

STEPHEN DAVID GIBSON
versus
JENNIFER MARGARET SHADRACH (represented by Phillip Ellse)
and
THE SHERRIFF OF ZIMBABWE.

HIGH COURT OF ZIMBABWE
BHUNU J
HARARE, 25 February 2014.

Mrs. Wood, for the applicant.
M. Madega, for the 1st respondent
P.A Toto, for the 2nd respondent.

BHUNU J: The first respondent in his capacity as the Sheriff of Zimbabwe acting in terms of a writ of ejectment duly issued by this Court commenced the process of ejecting the applicant from House number 19 Helensvale Road, Helensvale on 22 January 2014. The ejectment was however interrupted by the setting down of an application for stay of execution before HUNGWE J under case No. HC 10785/13. The application was granted on 24 January 2013. By then partial eviction had already been effected and the remaining property of the applicant staffed in an office.

According to the Sherriff's report the interruption occurred after he had already carried out partial eviction and a third party the second respondent had already taken partial occupation of the disputed premises. The applicant then wrote to the first respondent on 28 January 2014 requesting the removal of the second respondent from the premises.

The first respondent through the Chief Registrar replied on the same date declining the request on the ground that he could not eject the second respondent from the premises without a Court order. The letter reads:

“We have taken note of the contents of your letter and we have also had site of the Court order attached to your letter. Our position is as follows: we have already complied with the Order of the Court by returning the applicant's goods back into the house. At the time however we returned the goods another person had already taken occupation of the property. The Court order therefore had been overtaken by events. The applicant's goods were placed in an office and the keys to that office may be collected from the Sheriff's office together with the return of service. We are unable to evict the person who has taken occupation because there is no Court Order directing us to do so.

Please note that the law does not stop the Sheriff from executing a Court Order even where they (sic) is a pending Court Application.”

It is self evident that as way back as 28 January the Applicant was aware that the first respondent was not going to reverse what he had done through a Court Order without a lawful Court order reversing the same. Despite being directed to seek a Court Order empowering the Sheriff to effect the desired eviction the Applicant ignored that advice choosing to approach the Judge President for relief. There is however no rule of law that allows the Judge President to interfere with the execution of an order issued by another judge of the same Court. In fact the Judge president was unable to offer any assistance to the Applicant because notwithstanding his status as Head of the High Court he was equally bound by the order of Court in terms of s 164 (4) of the Constitution which provides that:

“(3) An order or decision of a court binds the State and all persons and governmental institutions and agencies to which it applies.”

What this means is that where the Judge President is not presiding over a case his function is purely administrative he cannot interfere judicially with the order of a fellow judge of the same jurisdiction. Thus pursuing the Judge President for a judicial remedy over a case presided over by another judge of his Court was sheer waste of time going on a wild goose chase on a dead end road that leads to nowhere.

Upon reaching the dead end an inordinate delay of 20 days had already occurred. It is only then that the Applicant decided to hearken to the first Respondent’s advice and filed this urgent chamber application on 18 February 2014. Undoubtedly the delay is inordinate and unreasonable in that right from the onset the applicant was properly advised of the correct action to take by the appropriate government official but he chose to pursue an inappropriate remedy.

The urgency was therefore self created such that it is not the sort of urgency that should prompt this court to give the matter precedence over other matters filed before it. See *Kuvarega v Registrar – General & Another* 1998 (1) ZLR 188 at 193F.

For the foregoing reasons I can only come to the conclusion that this matter is not urgent. It is so ordered.

Matizanadzo & Warhurst, applicant’s legal practitioners.
Mwonzora & Associates, 2nd respondent’s legal practitioners.