

TETRAD INVESTMENT BANK LIMITED
versus
ILEX INVESTMENTS (PRIVATE) LIMITED
and
NACMAR TRADING (PRIVATE) LIMITED

HIGH COURT OF ZIMBABWE
MATANDA-MOYO J
HARARE, 17 June 2014 & 23 July 2014

In chambers

Ms S. *Bwanya*, for the plaintiff
No appearance for the defendants

MATANDA-MOYO J: This matter was set down before me for a Pre-Trial Conference on 17 June 2014. The plaintiff appeared but the defendants were in default. The plaintiff applied that defendants' defence be struck off and default judgment entered in its favour. For me to make such a finding I must first be sure that the defendants' were aware that the matter was set down for that day, and despite such knowledge decided not to turn up.

The defendants' are represented by Messrs Takaidza and Mubata whose address of service is given as c/o Messrs Kwenda and Associates of 9th Floor Hurudza House, Corner Park Street/N.Mandela Avenue, Harare. There has been no change of address filed with court by the defendants'. The Deputy Sheriff served a notice of set down for the Pre Trial Conference on the said Kwenda and Associates who refused to accept service. Below is what was written by the Deputy Sheriff on the return of service;

“Attempted service. Kwenda and Associates refused to accept on behalf of the defendants' legal practitioners.-----.”

The question which falls for determination is whether such service is proper service at law. Counsel for the plaintiff submitted that since service was done at the address provided for the defendants, such service was proper. She argued therefore that defendants were in wilful default and prayed for the striking out of defendants' plea and that default judgment be entered in favour of its clients. I agree with counsel's submissions. Kwenda and Associates is the address

of service chosen by the defendants. In terms of the High Court Rules service of process on defendants chosen address is proper service.

I am thus satisfied that defendants were properly served. It follows therefore that defendants were in wilful default.

Accordingly I order as follows;

1. Defendants' defence is hereby struck off.
2. Matter is referred to the unopposed roll for quantification.

Mawere & Associates, plaintiff's legal practitioners
Messrs Takaidza & Mubata, defendants' legal practitioners