABWE N.O

HIGH COURT OF ZIMBABWE
DEME J
HARARE, 13 October, 1 November 2022 & 17 May 2023

Opposed Application

Adv *T Zhuwarara*, for the applicant.
Adv *R Mabwe with* Mr *C Mavhondo,* for the 1st respondent.
No appearance, for the 2nd and 3rd respondents.

DEME J: The applicant approached this court seeking the confirmation of the provisional order. More particularly, the relief sought by the applicant is expressed in the following way:

> "1. The interim order granted by this Honourable Court on the 26th of March 2022, per Ms Mungwari J, be and is hereby confirmed.
> 2. The writ of execution issued by the 2nd Respondent in HC3203/21, dated 16th February 2022, be and is hereby set aside.
> 3. The 3rd Respondent's execution of the writ of execution issued by the 2nd Respondent dated 16th February 2022, be and is hereby set aside.
> 4. The 1st Respondent to bear Applicant's costs of suit on a legal practitioner and client scale."

I will firstly introduce factual base of the present application before applying law to the facts. On 26 March 2022, this court granted provisional order for the stay of execution which is couched in the following way:

> "1. The execution by the 1st and 3rd Respondents of the writ of execution issued by the 2nd Respondent, on the 16th of February 2022, in HC 3203/21, be and is hereby stayed.

2. The 3rd Respondent is ordered to release and return to the Applicant, from attachment all goods attached, and or removed on account of the aforesaid writ."

The applicant and the first respondent are companies duly registered in terms of the laws of Zimbabwe. The applicant is challenging the validity of the writ of execution issued by the second respondent on 16 February 2022 on the basis that the writ of execution seeks to introduce evidence which is outside the circumference of the court order sought to be enforced. According to the applicant, the judgment debt, in the writ of execution, is not specified with exactitude as should be the practice in terms of the Rules. The applicant averred that the computation of the judgment debt is subject to the rate of inflation as may be specified by the Central Statistics Office according to the writ of execution. The appropriate provision of the writ of execution is as follows:

"…..to be realised the sum of ZW$1 483 061,46 together with the interest thereon at the rate of 5% per annum calculated from the 23rd day September of 2020 to date of full payment and also holding over damages at the rate of ZW$368 662,72 per month calculated from July 2020, through the addition of monthly inflation figure provided by the Central Statistics Office for each subsequent month together with the interest thereon at the rate of 5% per annum from the 1st of each month until date of full payment, which amounts the Applicant recovered by judgment of this court dated 20th day of January 2022. In the above mentioned suit, and also all other costs and charges of the Applicant in the said suit to be thereafter duly taxed according to law, besides all your costs thereby incurred." .

The applicant further asserted that the third respondent, pursuant to the writ of execution, sought to recover the sum of ZW$17 876 697, 24. The applicant claimed that the sum in excess of ZW$17 million was arbitrarily calculated by the first respondent's legal practitioners who did not consult its legal practitioners. According to the applicant, the third respondent had no reason to recover such sum as this was not specified in the judgment of 20 January 2022 under case number HC 3203/21. The order of 20 January 2022 is as follows:

"1. Case HC 13/21 is dismissed with costs.

2. Case HC3203/21 is upheld and arbitral award handed down by the Honourable Arbitrator ABC Chinake on 20 December 2020 in the matter of Stonezim (Private) Limited v Quarrying Enterprises (Private) Limited is hereby registered for purposes of enforcement as an order of this Honourable Court in terms of Article 35 of the Schedule to the Arbitration Act [*Chapter 7:15*]

3. The applicant (Quarrying Enterprises (Private) Limited shall pay costs of suit on a legal practitioner and client scale."

The applicant further alleged that it paid the sum in excess of ZW$11 495000, 00 which it verily believes that such sum extinguished the judgment debt. Thus, the parties to the present application are disputing the amount to be recovered by the third respondent. It is the applicant's case that writ of execution flies against the provisions of Form 32 of the High Court Rules, 2021 as it fails to precisely state the sum sought to be recovered. The applicant also affirmed that the legal practitioners of both sides met with a view to iron out their differences but this did not yield any positive result.

The present application was opposed by the first respondent. In responding to the application, the first respondent gave its own version of the background of the matter before specifically responding to the issues raised. According to the first respondent, on 27 April 2016, it entered into the tribute agreement with the applicant which entitled the applicant to extract black granite from the first respondent's black granite claims otherwise called Chidje Claims. In terms of the tribute agreement, according to the first respondent, the area of operation was Mashonaland East, Mutoko and Mutawatawa to be more precise. The first respondent additionally maintained that the parties later, on 16 December 2019, decided to revise the royalties payable in terms of the tribute agreement in order to take into account the inflationary realities of the economy. In terms of the revised tribute agreement, the royalties payable to the first respondent, were to be subjected to adjustment occasioned by inflation. The first respondent additionally affirmed that the dispute ensued following the applicant's failure to pay the inflation adjusted royalties on time. It is the first respondent's version of events that the dispute was subsequently referred to the arbitrator, Mr. Chinake, who, in his arbitral award of 20 December 2020, directed that the applicant pay royalties to the first respondent and subsequently vacate the Chidje Granite Claims.

According to the first respondent, the applicant, instead stopped paying mining royalties to it but continued with the mining of black granite from the area specified in the tribute agreement. The first respondent, in addition, averred that the tribute agreement, which enjoyed the life span of five years, expired on 30 April 2021. It is the first respondent's affirmation that the applicant continued with the extraction of the black granite from Chidje Granite Claims despite the fact that the tribute agreement had expired and that the arbitral award had commanded the applicant to vacate the disputed claim. The first respondent subsequently got an order for the registration of the arbitral award in order to enforce the award through the judgment under case number HC 3203/21. The applicant also filed the application which sought the setting aside of the arbitral award under case number HC 13/21.

This application was subsequently consolidated with the application for registration of the award. The application for the setting aside of the arbitral award was subsequently dismissed. According to the first respondent, the applicant did not appeal against the decision of the court but continued occupying the Chidje Granite Claims and also carried on extracting the black granite. The first respondent also asserted that the applicant also persisted with its non-payment of the royalties.

The first respondent also alleged that it was forced to have the writ of execution and writ of ejectment issued by the second respondent on 16 February 2022 in order to enforce the judgment of 20 January 2022. The first respondent additionally affirmed that the applicant's legal practitioners, on 17 February 2022, called its legal practitioners with a view to settle the outstanding amount. According to the first respondent, its legal practitioners, by way of the letter dated 18 February 2022, advised the applicant's legal practitioners that the outstanding amount was ZW$17 876 697,24. The first respondent claimed that the applicant then settled part of the debt but refused to defray the balance.

The first respondent alleged that it then instructed, on 28 February 2022, the third respondent to execute the writ of execution at Chidje Granite Claims in order to satisfy the judgment debt. On the same day, the third respondent was also instructed to execute the writ of ejectment against the applicant. According to the first respondent, the first respondent also went to the Ruwa address which is the applicant's business address and attached some goods thereat. The first respondent also alleged that applicant's sister companies namely Zimrock International P/L and Stonezim Holdings P/L subsequently filed interpleader proceedings claiming to be owners of the property attached at the Ruwa and Mutoko addresses.

With respect to merits, the first respondent alleged that the writ of execution is not irregular as it seeks to enforce the order of this court. According to the first respondent, the writ of execution relied upon the information on the court order and the arbitral award to ascertain the amount payable. The first respondent, in addition, alleged that the court order registered the arbitral award which automatically became part of the court order by reference and operation of law. The first respondent also affirmed that the arbitral award lays out the computation method of inflation adjustments based on the data from the Central Statistics Office. According to the first respondent, the data for inflation from the Central Statistics Office is always in the public domain and hence this ceases to be a legal issue but purely a mathematical question. The first respondent also asserted that the amount payable is easily ascertainable. The first respondent also asserted that even though it may be conceded

that the writ of execution requires extrinsic evidence, this does not make the writ of execution irregular. The first respondent additionally argued that the writ of execution complies with the Rules. The first respondent asserted that it strictly followed the method laid out in the arbitral award in calculating the amount payable.

According to the first respondent, at the time of instructing the third respondent, the amount payable was ZW$17 876 697, 24. However, the first respondent maintained that this amount increased, in March 2022, to ZW$20 878 19.39. The first respondent also claimed that the applicant only paid ZW$ 12 665 692.90 leaving a balance of ZW$8 212 421.49 by the date of eviction, 22 March 2022. The first respondent also maintained that the third respondent's costs together with the first respondent's legal costs have not been recovered.

The applicant, through the answering affidavit, responded to the issues raised in the opposing affidavit. The applicant alleged that it was religiously paying the royalties to the first respondent. The applicant asserted that there was no agreed formula for calculating the royalties and hence it was difficult to ascertain the royalties due. The applicant maintained that it faced some challenges occasioned by sanctions imposed on Zimbabwe which significantly delayed the receiving of its export proceeds which saw the delayed payment of the royalties. According to the applicant, this was communicated to the first respondent on numerous occasions.

The applicant insisted that the dispute before the court is not a legal one but a mathematical issue which can only be interrogated by financial experts and not legal practitioners. The applicant suggested that the applicant and the first respondent may appoint a mutually agreed financial expert to make appropriate calculations.

In opposing the confirmation of the provisional order, the first respondent raised two points *in limine*. Firstly, the first respondent objected to the confirmation of the provisional order on the basis that the relief sought is not competent. According to the first respondent, the property in question was sold by way of auction and bids which were completed on 22 March 2022. The first respondent affirmed that there is nothing to stay as the sale of the property was completed.

In response to this point *in limine*, the applicant argued that the execution is a process and not an event. According to the applicant, the last legs of the execution of judgment involve the payment of purchase price by the bidders, the conducting of the accounting procedures by the third respondent and the subsequent remittance of the amount due to the judgment creditor and the residual balance thereof being remitted to the judgment debtor. It is

the applicant's averment that the last legs of execution of judgment aforesaid have not been concluded and hence it is not correct that the relief being sought is incompetent. The applicant averred that the court has got powers to set aside the sale where there are irregularities that can be identified. The applicant also maintained that it did not seek the stay of a judicial sale but it sought the stay of the entire process of execution of judgment. The basis for seeking the stay of execution is the irregular writ of execution, according to the applicant. The applicant additionally claimed that the second respondent who issued the writ of execution admitted that the writ is irregular. The report of the second respondent states as follows:

> "1. We have been served with urgent chamber application for stay of execution where the Registrar has been cited as the 2nd Respondent.
> 2. The dispute arises from a Writ of Execution issued by our office on 16th February 2022.
> 3. We concede that further to monetary figures the writ of execution does not include the calculation figure provided by the central statistics office. This is not provided for by the judgment granted by this Honourable Court on the 20th of January 2022.
> 4. Thus our office should not have signed such a writ which has additional items which are not provided for in the judgment of the Honourable Court. It was a mistake to do so.
> 5. We stand guided by the court's decision."

On 21 April 2022, the second respondent confirmed that the report quoted above was generated by their office. The applicant also affirmed that no evidence had been placed before the court to substantiate the claims that the sale had been completed. The applicant argued that its preliminary inquiries have revealed that the third respondent is not holding any money pursuant to the sale. Consequently, the applicant argued that there is no sale to be protected by the court.

Secondly, the first respondent raised a further point *in limine* to the effect that the applicant approached the court with dirty hands. It is the first respondent's assertion that the applicant hid 150 tonnes of granite blocks attached by the third respondent. According to the first respondent, this act is unlawful as this was not done with the consent of the third respondent. The first respondent motivated the court not to consider the present application until the applicant has purged its unlawful acts.

The applicant vehemently opposed this assertion. It alleged that it only removed its blocks after the issuance of the relief that it was seeking. The applicant also alleged that after being evicted from the disputed claim, it saw it prudent to remove its granite blocks for safe keeping since there was no-one who would ensure the safe keeping of such blocks. The

applicant also argued that it had paid the amount due in full and there was no reason for the third respondent to continue attaching the granite blocks. The applicant also maintained that there is no evidence placed before the court to substantiate the point in *limine*.

I will now turn to the first point *in limine* where the first respondent argued that the relief is incompetent. It is not disputed that the court has got powers to set aside sales where they are not completed as submitted by the applicant. According to the applicant, no money had exchanged hands although the sale had been conducted on 22 March 2022. The first respondent is making empty assertions that the sale has been completed. Nothing has been placed before my attention to substantiate this averment. The third respondent's report did not highlight that they have received money in order to complete the sale. The counsel for the applicant Adv *Zhuwarara* argued that this court has powers to regulate its own process. He referred the court to the case of *Mupini* v *Makoni*[1]. In any event, during the hearing of the urgent chamber application, this court considered the report of the third respondent authored on 24 March 2022 and saw it prudent to order the release of the goods to the applicant. I do agree with the Applicant's assertion that the first respondent ought to have authenticated its affirmations. In the absence of evidence, I see no merit in this point *in limine*. Consequently, I dismiss this point *in limine*.

With respect to the second point *in limine*, it is my considered view that the first respondent ought to have substantiated its claims that the removal by the applicant of the attached goods occurred prior to the granting of the interim relief in March 2022. In my view, the supporting affidavit authored by Chiwaridzo Jameson filed with this court on 7 April 2022 cannot be used to substantiate the first respondent's assertions as this affidavit was not available on the date of the hearing of the urgent chamber application. In the supporting affidavit, Chiwaridzo Jameson asserted that he was charged with the responsibility of securing the disputed site where the applicant's granite blocks had been attached by the third respondent after the eviction of the applicant which occurred on 22 March 2022. Chiwaridzo Jameson additionally averred that he witnessed the trucks taking some granite blocks from the site on 24 and 25 March 2022. I wonder why this supporting affidavit was not placed before the court's attention at the time of consideration of the urgent chamber application. In my view, this supporting affidavit is an afterthought by the first respondent having realised that its point *in limine* is weak. Consequently, I dismiss the point *in limine* concerned.

[1] 1993 (1) ZLr 80 at page 82.

I will now shift my attention to the merits of the present application. The sole issue for determination is whether the provisional order ought to be confirmed.

The applicant's counsel, Adv *Zhwarara*, argued that the writ of execution flies against the provisions of Form 32 of the High Court Rules, 2021 as it fails to specify the amount to be recovered. He also argued that the Form does not provide for explanatory notes as is being sought to be introduced by the first respondent. The applicant's counsel also referred the court to the case of *Shava* v *Bergus Investments (Pvt) Ltd and Anor*[2], where it was held that it is trite that a writ of execution may be set aside on application if the judgment upon which it is premised was not definite and certain. In the case of *Shava* v *Bergus Investments (Pvt) Ltd* (*supra*), the court opined as follows:

> "While the judgment is definite and certain in that it can be gathered what money or thing the judgment debtor must deliver, the first respondent only executed it some eleven months later and wrongly included amounts sounding in United States dollars for a maximum of only one quotation obtained long after judgment had been entered contrary to the time prayed for in the claim. In terms of the judgment that was granted, the value of the damaged door and the costs for materials and labour was to be pegged at the time judgment was entered namely, 14 March, 2008 and not at the time of execution eleven months later! At the time judgment was entered the currency in use was the Zimbabwe dollar and not US dollar."

The applicant also referred the court to the case of *Van Der Walt* v *Kolektor (EDMS) BPK EN Andere*[3] where it was held that if execution is carried out in disregard of Rules, the attachment and sale may not constitute an attachment and sale in terms of the Rules and the aggrieved party may be entitled to relief.

The applicant also argued that the conduct of using a wrong form is frowned upon by the court. In support of this, the applicant referred the court to the case of *Marick Trading* v *Old Mutual Assurance Company of Zimbabwe and Anor*[4]. In this case, the court struck from the roll the application which did not comply with the appropriate form. The applicant also relied on the case of *Delta Beverages* v *Zimbabwe Revenue Authority*[5], *and Malambo* v *City*

[2] 2011 (2) ZLR 340 at page 342

[3] 1989 (4) SA 690 (T).

[4] HH667/15.

[5] SC9/19.

of Harare [6] where the Supreme Court and High Court respectively accentuated the need to comply with the Rules.

On the contrary, the first respondent argued that the court should not be a slave to its own Rules. The counsel for the first respondent, Adv *Mabwe*, argued that the rules are designed for the benefit of the court and the proper administration of justice. She additionally argued that the rules are just tools for the court fashioned for the court's own use and are not an end to themselves. The first respondent referred the court to the cases of *Darangwa* v *Kadungure and Others*[7], *Scottish Rhodesian Ltd* v *Honiball*[8], *Federated Trust Ltd* v *Botha*[9]. In the case of *Darangwa* v *Kadungure and Others* (*supra*), the court opined as follows:

> "The rules of court are designed for the benefit of the court and the proper administration of justice. As has been said, they are "not laws of Medes and Persians". See *Scottish Rhodesian Ltd* v *Honiball* 1973(2) SA 747 (R) at p 748. The rules are just the court's tools fashioned for the court's own use and are not an end in themselves to be observed for their own sake. See *Federated Trust Ltd* v *Botha* 1978(3) SA 645 at 654."

In my view, there is a limit to which the court may condone a departure from its Rules. Not all departures may be tolerated by the court. If all departures are to be condoned, then the Rules would serve no purpose.

The applicant's counsel argued that the writ of execution must not be supplemented by information which is foreign to the order of the court or the arbitral award. Any attempt to do so would nullify the writ, argued the applicant's counsel. The applicant, in its Heads of Argument, referred the court to the case of *Mandiringa and Others* v *National Social Security Authority and Others*[10] where the court held that:

> "In terms of Rules 322 and 323 of the High Court Rules, 1972, a writ may be sued out by any holder of a judgment or order in terms of which has been ordered "the payment of money, the delivery up of goods or premises or for ejectment". A writ may not be sued out in this court for reinstatement in employment. Aware of this impediment created by the rules of this court, all the applicants before me calculated their own losses and attached computation of these to the awards ordering their reinstatement. Such computations, no matter how accurate, are not part of the awards made by the

[6] 2001 (2) ZLR 545 (H).

[7] S126/21.

[8] 1973 (2) SA 747 ® at page 748.

[9] 1978 (3) SA 645 at page 654.

[10] 2005 (2) ZLR 329 (H).

arbitrators and have not been before any determining authority for quantification. They remain the claims that the applicants are making against their respective employers. A writ of execution cannot therefor issue in respect of such claims before they are made part of the arbitral award. On their own, they are not capable of registration as orders of this court as they fall outside the ambit of the provisions of section 98(14) of the Act."

In the case of *Matthews* v *Craster International (Pvt) Ltd*[11], also relied upon by the applicant, the court declined to register unquantified damages and consequently made the following remarks:

> "The applicant brought this application prematurely. The respondent argued that having seen that paragraph (c) of the award did not specify the amount, the applicant should have proceeded in terms of art 33 of the Arbitration Act. This article provides for the correction and interpretation of an award within thirty days of the receipt of the award, or within a longer period as may be agreed upon by the parties. In paragraph (a) of sub-article (1) a party may, on notice to the other, request the arbitrator to, *inter alia*, "… ***give an interpretation of a specific point or part of the award***." If the arbitrator considers the request to be justified it shall make the correction or give the interpretation within thirty days of the receipt of the request."

Adv *Mabwe* referred the court to the case of *ZITF Company (Pvt) Ltd* v *Viking Plastics (Pvt) Ltd and Anor*[12] where the court held that it may not tolerate the behavior of the party which seeks to stay the execution of judgment in bad faith. The first respondent also relied on the case of *Greathead* v *Greathead*[13], where the court underscored that a judgment is final if

> "….in the court by which it was pronounced it conclusively, finally, and forever established the existence of the debt…. So as to make a *res judicata* between the parties."

The first respondent argued that the arbitral award is liquid and capable of being enforced in its current form. The first respondent maintained that the present application seeks to challenge the order of this court which registered the arbitral award. The first respondent referred the court to a plethora of cases which include *Hlatshwayo* v *Mare and Deas*[14], *Burns and Co* v *Burne*[15], *Herselmann* v *Koerner*[16], *Naidoo* v *Estate Mahomed and*

[11] 2015 (2) ZLR 374 (H).

[12] HB83/13.

[13] 1946 T.P.D. A404at page 407.

[14] 1912 AD 242.

[15] 1922 NPD 461.

Others[17], *Kanneberg* v *gird*[18], *Stuart Nixon Estates Agency* v *Brigaddon (Pty) Ltd and Anor*[19].

On the hearing day, all legal practitioners were not able to articulately elaborate the method of calculating holding over damages as specified by the arbitral award. On p 32 of the record, Paragraph F of the award, which provides for the quantifications method of holding over damages, is as follows:

> "The Respondent shall, in addition to paying the amount and interest stated in paragraph [,c] and [d] above as adjusted by the effect of paragraph [e], pay to the Claimant, representing holding over damages for the period starting from July 2020 to the date upon which vacant possession of the mining claims, namely Chidje Granite Claims, 21919 BM; 23534 BM; 23174 BM; 23175 BM; 26606 BM; 26607 BM; and 26608 BM, which were in the district of Mutawatawa at the rate of ZWL 368 662.72 per month and thereafter, for each subsequent month through the addition of the monthly inflation figure provided by the Central Statistics Office on this amount, together with interest at the prescribed rate of 5% per annum calculated from the 1st of each month to the date of payment for such period as the Respondent may remain in occupation of the mining claims or any portion thereof."

What escaped the legal practitioners of both parties is to place before my attention the validated official data from the Central Statistics Office. Parties simply made their own independent calculations which were not tallying. The applicant's calculations for the period in question saw it paying the amount in excess of ZW$ 12 million while the first respondent was claiming from the applicant an amount in excess of ZW$ 20 million. Thus, the parties did not agree on the use of the method of calculating holding over damages. The applicant initially suggested, in its Heads of Argument, that the mathematical calculations ought to be referred to the suitably qualified financial accountant who is mutually appointed by the parties. However, on the date of hearing Adv *Zhuwarara* departed from this suggestion and proposed that the matter be remitted to the arbitrator for final calculations to be made. On the contrary, Adv *Mabwe* argued that this is unnecessary as these figures for holding over damages are readily ascertainable. This was despite the fact that she failed to demonstrate how the amount in excess of ZW$20 million was arrived at.

---

[16] 1922 SWA 40at page 43.

[17] 1957 (1) SA 915 (N).

[18] 1966 (4) SA 173 [C] at page 183.

[19] 1970 (1) SA 97 (N) at page 102.

Adv *Mabwe* argued that the present application seeks to challenge the order of this court which saw the arbitral award being registered. On the other hand, the counsel for the applicant, Adv *Zhuwarara* contended that the writ of execution puts too much discretion on the third respondent who is supposed to calculate the monthly rate of inflation. He also submitted that if it appears to be difficult to the legal practitioners for the parties, it would be even more difficult to the third respondent to calculate the holding over damages. Adv *Zhuwarara* additionally argued that the writ of execution makes the third respondent a judicial officer.

In my view, if no certified data from the Central Statistics Office is placed before my attention, I see no merit in the first respondent's argument to the effect that the writ of execution is regular. It can only be valid if formal information is readily available for everyone. Despite the first respondent's averment that the data inflation from the Central Statistics Office is available in the public domain, it failed to make such information accessible to the court. Furthermore, although the first respondent insisted that the amount payable to it is easily ascertainable, its legal practitioner, Adv *Mabwe*, was not able to demonstrate the practical application of the computation method. On this basis, I consider the writ of execution to be irregular for want of sufficient clarity. It is my considered view that the extrinsic evidence sought to be introduced in the writ of execution is extraneous in the absence of endorsed data from the Central Statistics Office. The effect of nullifying the writ of execution is not to set aside the decision of this court for registration of the award which was handed down on 20 January 2022. The effect is that the arbitral award may be subjected to further quantification of the holding over damages which are in dispute. Such quantification is impossible in the absence of the authorized data from the appropriate office. Once the proper quantification has been conducted, there is nothing that may prevent the first Respondent from having a proper writ of execution issued by the second respondent in order to recover the outstanding judgment debt, if any.

It is my considered view that the quantification may be conducted by an appositely financial accountant who may be mutually appointed by the parties. This expert may be able to quantify the damages for the parties. If the parties fail to reach an agreement for the appointment of the appropriately qualified financial expert, it is my opinion that the matter must be remitted to the arbitrator for quantification of the holding over damages upon such terms and conditions as the parties may agree.

With respect to costs, I am of the view that an order that each party must bear its own costs is appropriate given that there is no justification for punishing either party due to the arbitral award which requires further quantification.

In the final result, it is ordered as follows:

a) "The interim order granted by this Honourable Court on 26 March 2022, per MS MUNGWARI J, be and is hereby confirmed.
b) The writ of execution issued by the second respondent in HC 3203/21, dated 16th February 2022, be and is hereby set aside.
c) The third respondent's execution of the writ of execution issued by the second respondent dated 16th February 2022, be and is hereby set aside.
d) The parties are directed to appoint a mutually agreed financial accountant for purposes of quantifying holding over damages for the disputed period within thirty days from the date of this judgment, or any such longer period as the parties may agree, failing which the parties may approach the arbitrator for quantification of holding over damages for the period in dispute upon such terms and conditions as the parties may agree.
e) Each party shall bear its own costs."

Gill, Godlonton and Gerrans, applicant's legal practitioners.
Mhishi Nkomo Legal Practitioners, first respondent's legal practitioners.