

AGRICULTURAL BANK OF ZIMBABWE LTD  
t/a AGRIBANK  
versus  
JOHN MUTERO  
and  
NORMAN BAYIWA

HIGH COURT OF ZIMBABWE  
MUREMBA J  
HARARE, 31 October 2016 & 15 December 2016

### **Pre-trial Conference**

*J. Dondo*, for the plaintiff  
*G Laita*, for the second defendant

MUREMBA J: This matter was allocated to me for a pre-trial conference. I had the matter set down for hearing on 30 September 2016. The pre-trial conference related to the plaintiff and the second defendant only. The second defendant is represented by Mr. *Laita* of Laita and Partners in Marondera. As a result, the notice of set down for the pre-trial conference was served on the correspondent lawyers, Mahuni & Mutatu of 825 Samora Machel Avenue/8<sup>th</sup> Street, Harare on 22 September 2016.

On 30 September 2016, Mr. *Laita* sent the second defendant to come and attend the pre-trial conference alone. The second defendant explained that Mr. *Laita* just gave him his file and told him to come to court alone without explaining why he was not coming with him. With this explanation I decided that it was unfair to proceed with the pre-trial conference with the second defendant unrepresented when his lawyer Mr. *Laita* had not renounced agency. I thus postponed the hearing to 6 October 2016 with the instruction to the second defendant to come with his lawyer, Mr. *Laita*. I also told the second defendant to tell his lawyer to renounce agency if he was no longer representing him. Again, on 6 October 2016, Mr. *Laita* did not turn up and at the same time he had not renounced agency. The second defendant could not explain satisfactorily

the non-attendance of Mr. *Laita*. All he explained was that he had told his lawyer what I had said on 30 September 2016.

I postponed the hearing yet again to 14 October 2016 to enable Mr. *Laita* to come and explain himself. On 14 October 2016 Mr. *Laita*, again, did not turn up. Instead he sent Mr. Mahuni the correspondent lawyer to come and deal with the pre-trial conference. I asked Mr. Mahuni why Mr. *Laita* had not personally come to deal with the matter and to explain himself on why he had not attended the previous hearings. Mr. Mahuni's explanation was that he did not know anything about what had happened previously as Mr. *Laita* had not explained anything to him. Mr. Mahuni said that all Mr. *Laita* had done was to ask him to come and deal with the pre-trial conference.

Together with Mr. Mahuni and Mr. *Dondo*, for the plaintiff we discussed and agreed on the issues for trial. Having taken great exception to the conduct of Mr. *Laita* which I found despicable and disrespectful I asked the Registrar to write to Mr. *Laita* inviting him to come to my chambers on 21 October 2016 to show cause why he should not be ordered to pay costs *de bonis propriis* for all the occasions the matter was postponed due to his non-attendance. The letter was written and was duly served on the correspondent lawyers Mahuni and Mutatu Attorneys at Law on 17 October 2016. A copy was also served on Mr. *Dondo*, the plaintiff's legal practitioners.

On 21 October 2016 Mr. *Laita* did not attend turn up. Mr. *Dondo* did not appear personally, but he sent a Mr. Matapura on his behalf. Since Mr. Matapura was not conversant with the matter, I decided to postpone it to 31 October 2016 for Mr. *Dondo* to come and deal with the matter. On 31 October 2016 Mr. *Dondo* attended. As usual Mr. *Laita* did not attend. In his place he sent Mr. Mahuni once again.

I asked the two legal practitioners why I should not award costs *de bonis propriis* against Mr. *Laita* for all the occasions he did not attend court. Mr. Mahuni submitted that he had no submissions to make. Mr. *Dondo* was in agreement that Mr. *Laita* should be ordered to pay costs *de bonis propriis* for his conduct. Considering the conduct of Mr. *Laita*, I awarded costs *de bonis propriis* against him on 31 October 2016. An award of costs *de bonis propriis* is an order which courts do not make against legal practitioners lightly. They are awarded in cases where a legal practitioner has exhibited really improper conduct. The present matter is one such matter where

the legal practitioner, Mr. *Laita* exhibited really improper conduct. On 5 occasions Mr. *Laita* deliberately refused to come to court. Even in light of a letter written by the Registrar asking him to come and show cause why costs *de bonis propriis* should not be awarded against him he refused to come, not only once, but twice. Initially no one came on 21 October 2016. Then on 31 October 2016, he sent Mr. Mahuni. He clearly disregarded my invitation to come and show cause why I should not award costs against him for his reprehensible conduct. Before that he had disregarded my instruction that if he is no longer interested in representing the defendant he should simply renounce agency. Mr. *Laita*'s conduct was highly disrespectful and contemptuous. By his conduct I was forced to postpone this matter on 4 occasions thereby causing his client, the second defendant and the plaintiff to incur unnecessary costs. The postponements also caused me to waste unnecessary time as I had to accommodate this matter on 5 occasions. This caused delay in the finalisation of the pretrial conference. There is no doubt that Mr. *Laita* acted unreasonably, irresponsibly and was grossly reckless in the way he handled the pretrial conference. He also showed lack of concern as to the consequences of his actions.

Order 2 r 6 of the High Court Rules, 1971 is very clear about renunciation of agency by a legal practitioner. It states that a legal practitioner may for good cause renounce his agency. If Mr. *Laita* felt that he had good cause for renouncing agency on behalf of the second defendant he should have done so, but he did not. Even in light of an instruction from the court he refused to do so. He deliberately chose not to comply with the requirements of the rules of this court. At the same time he refused to come to court to represent his client. With this I did not see why Mr. *Laita* should not be penalised. This was a reasonably serious case warranting the award of costs *de bonis propriis* against a legal practitioner. I ordered as such. I also ordered that the matter be brought to the attention of the Law Society of Zimbabwe so that it can deal with Mr. *Laita* accordingly.

I thus ordered as follows.

1. That Mr. *Laita* pays to the plaintiff costs *de bonis propriis* on the attorney-client scale for all the postponements which were occasioned by his non-attendance.
2. That the Registrar brings Mr. *Laita*'s conduct to the attention of the Law Society of Zimbabwe.

I thus order that the Registrar furnishes the Law Society of Zimbabwe with this judgment.

*Dondo & Partners*, plaintiff's legal practitioners

*Laita & Partners*, second defendant's legal practitioners