

UNIVERSAL CABLE (PVT) LTD
versus
THE SHERIFF OF ZIMBABWE
and
THE MASTER OF HIGH COURT

HIGH COURT OF ZIMBABWE
MANGOTA J
HARARE, 24 and 28, July 2014

Urgent Chamber Application

M. Mbuyisa, for the applicant
Respondents in default

MANGOTA J: The present is a classic case of a senior court official who made up his mind to disobey a lawful court order. His reasons for doing so remain unknown.

The applicant was placed under provisional liquidation on 2 July, 2014. Two days after the mentioned date, the first respondent, a senior court official, who is charged with the responsibility of executing court orders or judgments, caused goods which belonged to the applicant to be removed from the latter's premises pursuant to a writ of execution which had been issued under case number HC 3141/14. The case involved the applicant and another party in favour of whom judgment had been entered.

The applicant's provisional liquidator one Christopher Maswi advised the first respondent that the applicant was under liquidation. The advice fell on deaf ears as the first respondent proceeded with the removal of the goods. Its reason for doing so, at the time, was that the provisional liquidator had not availed to him the court order which supported the statement which he had made.

On 10 July, 2014 the liquidator furnished the first respondent with the court order which placed the applicant under provincial liquidation. That fact notwithstanding, the first respondent proceeded to authorise the sale of the applicant's property. He, in the mentioned regard, placed an advertisement in *The Herald* newspaper on 18 July, 2014 and advised

members of the public that he would, on 24 July, 2014, sell the applicant's goods by public auction.

The applicant attached to its application a copy of the court order which placed it under provisional liquidation. It marked it Annexure A. Paragraph 4 of the annexure is pertinent. It reads:

“pending the return day, this order shall operate as a provisional order of winding up.”

The court which made the order set the 3rd of September, 2014 as the return day on which all interested parties would appear and present themselves before the court sitting at Harare to show cause why a final order should not be made placing the applicant in liquidation.

On 18 July, 2014 the applicant addressed a letter to the first respondent. It advised him that it was unlawful for him to proceed with the sale in execution and the first respondent gave all the indications that he would sell the applicant's goods the existence of the court order notwithstanding. The applicant referred the first respondent to s 213 of the Company's Act [*Cap 24:03*]. It quoted the section in the letter, annexure D, for the first respondent's education on what the law provides in respect of attachments and/or execution of court orders or judgments entered against a company which is under provisional liquidation as the applicant was or is. The section reads:-

“213 Action stayed and avoidance of certain attachments, executions and dispositions and alteration of status.

In a winding up by the court –

- (a) no action or proceeding shall be proceeded with or commenced against the company except by leave of the court and subject to such terms as the court may impose;
- (b) any attachment or execution put in force against the assets of the company after the commencement of the winding up shall be void;
- (c) every disposition of the property, including rights of action, of the company and every transfer of shares or alteration in the status of its members, made after the commencement of the winding up, shall, unless the court otherwise orders, be void.” (emphasis added)

It is difficult, if not impossible, to understand the reasons which compelled the first respondent not only to disobey the court order which the applicant had furnished him with for his education and convenience but also to disregard the abovementioned section of the country's Act the provisions of which are couched in a very clear and unambiguous language. Those provisions are mandatory and anyone who disobeys them as the first respondent did in the instant case, does so to his possible detriment.

The applicant appraised the first respondent of what the law required of him in the letter which it addressed to him on 18 July, 2014. The first respondent's conduct persisted in an unabated manner and it, on 21 July 2014, filed the present application with the court.

The court realised the urgency of the application and it placed a temporary interdict on the execution of judgment of the case of Fidelis Taruvinga and the applicant. The interdict remained operative from the date that the court became seized with the matter to the date that the application was heard and finalised. It directed that the application be served on the respondents both of whom, the court noted, are senior officers of this court. The respondents were duly served and the application was heard on 24 July, 2014.

A day before the hearing of the matter, the first respondent who was or is the culprit in this application filed his report with the court. The report which he date-stamped 23 July, 2014 reads:-

“I have gone through the applicant's affidavit and advise that the Sheriff has been sighted as the 1st respondent in his official capacity.

The Sheriff has stopped execution in the above matter as per court order granted by Honourable Justice Mangota dated 22 July, 2014.

I will abide by the decision of this Honourable Court.”

The second respondent who was also cited in his official capacity did not appear in person or through legal representation. Nor did he file any report with the court. The court, therefore, entertains the view that he will abide by its decision as the first respondent said he would.

It goes without saying that there was no opposition to the application. The application was very urgent and the applicant treated it as such. The court mentions in passing that, but for the conduct of the first respondent, the present application would not have been before it. The first respondent's decision to disobey a lawful court order and the law as enunciated in s

213 of the Company's Act embroiled the applicant in the mess which the court is called upon to clean. What the first respondent did is inexcusable and it must, therefore, be censured in a manner which will drive home to him that, as much as it is his duty to enforce court orders, he, more than anyone else, should obey such orders as well as the law.

The applicant argued its case on the papers satisfactorily. It prayed that its application be granted with costs on a higher scale.

The court has considered all the circumstances of this case. It, accordingly, makes the following order:-

- (a) that the application be and is hereby granted.
- (b) that the first respondent pay the costs of this application on an attorney and client scale.

C. Nhemwa and Associates, Applicant's Legal Practitioners