WILBERT MUNONYARA
versus
CBZ BANK LIMITED
and
M/S MWANYISA
and
PAUL CHIMUDZI
and
PUNISH MUSHEZHU
and
CHRISTINA MUSHEZHU
and
PRITSBOROUGH MARKETING
and
WILSON TENDAI DONZWA
and
SALVATE TRADING
and
TAPVICE ENTERPRISES
and
THE SHERIFF OF HIGH COURT
and
REGISTRAR OF DEEDS

HIGH COURT OF ZIMBABWE
MAFUSIRE J
HARARE, 4 September 2013 & 20 December 2013

Unopposed motion court

The applicant in person
No appearance for the respondents

MAFUSIRE J: On 4 September 2013, this matter was on the unopposed roll for motion court. The applicant appeared in person. There was no appearance by any of the respondents. In court I raised three concerns with the applicant: what really was the nature of the application as the papers before me were incoherent and seemed to disclose no cause of action? Who were all those parties cited as respondents as none of them had properly been described in the application? And had service been properly effected on the respondents since from the applicant's affidavits of service it appeared that the documents had simply been

lodged with some firm of lawyers but without any explanation as to why it had been done that way?

I got no satisfactory answers. The situation was even more confusing after the applicant's purported explanation. In the end, I dismissed the application for want of form and for want of substance. I announced in court that I was not satisfied that the application disclosed any cause of action. I also mentioned that I was not satisfied that the application had properly been served on the respondents. A few weeks later, the court record was returned to me with a notice of appeal and a request by the applicant for written reasons for my decision.

The reasons that I gave in motion court on that day are the same reasons that I give in this judgment. I appreciate that the applicant was a self-actor. It is the practice of this court to lean in favour of self-actors. The reasons are obvious. Justice is not only for the rich or only for those endowed with sufficient resources to brief counsel. In *Mwatsika* v *ICL Zimbabwe* 1998 (1) ZLR 1 (H) DEVITTIE J had this to say, at p 2 of the judgment:

> "Our legal system does not provide comprehensive legal aid to the litigant without sufficient or with moderate means. It comes as no surprise therefore that the self-actor is becoming a frequent presence in the courts. He has to grapple with the intricacies of the law in which he has little or no learning. He relies in the main on his perception of justice. At times he bombards the courts with a multitude of actions which border on a deliberate abuse of the court process. Happily, such instances are not common. The practice of our courts has always been to afford the self-actor a degree of tolerance and, within permissible limits, to eschew too rigid an adherence to procedural requirements" (my underlining).

As noted by the learned judge, there is a limit on the extent to which the court can accommodate self-actors. Despite the perceived short comings our legal system does have provision for assistance to indigent litigants.

In the present matter the applicant's founding affidavit rumbled on incoherently. Numerous documents had been attached without much effort to link them to whatever was perceived to have been the cause of action. From the draft order it appeared that the major relief sought was an interdict to stop the sale of a certain immovable property owned by the applicant but which he had mortgaged to the first respondent as security for a bank facility that had been availed to the sixth respondent, Pritsborough Marketing, a special purpose vehicle operated by the applicant and his business associates, one of them his own brother-in-law.

Furthermore, what could be gathered from the founding affidavit and some of the long winded documents attached thereto was that the applicant's sole complaint was that he had not personally benefited from the proceeds from the bank facility and that even though he acknowledged his association with both the sixth respondent and its other directors, according to him he had not properly been appointed a director of that company and that therefore he should not have been held liable for the debt.

As I went through the applicant's long winded application and the documents attached thereto in preparation for the motion court, it was evident to me that apart from the fact that no attempt had been made to establish the requirements for a final interdict, the applicant was manifestly attempting to abuse the court process. Even from his own documents, this was a debt which he acknowledged. Furthermore, the same issue he was bringing for motion court had previously been dealt with by this court. Even though the applicant seemed to argue that the issue had not been dealt with on the merits, he seemed to contradict himself in other documents. For instance, he attached an incomplete judgment by BHUNU J. But from some of his averments and some of his documents, particularly the letter from BERE J on p 22 of the record in which the learned judge had refused to deal with the applicant's urgent application - incidentally, one of the many such applications by the applicant - it was evident that BHUNU J had disposed of the issue on the merits.

It was essentially for the above reasons that I dismissed the application.