

SETSAIL EQUIPMENT (PVT) LTD

Versus

JAVINGTON INVESTMENTS (PVT) LTD

And

DEPUTY SHERIFF FOR BULAWAYO

IN THE HIGH COURT OF ZIMBABWE
NDOU J
BULAWAYO 12 & 22 MARCH 2012

G. Nyoni for the applicant
F Museta for 1st respondent

Urgent Chamber Application

NDOU J: The applicant seeks stay of execution of the order of this court granted on 16 February 2012 under case number HC 3351/11. The background facts of the matter are the following. Under HC 3351/11 the 1st respondent obtained an order against the applicant for the payment of US\$9 099,00 arrear rentals (plus interest on the said amount), cancellation of lease agreement between the applicant and the 1st respondent and eviction of the applicant from rented property being 112A Fenleigh Building, Fife Street, Bulawayo. This order was granted by default on 16 February 2012 after the applicant had been barred on 30 January 2012. What is apparent from the papers is that the summons were served on the applicant on 2 November 2011. The applicant entered an appearance to defend on 5 December 2011. The applicant did not file the plea. Consequently on 20 January 2012, the 1st respondent filed a notice of intention to bar and served it on the applicant's legal practitioners the same day. Still no plea was filed. As a result, the applicant was duly barred on 30 January 2012 leading to the application of the above-mentioned default judgment. Under HC 551/12 the applicant filed an application for rescission on 21 February 2012. This application is opposed by the 1st respondent. The answering affidavit and heads of argument have been filed in the latter application. That matter is awaiting set down. The major hurdle facing the applicant is that this urgent application was filed after the Deputy Sheriff had acted pursuant to writs issued under HC 3351/11. The applicant seeks in essence the return of the attached property and reversal of the writ of ejectment filed on pages 12 and 13 of this application. It is trite law that an interim interdict is not a remedy for past invasions of rights and will not be granted to a person whose rights in a thing have already been taken away from him by operation of law at the time he or

she makes an application for interim relief. An interdict is sought to protect rights in property. An application for interim interdict for property already taken away from the applicant may not be granted – *Meyer v Meyer* 1948 (1) SA 484 (T); *Stauffer Chemicals v Monsanto Co* 1988 (1) SA 805 (T) at 809F-G and *Airfield Investments (Pvt) Ltd v Minister of Lands & Ors* 2004 (1) ZLR 511 (S) at 517F-H.

For this reason alone the application should fail. Accordingly, the application is dismissed with costs.

Moyo & Nyoni, applicant's legal practitioners
Danzinger & Partners, 1st respondent's legal practitioners