

PARKVIEW TRADING (PVT) LTD
versus
AUTO DECO PAINTS (PVT) LTD
and
GREENSLOP TRADING (PVT) LTD
and
RONNIE CHIPO MUKWADA
and
PATIENCE NDORO
and
NMB BANK LIMITED
and
SHERIFF OF THE HIGH COURT

HIGH COURT OF ZIMBABWE
NDEWERE J
HARARE, 8 July 2014 and 6 August 2014

Urgent Chamber Application

Ms *N.P Timba*, for applicant
Ms *P. Kadembo*, for the 5th respondent

NDEWERE J: On 11 July, 2012, the fifth respondent, NMB Bank Limited obtained an Order in case No. HC 1087/11 against the first, second and third respondents and two others for the payment of \$215 532-76 together with interest at 36% per annum on the amount claimed from 1 December 2010 to date of payment.

To satisfy that debt the fifth respondent had a writ of execution issued on 29 January, 2013 against the first respondent's movable and immovable property. In accordance with the writ, the sixth respondent, who is the Sheriff of the High Court, attached the first respondent's immovable property, known as Stand 867 Strathaven Township, 11 of stand 970A; Strathaven Township on 3 May, 2013. On 7 March, 2014, the fifth respondent instructed the Sheriff to sell the attached property. The sale was scheduled for 20 June, 2014.

In the meantime, the applicant in case No. HC 5845/13 had on 27 February, 2014 obtained an order to compel the first respondent and others to sell "stand 869, Strathaven Township" so that they share the proceeds of the sale.

The applicant has now approached the High Court on an urgent basis to order the Sheriff to reserve 50% of the proceeds from the sale for it on the basis of the order in HC 5845/13.

The first issue for the court to determine is whether the applicant can properly seek urgent relief. Both parties filed Heads of Argument and made oral submissions during the hearing. Having taken into account all the submissions made, I am of the view that the application by the applicant is not urgent.

The property which was attached and advertised for sale is owned by the first respondent alone; it is not jointly owned so on the face of it, there is nothing entitling the applicant to involve itself in the execution of the property to satisfy the first respondent's judgment debt. The applicant is relying on a judgment it obtained on 27 February, 2014. That judgment refers to a different property, which is stand 869 Strathaven Township whereas the stand which was advertised for sale is stand 867.

During oral submissions, counsel for the applicant said the judgment of 27 February, 2014 contains a typographical error in that instead of writing 867 the number 869 was written instead. The court noted that the stand number in the judgment is the one which was in the founding documents to the application, which means the error is not a typographical error in the judgment: its more than that. Whatever the nature or reason for the error, until the error is corrected, the fact remains that the applicant has a different stand number to the one which was advertised for sale.

The applicant cannot therefore rush the court and say it requires urgent relief when it has not yet put its house in order by attending to the correction of the erroneous judgment. The applicant has said it intends to have the judgment of 27 February, 2014 corrected. In *Makamure v Denven Engineering (Pvt) Ltd* 2008 (2) ZLR, 319 at 321, GOWORA J as she then was said:

“Litigants must refrain from seeking relief in an urgent manner where such relief is dependent on the conclusion of an action launched on to be launched”.

I associate myself with the above view. This means the applicant should not approach the court on an urgent basis until it has had the judgment corrected.

In the case of *Tripple C. Pigs & Anor v Commissioner General* 2007 (1) ZLR 27 referred to by respondent's counsel, it was held that in an urgent chamber application, the applicant has to show imminent danger to existing rights or some legitimate interest.

In view of the facts outlined above, that the applicant is not a joint owner and that the court order it is relying on has a different stand number, the applicant in the present case has failed to show that it has existing rights or a legitimate interest in the property which is the subject of the writ of execution.

Since the applicant has not shown any existing rights or legitimate interest, it follows that he can suffer no irreparable harm if his application is not treated as urgent.

The application for urgent relief is therefore unsuccessful.

The applicant shall pay the fifth respondent's costs for this application.

Kantor & Immerman, applicant's legal practitioners
Gula-Ndebele & Partners, 5th respondent's legal practitioners