

MANA MANAGEMENT CONSULTANCY (PVT) LTD
versus
ADDITIONAL SHERIFF CHIREDDZI
and
PICKGLOW TRADING (PVT) LTD
and
CHUCKWOOD ENTERPRISES (PVT) LTD
and
JES MICHEAL SIMONSEN
and
VIRGINIA SIMONSEN

HIGH COURT OF ZIMBABWE
BHUNU J
HARARE, 27 August 2014 and 29 August 2014 and
10 November 2014

T D Stevenson, for the applicant
A Makoni, for the respondents

Urgent Chamber Application

BHUNU J: The second respondent Pickglow Trading (Pvt) Ltd obtained judgment against the third, fourth and fifth respondents for payment of moneys claimed under case number HC 9294/12. The first respondent being the Additional Sheriff, Chiredzi, acting properly and in the course of duty on 14 March 2014 lawfully attached property listed on the notice of seizure at number 326 Baobab Road Chiredzi.

Following the attachment of the property in dispute the applicant's director one Jes Michael Simonsen filed an affidavit claiming that the attached property belonged to the Applicant. That claim prompted first respondent to issue an interpleader summons on 12 May 2014 under case number HC 3292/14. About 5 months later after the attachment of the property in question on 25 August 2014 the applicant filed this urgent chamber application seeking a provisional order in the following terms.

“PROVISIONAL ORDER ISSUED

The bar against the Claimant in Case No. HC 3293/14 is hereby removed

The First Respondent shall immediately restore to the Applicant all asserts removed from the Applicant under the warrant of Execution issued in pursuance of the default judgment in Case No. 9294/12, but assets may at the discretion of First Respondent remain under attachment pending the outcome of Case No. HC 3292/14.

Costs shall follow the outcome of case 3292/14”.

The second respondent has taken a preliminary point opposing the application on the basis that the application is not urgent. The applicant appreciates that there has been inordinate delays and untidy handling of this matter. It however seeks to blame its then legal practitioners Chirimuuta & Associates who have since renounced agency. Chirimuuta & Associates Are said to have renounced agency on 6 June 2014. They have not been afforded an opportunity to explain their position. I would therefore hesitate to condemn them without being heard. I would however hasten to point out that the courts have said time without number that there is a limit beyond which a litigant cannot escape the ineptitude of his Legal Practitioners.

As correctly pointed out by Mr. *Makoni* for the second respondent the applicant’s handling of the matter is in a mess and abject shambles. There is therefore force in Mr. *Makoni’s* argument when he says the matter is not urgent. The goods were attached and removed on 14 March 2014 but the Applicant only filed this urgent application more than 5 months later on 28 August 2014. While it is easy for the applicant to blame its erstwhile lawyers it was its responsibility to track its case to find out what was happening.

It was remiss of the applicant to sit back for 5 months without checking with its lawyers as to what was happening to its property. The mere fact that the applicant was prepared to sit back for 5 months without chasing after the case is ample proof that it did not treat the matter as urgent. The court cannot therefore treat the matter as urgent in circumstances where the applicant itself failed to treat the matter as urgent. The applicant should not content itself with blaming others without taking responsibility for its own deleterious conduct.

In *Madzivanzira and Others v Dexprint Investments (Pvt) Ltd and Another* 2002 (2002) ZLR 316 (H) it was held that for the court to treat a matter as urgent it was not enough to show that there was danger of irreparable harm, the applicant must also have treated the matter as urgent. This, the applicant failed to do.

I accordingly hold that the matter is not urgent.

Thompson Stevenson & Associates, applicant's legal practitioners

The Additional Sheriff Chiredzi, 1st respondent's legal practitioners

Chuckwood Enterprises (Pvt) Ltd t/a Petrolines, 3rd respondent's legal practitioners

Jes Michael Simonsen, 4th respondent's legal practitioners.

Virginia Simonsen, 5th respondent's legal practitioners