JOHN MAFUNGEI CHIKURA N.O.
DEPOSIT PROTECTION CORPORATION
(In his capacity as liquidator of Royal Bank Zimbabwe Limited)
versus
PETER SIMHANGA CHIKUMBA
and
NOMSA SIBUSISIWE YEHUDA
and
HARDWORK NJODZI PEMHIWA
and
MATTHEW CHAMUNORWA WAZARA
and
CHAKANYUKA GODFREY KARASE
and
SANDRA MICHELLE ROBERTS
and
ANDRIES CHRISTOFFEL KLOPPERS
and
JEFFREY MZWIMBI
and
DURAJADI SIMBA

HIGH COURT OF ZIMBABWE
CHIWESHE JP
HARARE, 14 July 2017 and 16 February 2018

**Opposed Matter**

Adv *Zhuwarara*, for the plaintiff
Adv *E. Matinenga*, for the defendants

CHIWESHE JP: The plaintiff issued summons against the defendants for an order declaring that the defendants ran the business of Royal Bank Zimbabwe Limited recklessly, with gross negligence and that they are therefore personally liable, without limitation of liability, for all of the debts or liabilities of Royal Bank Zimbabwe. Further the plaintiff sought payment to it for the benefit of creditors, depositors and other stakeholders of the sum of US$11 383 031.00 against

the defendants jointly and severally, the one paying the others to be absolved. It also claimed interest at the prescribed rate calculated from the date of service of summons to the date of final payment plus costs of suit.

The 1st, 4th, 6th and 7th defendants entered appearance to defend the matter on 19 December 2016 and thereafter filed requests for further particulars. The said defendants then filed a special plea in bar on 22 May 2017. The special plea is to the following effect – that the present claim is bad in law and of no legal effect, as John Mafungei Chikura has no *locus standi in judicio* to bring the claim. The special plea is based on the following averments.

The Royal Bank is a registered bank in terms of the Banking Act [*Chapter 24:20*]. In February 2013 and pursuant to its powers in terms of that Act, the Reserve Bank made an application to this honourable court for the placement of the bank in liquidation. In terms of section 57 (2) (b) of the Banking Act, the Reserve Bank was required to appoint the Deposit Protection Corporation (established in terms of the Deposit Protection Corporation Act [*Chapter 24:29*] as the provisional liquidator and thereafter, as the liquidator of Royal Bank. No other person or entity could by law be appointed to that position. Accordingly, the appointment of John Mafungei Chukura as liquidator of Royal Bank of Zimbabwe was bad in law, void and of no legal force or effect. In any event in terms of the Companies Act a liquidator should be described as the liquidator of a particular company and not in his personal name. His description in the order appointing him as "John Mafungei Chikura of Deposit Protection Unit or John Mafungei Chikura N.O." is accordingly defective. That being the case, so argue the defendants, there is no lawful or proper plaintiff bringing the present action.

The plaintiff has vigorously opposed the grant of the defendants' exception. I agree with the plaintiff's argument that the provisions of the Banking Act only apply to those companies to whom a banking licence has been issued by the Reserve Bank and for as long as the licence remains in force. In *casu* the licence was surrendered by the bank on 27 July 2012. Neither party disputes this fact. From that date therefore Royal Bank Zimbabwe Limited ceased to be a bank in terms of the Banking Act. Thus revocation or surrender of a banking licence will place the bank outside the realm of the Banking Act. Its affairs from then henceforth are governed in terms of the provisions of the Companies Act [*Chapter 24:03*]. That being the case section 57 of the Banking Act which requires the Reserve Bank to appoint the Deposit Protection Unit as the liquidator ceases

to apply. Authority for this proposition is to be found in the case of *Reserve Bank of Zimbabwe v Sibanda & Anor* SC 20-07 wherein ZIYAMBI JA had this to say:

> "The unlawful act of the Master in appointing the first respondent as liquidator took place on 13 September 2016, more than a month before the licence was revoked. Thus, at the time of the revocation of the licence, FNBS was a building society in terms of the Act, albeit in liquidation. Accordingly, the appointment of the liquidator was governed by the provisions of the Act and not the Companies Act and the Insolvency Act as found by the learned judge."

Once it is shown that a company has ceased to be a bank as defined in the Banking Act, the provisions of that Act, requiring the Reserve Bank to appoint the Deposit Protection Corporation as its liquidator, automatically falls away. The company ought then to be dealt with in terms of the Companies Act and the Insolvency Act. Accordingly, the defendants cannot fault the order of this court given under the hand of MAKONI J on 20 February 2013, placing Royal Bank Zimbabwe Limited under provisional liquidation and appointing John Mafungei Chikura of the Deposit Protection Corporation as its provisional liquidator. That provisional order was duly confirmed by ZHOU J. These orders were properly made in terms of the provisions of the Companies Act. They do not purport to have been made pursuant to the provision of the Banking Act which no longer apply to Royal Bank Zimbabwe Limited by virtue of the withdrawal of its banking licence. For this reason alone, the special plea cannot proceed.

Assuming I am wrong in arriving at that conclusion, the defendants would not be able to cross the next hurdle, namely that so far as the orders granted by MAKONI and ZHOU JJ are concerned, this court is now *functus officio*. It therefore cannot revisit these orders in the manner suggested by the defendants. I agree with the submission made by Adv *Zhuwarara* that I have no power to alter or ignore an order granted by a judge of parallel jurisdiction. I fully associate myself with the view expressed in *City of Mutare v Mawoyo* 1995 (1) ZLR 258 HC which aptly captures the correct position at law. The following passage is instructive:

> "The whole thrust of the reasons advanced by Mr O'Meara seems to point to an assertion that in his view the order was wrongly made. As a judge of the High Court, it is not up to me to vary or alter an order of a judge of parallel jurisdiction, short of expanding on it."

I similarly decline jurisdiction. In any event this case does not fall within the confines of Rule 449 (1) (a) in terms of which the court may correct or rescind a judgment sought or granted in error in the absence of any other party affected thereby. The defendants have wisely not relied

on the provision of that Rule in support of their prayer. For these reasons the special plea cannot be upheld.

Accordingly, it is ordered that the defendants' special plea be and is hereby dismissed with costs.

*Messrs Coghlan Welsh & Guest*, plaintiff's legal practitioners
*Gill Godlonton & Gerrans*, 1st, 4th, 6th & 7th Defendants' legal practitioners
*Messrs Mambosasa*, 2nd, 3rd, 5th & 8th Defendants' legal practitioners