HC2268/21
Ref HC 4876/99
Ref HC 6115/18

DORCAS MAKAZA
versus
PLAXEDES CHIKEREMA
and
SHERIFF FOR ZIMBABWE

HIGH COURT OF ZIMBABWE
MAFUSIRE J
HARARE, 27 May 2021

Date of *ex tempore* judgment: 27 May 2021
Date of written judgment: 24 June 2021

Urgent chamber application

Adv T.G. Musarurwa, for the applicant
First respondent in person
No appearance for the second respondent

MAFUSIRE J

[1] This is an urgent chamber application. The applicant applies to stay execution of certain property belonging to the Estate Late James Robert Dambaza Chikerema ("Estate Late James Chikerema") attached by the second respondent at the instance of the first respondent. The applicant is the executrix dative of the Estate Late James Chikerema. The first respondent is the executrix dative of the Estate Late Charles Kufahakurotwe Chikerema ("Estate Late Charles Chikerema"). She is thoroughly ill-advised. She is flogging a horse that has been dead more than twenty years ago. This sort of thing happens if lawyers abdicate their responsibilities and begin to act like hired guns. The first respondent was at all times represented by a firm of lawyers known as S. Makonyere Legal Practitioners ("S. Makonyere"). They prepared the notice of opposition to this application. Their Mr *Masocha* actually appeared on the original date of set down. He sought time to brief counsel. Once the postponement was granted (for a number of days) he never came back! Nor counsel! The next thing was a notice of renunciation

of agency and a letter to say that the first respondent had insisted on representing herself. These documents were received just a day before the hearing. Nobody appeared to explain.

[2] The first respondent is flogging a dead horse because the debt she is trying to recover from Estate Late James Chikerema through a writ of execution is non-existent. The one that ever was in existence has since been extinguished. Her instructions to the Sheriff, through S. Makonyere, were patently irregular. At best, such conduct amounts to overreaching. But it could be something worse. The applicant says it is fraud. One cannot blame her. The material facts are all common cause.

[3] On 23 January 2001 the then executor to the Estate Late Charles Chikerema, one Cecil Madondo, obtained against the Late James Chikerema, a judgment from this court in HC 4876/99, *per* ZIYAMBI J, as she then was. It was in the sum of $762 600-00, old Zimbabwean currency. 23 January 2001is more than twenty years ago. The debt remained unpaid. Although a writ was issued in February 2001, it was never executed. The judgment became superannuated.

[4] At some stage, Cecil Madondo was removed as executor. He was replaced by the first respondent. Eighteen years later, the judgment had still not been executed. Meanwhile, the Late James Chikerema had passed on. In the course of time the applicant was appointed the executrix dative. Because the 2001 judgment had become superannuated, the first respondent sought to revive it. She did. On 22 August 2018 she obtained from this court, under HC 6115/18, *per* Zhou J, an order reviving the judgment. This was at a time when the multi-currency system was in use. Of the basket of currencies, the United States dollar was predominant.

[5] In the same order reviving the judgment, the first respondent also got another order saying that the old judgment amount of ZWD762 000-00 would be converted by the Commercial Bank of Zimbabwe to United States dollars as at 23 January 2001. The court further declared that such conversion would be sufficient and lawful for purposes of execution. This was all at the instance of the first respondent. She approached the Reserve Bank of Zimbabwe for the conversion. The judgment amount was converted to USD22 317-22,

inclusive of interest. But the first respondent never executed. The applicant says she was disappointed by what appeared to be a paltry amount.

[6] On 22 February 2019 Statutory Instrument 33 of 2019 was promulgated. A new Zimbabwean currency called the RTGS dollar was introduced. In June 2019 yet another Statutory Instrument was introduced, SI 142 of 2019. In terms of it, the pre-existing multi-currency system was abolished. The RTGS$ would now be the sole legal tender. Pre-existing debts or liabilities in foreign currency would be valued in local currency at the ratio 1: 1. Eventually both SI 33/2019 and SI 142/2019 would be incorporated into the Finance Act (No 2) No 7 of 2019.

[7] In December 2019, the applicant established that the USD22 317-00, together with interest and the legal costs due to S Makonyere, converted to ZWL45 000-00 (forty-five thousand dollars). The first respondent would not accept that amount. Following legal advice, the applicant paid it into court. That was on 21 January 2020. On the same date, she wrote to the Registrar of this court to advise of the payment. She copied S. Makonyere. The lawyers received their copy on 23 January 2020. On 25 February 2020 the applicant wrote again to the Registrar reminding him of her payment and imploring him to advise the first respondent's legal practitioners to uplift the money.

[8] However, neither the legal practitioners nor the first respondent uplifted the money. Instead, in April 2021, that is to say, fourteen months after the applicant's payment into court, S. Makonyere sought to execute the writ which they had issued more than twenty years ago, and which reflected the old sum of $762 000-00. To make matters worse, in his notice of attachment served on the applicant, the Sheriff sought to recover a staggering USD762 000-00! He went on to attach a variety of movables, including 148 head of cattle and a motor bike. The combined values of the attached property came nowhere near USD762 000-00. The applicant says some of those assets belong to other people.

[9] Not unexpectedly, the applicant raised an alarm. She protested to both the Sheriff and S. Makonyere. She narrated the whole history of the debt as set out above. She demanded an

assurance from the Sheriff that he would call off the execution and uplift the attachment. He did not. But he undertook to get further instructions from S. Makonyere. He did.

[10] Unbelievably, S. Makonyere insisted that the Sheriff should proceed with execution. They practically ignored the applicant's protestations. They insisted that the execution was being carried out legitimately and that without a court order the Sheriff could not abandon execution. Regarding the history of the debt as narrated by the applicant, they simply made bare denials. Armed with S. Makonyere's letter, the Sheriff then gave the applicant notice that he was going to proceed with execution. It was then that the applicant filed this urgent application.

[11] The first respondent's notice of opposition, through S. Makonyere, does not deal with the substance of the applicant's complaint, particularly the manner in which the original debt had morphed into the amount finally paid into court. The notice of opposition raises some frivolous points *in limine*, such as:

- that the certificate of urgency is not stamped;
- that somewhere in the body of the founding affidavit reference is made to a non-existent party, and that for that reason the applicant is non-suited, and
- that the matter is not urgent because the writ sought to be stopped had been issued way back in February 2001.

[12] On the merits, the first respondent relies on some dubious conversion of the judgment debt done in March 2021, that is to say, a month before the writ was dispatched to the Sheriff. Apparently the conversion was done at her instance (or her lawyers') allegedly by some department of CBZ Bank Limited. This conversion was allegedly of the original judgment amount, $762 600-00 in 1999, never mind its metamorphosis on the orders of this court at the first respondent's instance. In this conversion, the original debt was first converted to its United States dollar value in 1999. Factoring compound interest at a staggering and unexplained rate of 30% per annum, the dubious computation arrives at a gigantic USD6 757 265-44 (six million seven hundred and fifty seven thousand two hundred and sixty five United States dollars, forty four) owing as at February 2021! It is this patently preposterous computation that the first respondent, through S. Makonyere, uses to found the argument on the merits that the writ, at

USD762 600-00, comes nowhere near the actual amount due by the Estate Late James Chikerema to Estate Late Charles Chikerema. This is despite that there is no court order for such an amount.

[13] Left on her own, and in submissions during the hearing, the first respondent seeks to go behind the original judgment by ZIYAMBI J to advance the point that what the Late James Chikerema took away from the Estate Late Charles Chikerema was livestock, comprising cattle, goats, sheep and ostriches, the combined values of which today would be way above USD765 600-00. As such, her argument continues, all she is trying to recover today, is the true value of what was taken away from the Estate Late Charles Chikerema, and whatever else may be the progeny of such livestock. But this is despite the fact that this was exactly the exercise done twenty years ago, culminating in the order of this court in HC 4876/99. To her it does not matter that there is no other order of this court, or of any other for that matter, granting her the right to do what she is doing.

[14] It has required patience, skill and tolerance to help the unrepresented first respondent put her case across and to make her understand certain legal processes, if at all she did. It is just difficult to understand what S. Makonyere hoped to achieve by instructing the Sheriff to execute on a non-existent judgment debt. It was brought to their attention that the Sheriff was pursuing USD762 600, not ZWL$762 600-00, and that this was obviously wrong. They insisted on him going ahead. But even on their own strange and self-serving logic, they could not properly instruct the Sheriff to recover ZWL$762 600 because that figure had been converted on the orders of this court, *per* Zhou J, at the first respondent's own instance. Furthermore, it was incumbent upon them to explain to their client the changes in the monetary system in February 2019 and June 2019. It was not anybody's fault that such supervening developments occurred to the detriment of the first respondent. She was not the only person affected by this intervention. The entire nation was. However, why the first responded refrained from executing her judgment for a staggering twenty years was never explained. It seems her own lassitude cost her.

[15] The three points *in limine* are frivolous and an abuse of the court process because:

- It is not explained why it is said that the certificate of urgency is not stamped. Not stamped by who? The document before the court bears the date-stamp of the Registry. It is signed by the lawyer who explains who she is and which firm she is with.

- To say just because somewhere in para 16 of her founding affidavit the applicant refers to the estate (to which she is the executrix) as "the second applicant", evidently a harmless mistake, should lead to the dismissal of the entire application, is really scraping the barrel. Officers of the court should treat legal proceedings with the seriousness that they deserve.

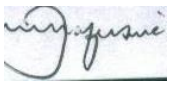
- Regarding urgency, this matter is classically urgent. The urgency does not stem from the issuing of the writ, as the first respondent says in her opposing affidavit. It stems from the attachment that is coming some twenty years after the writ was issued, and with no prior warning. After the applicant hit a brick wall in efforts to stop the Sheriff, she turned to the law. She did not waste time.

[16] The applicant makes no issue regarding costs. Therefore, at the end of argument, and on the application by counsel to amend the draft order, I granted a final order in the following terms:

i/ The judgment debt in case number HC 487/99, as amended by the judgment in HC 6115/18, was fully settled by the payment into court of the sum of ZWL45 000-00 on 21 January 2020 .

ii/ The writ of execution issued under case number HC 4876/99 and dated 8 February 2001 is hereby set aside.

24 June 2021



Warara & Associates, legal practitioners for the applicant