

MYDALE INTERNATIONAL MARKETING (PRIVATE) LIMITED
versus
DR. ROB KELLY
and
HAMMER & TONGUES (PRIVATE) LIMITED
and
STANBIC BANK OF ZIMBABWE (PRIVATE) LIMITED

HIGH COURT OF ZIMBABWE
TAGU J
HARARE, 30 May 2017

OPPOSED MATTER

F.M. Katsande, for applicant
S.T. Mutema, for the applicant
Ms F. Mahere, for 1st and 2nd respondents

TAGU J: On the 30th May 2017 I upheld a preliminary point raised by *F. Mahere* that the applicant was not represented in these proceedings and I gave the following order-

“1. Applicant not represented. Application be and is hereby dismissed. Mr F.M. Katsande and S. Mutema to pay costs *de bonis propriis*.”

Mr *S. Mutema* has now requested for reasons for purposes of facilitating the appeal against the order for costs. These are they.

At the hearing of the matter *F. Mahere* applied for the matter to be dismissed on the basis that the applicant was not represented. She further applied for cost *de bonis propriis* against Mr *F. M. Katsande* and Mr Stansilous.

Advocate *F Mahere* applied that the matter be dismissed because Mr *F.M. Katsande* who purported to represent the applicant Mydale International Marketing (Private) Limited had no authority to represent the applicant and was acting in contempt of the court order by BERE J in HC 2470/13 dated the 24th of April 2013 which read as follows-

“IT IS ORDERED THAT:

1. The first and second respondent and anyone acting through them are hereby interdicted from holding themselves out as representatives of the first applicant.

2. First and second respondent be and are hereby ordered to pay costs on an attorney and client scale, the one paying the other to be absolved.”

For avoidance of doubt the first respondent in HC 2470/13 is Mr Peter Valentine and the second respondent is Mr Francis Katsande. The order by BERE J is still extant.

Mr F Katsande conceded that he was not representing the applicant although he deposed to the founding affidavit in this matter.

F. Mahere further submitted that Mr Stansilous’ client who also purported to represent the applicant was found to be in contempt of BERE J’s order. His client being Mr Peter Valentine. There being no proof that Peter Valentine was authorised to represent the applicant I agreed with *F Mahere* that there was no representative of the applicant before me. Ms *F Mahere* applied that the matter be dismissed with costs *de bonis propriis* against Mr Katsande and Mr Stansilous because Mr Katsande being a senior practitioner ought to have known that he had no authority to represent the applicant but in contempt of court deposed to the founding affidavit on behalf of the applicant. She further submitted that Mr Stansilous also ought to have known that his client was in contempt of court but insisted on representing him. As a result the respondents have been put on unnecessary costs coming twice to court and filing heads of argument.

The court was persuaded that this is a case that deserves punitive costs and in its discretion agreed with *F Mahere* and dismissed the matter with an order for costs *de bonis propriis* against Mr Katsande and Mr Stansilous. See *Passmore Matanhire v BP Shell Marketing Services (Private) Limited* SC-113/04.

These were my reasons.

F M Katsande & Partners, applicant’s legal practitioners
Stansilous and Associates, applicant’s legal practitioners
Venturas & Samukange, 1st and 2nd respondent’s legal practitioners