

**KERINA NAOME SONGORE**

**Versus**

**ZEDIAS NENE**

**ADDITIONAL SHERIFF OF THE HIGH COURT OF ZIMBABWE**

**THE REGISTRAR OF THE HIGH COURT OF ZIMBABWE**

IN THE HIGH COURT OF ZIMBABWE

NDLOVU J

BULAWAYO 6 JULY & 17 NOVEMBER 2023

*Application for a Stay of Execution.*

*Mr. V. Mkwacharia for the Applicant.*

*Mr. I. R. Mafirakureva with B.C. Dube for the 1<sup>st</sup> Respondent*

*No Appearance for the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.*

**NDLOVU J:** This is an urgent chamber application for a stay of execution of a default judgment order granted under **HC157/23** by this court on the 4<sup>th</sup> of May 2023.

## **FACTS**

The Applicant and the 1<sup>st</sup> Respondent are engaged in a mining dispute. The default judgment order was served on the Applicant on the 13 of June 2023. She contends that, that is the first day and time she first knew of the matter under **HC157/23**. As soon as she became aware of the Default Judgment order she mounted an application for the rescission of that judgment under case number **HC 1299/23** in this court.

## 1<sup>st</sup> RESPONDENT OPPOSITION

The 1<sup>st</sup> Respondent took some preliminary points in this matter and they are;

- *Urgency*
- *Material non-disclosure*
- *Non-existence of the Application for rescission for failure to comply with **Rules 15(8) & (9)** of the Rules of this court in **HC1299/23**.*

## THE HEARING

At the hearing, Mr. Mafirakureva somehow went soft on urgency and material non-disclosure but was very strong on the non-compliance with **Rules 15 (8) & (9)**, arguing that there is no valid application before me.

**Rule 15 (8)** provides as follows:-

*“At any time of filing an .....application.....a party **shall** deposit with the Sheriff an amount determined by the Sheriff for costs of service of all notices of set down.”*

**Rule 15 (9)** reads as follows:-

*“A copy of the receipt of such deposit **shall** be furnished to the registrar by the party within (5) days of filing the ....application.....failing which the.....application..... **shall** be regarded as abandoned and, in the event of an .....application **shall** be deemed to have been dismissed.” [my emphasis]*

It is common cause that the application for rescission matter **HC 1299/23** did not comply with the peremptory provisions of **Rules 15 (8) & (9)**, after it was filed on 23 June 2023. The net effect of that is the reality that at the time of hearing *this* application for stay of execution there was no application for rescission of the default judgment order before the court because, in terms of **Rule 15 (9)**, that application for the rescission of the default judgment order was by operation of the law deemed to have been dismissed, meaning that it is not before the court.

***Farai Zizhou v The Sheriff of Zimbabwe & Others HH 201/23***

The above finding is decisive for this application. There being no application for the rescission of the default judgment order, which found this application for a stay of execution, ordering a stay of execution in the circumstances would be akin to giving an order to the 1<sup>st</sup> respondent with the right hand and taking it away with the left. The attempt by the applicant to move this court to condone her omissions in HC 1299/23 is without basis or merit. There is nothing to condone in the first place. Case number ***HC 1299/23*** is the one afflicted by procedural deficiencies and is not before me.

For the avoidance of doubt, the point *in limine* that this matter is not urgent is without merit. Generally, a stay of execution of a judgment is a matter of inherent urgency as the other party will be legitimately armed to execute and most of the time to the detriment of the applying party. The argument that the matter is not urgent is therefore dismissed. The same goes for the purported non-disclosure by the Applicant of the PMD's order against the Applicant. That point is a matter for the merits and it is equally dismissed for want of merit.

**DISPOSITION**

This application is improperly before this court.

**ORDER**

The application for the stay of execution of the Default Judgment Order in ***HC157/23*** be and is hereby struck off the roll with costs on an ordinary scale.

*T. H. Chitapi & Associates Legal Practitioners*, applicant's legal practitioners  
*Messrs. Moyo and Nyoni Legal Practitioners*, 1<sup>st</sup> respondent's legal practitioners.