REPORTABLE **(64)**

EVISON ZUZE
v
(1) THE TRUSTEES OF BONGAYI RUSHWORTH MLAMBO
(2) JEALOUS MARIMUDZA

SUPREME COURT OF ZIMBABWE
PATEL JA, MAVANGIRA JA & MAKONI JA
HARARE, MARCH 12 & SEPTEMBER 19, 2019

L. Madhuku, for the appellant

H. Mutasa, for the first respondent

No appearance for the second respondent

PATEL JA: This is an appeal against the judgement of the High Court dismissing an application for the rescission of a default judgment granted in favour of the first respondent against the second respondent in Case No. HC 9554/16. The application was brought in terms of r 449(1)(a) of the High Court Rules 1971. The applicant in that matter sought the rescission of the default judgement as well as his joinder in the main proceedings.

Background

On 23 February 2006, the first respondent purchased two pieces of land in Borrowdale, Harare, from a company called Drawcard (Pvt) Ltd. In June 2006, the first

respondent sold both stands to the second respondent. Thereafter, the second respondent took occupation of the stands, despite not having paid the full purchase price within three months of having concluded the agreement.

The second respondent in turn entered into an agreement of sale with the appellant in respect of a portion of the property on 30 January 2007. The appellant averred that he had paid the purchase price in instalments and had taken occupation of the purported subdivision in 2007.

On 20 September 2016, in Case No. HC 9554/16, the first respondent sued the second respondent for his alleged failure to pay the purchase price in full. The first respondent had cancelled the agreement of sale because of that breach and claimed the eviction of the second respondent and all others claiming occupation of the property through him. The default judgment in question was granted against the second respondent in Case No. HC 9554/16. Consequently, a warrant of eviction was issued, leading to the eviction of the second respondent as well as the appellant. In the event, the appellant sought the rescission of the default judgement in terms of r 449(1)(a) of the High Court Rules on the basis that the default judgment was erroneously sought and erroneously granted in his absence.

Judgment Appealed Against and Grounds of Appeal

The court *a quo* found that the first respondent must have received vacant possession of the property from Drawcard (Pvt) Ltd in order to enable it to sell the property

to the second respondent and allow him to take occupation. When the second respondent breached the agreement of sale, the first respondent was entitled to evict him and regain occupation, even though he was not the registered owner of the property at that time. Therefore, the appellant, as the purchaser of the purported subdivision from the second respondent, could not have any greater right to the property than the second respondent once the agreement of sale that led to the second respondent taking occupation was cancelled. When the High Court granted the default judgment, it was alive to the cancellation of the agreement of sale between the respondents and to the inevitable consequence that, in the event that other persons had taken occupation of the property through the second respondent, they also had to be evicted. Thus, the High Court did not make any error in that regard.

Addressing the constitutional point relied upon by the appellant, the court *a quo* held that the appellant's eviction was not arbitrary in contravention of s 74 of the Constitution, but was validly effected in terms of a court order. It would have been ideal had the appellant been cited but, in the circumstances of the case, the result would have been the same. His occupation was premised on an agreement of sale with the second respondent. The cancellation of the agreement of sale between the respondents entailed that the appellant's occupation was adversely affected as the property had reverted to the first respondent.

The court *a quo* further found that the Regional Town and Country Planning Act [*Chapter 29:12*] clearly prohibits the sale of any portion of a property before a proper

subdivision has occurred. In this case, the purported subdivision was invalid and the agreement of sale between the second respondent and the appellant was void *ab initio* and therefore unenforceable.

In the premises, the court *a quo* held that, although the default judgment was granted in the absence of the appellant and although he was affected thereby, the appellant had failed to prove that the High Court had made any error in granting the default judgment warranting its rescission. Accordingly the court *a quo* dismissed the application with costs.

The appellant impugns the judgment *a quo* on the following grounds. Firstly, the fact that the first respondent was a mere purchaser and not the registered owner of the property in dispute was not drawn to the attention of the High Court. Secondly, the fact that the appellant had established a "home" within the contemplation of s 74 of the Constitution was also not drawn to the attention of the High Court. And thirdly, s 39(1) of the Regional Town and Country Planning Act had no relevance to the facts *in casu*.

Requirements for Rescission of Default Judgment

The requirements for the rescission of default judgments in terms of r 449(1)(a) of the High Court Rules 1971 are well established. In order to invoke this sub-rule the applicant must establish that:

- the judgment to be rescinded was granted in error;
- the applicant was absent when the judgment was granted; and
- the applicant's rights or interests were affected by the judgment.

See *Tiriboyi* v *Jani & Anor* 2004 (1) ZLR 470 (H).

In the instant case, it is not in dispute that the applicant was not a party to the proceedings in Case No. HC 9554/16 and was absent when the default judgment in that case was granted. It is also not in dispute that he had a substantial interest in the matter by way of his right of occupation in the property when the eviction order was granted. It follows that the applicant was an affected party and that the default judgment was granted in his absence within the contemplation of r 449(1)(a). The first respondent accepts this position without demurrer. What remains in dispute is whether or not the default judgment was granted in error.

First Respondent's Status as Mere Purchaser

Mr *Madhuku*, for the applicant, submits that there were two aspects that the High Court should have considered before granting the default judgment. The first is that eviction occurred at the instance of a party that was not the registered owner of the property in question. This aspect was not brought to the attention of the court. Even if it was brought to its attention, the court erred in law by granting an eviction order in favour of the first respondent. Only the registered owner or possessor in actual physical possession of the property is entitled to evict. Mere vacant possession does not give any right to evict. In this regard, the first ground of appeal is not confined to an error of fact inasmuch as the High Court had not considered the legal implication of the first respondent's status as a mere purchaser.

Mr *Mutasa*, for the first respondent, submits that the High Court did apply its mind to the fact that the first respondent was not the registered owner of the property. This fact emerges quite clearly from the first respondent's declaration in Case No. HC 9554/16. Furthermore, the first ground of appeal does not raise any error of law but simply an error of fact. In any event, an error within the meaning of r 449(1) does not include an error of law. If it were to be so construed, the whole appeal procedure would be rendered redundant.

For the purposes of r 449(1)(a), an error occurs where there is a relevant fact that was not brought to the attention of the court and the nature of that fact or the given circumstances are such that, had that fact been brought to its attention at the relevant time, the judgment to be rescinded would not have been granted. See *Grantully (Pvt) Ltd & Anor* v *UDC Ltd* 2000 (1) ZLR 361 (S); *Wector Enterprises (Pvt) Ltd* v *Luxor (Pvt) Ltd* 2015 (2) ZLR 57 (S).

Rule 449, in its entirety, provides as follows:

> "(1) The court or a judge may, in addition to any other power it or he may have, *mero motu* or upon the application of any party affected, correct, rescind, or vary any judgment or order—
>
> (*a*) that was erroneously sought or erroneously granted in the absence of any party affected thereby; or
>
> (*b*) in which there is an ambiguity or a patent error or omission, but only to the extent of such ambiguity, error or omission; or
>
> (*c*) that was granted as the result of a mistake common to the parties.
>
> (2) The court or a judge shall not make any order correcting, rescinding or varying a judgment or order unless satisfied that all parties whose interests may be affected have had notice of the order proposed."

The rule clearly does not specify the kind of errors that it contemplates. However, a literal and plain reading of the rule would suggest that it encompasses both errors of law and errors of fact. There is nothing in the rule to indicate otherwise. By the same token, I am unable to find anything in the *Grantully* or *Wector Enterprises* cases (*supra*) to support Mr *Mutasa's* contention that the error concerned must be an error of fact in order to invoke the application of the rule. In any event, an error of fact might also necessarily implicate an error of law in particular circumstances where the two errors are inextricably intertwined.

In the instant case, the first ground of appeal relates to the status of the first respondent as a mere purchaser as opposed to being the owner of the property in question. This ground is predicated on this fact not having been drawn to the attention of the High Court in Case No. HC 9554/16, resulting in the impugned default judgment having been granted. Although the appellant's attack arises from a factual omission in those proceedings, it obviously implicates an error of law inasmuch as it unavoidably questions the legal status of the first respondent and its attendant entitlement to obtain an eviction order. I therefore entirely agree with Mr *Madhuku's* submission that the first ground of appeal necessarily raises an error of law as to the legal status of the first respondent and its legal capacity to evict the second respondent and other occupants of the property, including the appellant.

It is common cause that the first respondent was the mere purchaser and not the registered owner of the property in question. Its pleadings in Case No. HC 9554/16 do

not contain any averment to the effect that it was the registered owner of the property. Its cause of action in that case is confined to its agreement of sale with the second respondent and his breach of that agreement, leading to its cancellation and the claim for his eviction. The pleadings do not aver any right to evict by dint of the first respondent being the registered owner of the property. The right to evict is anchored solely on the second respondent's breach of the agreement of sale and his refusal to hand over vacant possession of the property to the first respondent. The question of ownership by virtue of registration was clearly not in issue nor was it canvassed before the court. In both the summons and the declaration the first respondent simply seeks "an order for the eviction forthwith of the Defendant ... from Plaintiff's property".

The question that then arises is whether the High Court would have granted the default judgment in Case No. HC 9554/16, if the fact that the first respondent was the mere purchaser and not the registered owner of the property had been drawn to its attention. The answer to that question hinges upon the court having considered and determined the correctness of the proposition that only the registered owner or possessor in actual physical possession or effective control of the property is entitled to evict.

All of this brings me back to a consideration of the kind of errors that are envisaged in the application of r 449(1)(a). As I have already stated, the rule read as a whole does not differentiate between errors of law and errors of fact and does not specify what kind of errors warrant the rescission of a judgment or order of the High Court. In both the *Grantully* and *Wector Enterprises* cases (*supra*), this Court was primarily concerned

with errors of fact but did not exclude the possibility of errors of law falling within the ambit of the rule. In the *Grantully* case, however, there is an indication as to the nature of the error contemplated by r 449(1)(a). It was observed that where a default judgment is held to have been "erroneously granted, it may be corrected, rescinded or varied without further enquiry" (my emphasis). Similarly, in the South African case of *Bakeoven Ltd* v *G. J. Howes (Pty) Ltd* 1992 (2) SA 466 (ECD), in addressing the equivalent of our r 449(1)(a), it was held, at 471E-H:

> "Rule 42(1)(a), it seems to me, is a procedural step designed to correct expeditiously an obviously wrong judgment or order. An order or judgment is 'erroneously granted' when the Court commits an 'error' in the sense of a 'mistake in a matter of law appearing on the proceedings of a Court of record'. (*The Shorter Oxford Dictionary*). It follows that a Court in deciding whether a judgment was 'erroneously granted' is, like a Court of appeal, confined to the record of proceedings. …….. . Once the applicant can point to an error in the proceedings, he is without further ado entitled to rescission." (My emphasis).

Cases dealing with the correction or variation of judgments or orders, in contradistinction to their rescission, are also pertinent and instructive in the proper interpretation of r 449 as a whole. While most of these authorities relate to the discretion to rectify exercisable by the same judge, the principles that they enunciate are germane to applications in terms of r 449 generally.

In *West Rand Estates Ltd* v *New Zealand Insurance Co Ltd* 1926 AD 173, at 186-187, it was accepted that a court could declare and interpret its own order or correct its wording by substituting more accurate or intelligent language "so long as [its] sense and substance are in no way affected by such correction". Again, in *Firestone South Africa (Pty) Ltd* v *Genticuro AG* 1977 (4) SA 298 (AD), at 306D and 308F, it was held that

"provided the court is approached within a reasonable time of its pronouncing the judgment or order, it may correct, alter or supplement it" in certain exceptional cases. However, it was cautioned that it is necessary to distinguish "a question of substantive law [from] one of procedural law" and that "a court has the discretion, not in regard to the former, but only in regard to the latter". Finally, in *S* v *Wells* 1990 (1) SA 816 (AD), at 820C-D, the Appellate Division took a "more enlightened approach", between two diametrically opposed views, which permits a judge "to change, amend or supplement his pronounced judgment, provided that the sense or substance of his judgment is not affected thereby (*tenore substantiae perseverante*)."

Reverting to r 449(1)(a) and the power exercisable thereunder to rescind a judgment or order of the court, I see no difficulty in the exercise of that discretion where there has been an obvious error of fact. On the other hand, I do not think that the power is as wide or as unqualified insofar as concerns errors of law. It seems to me that in that respect the power to rescind only extends to judgments or orders that are procedurally flawed. In other words, the error in question must be one of procedural law, *viz.* in the proceedings of the court, rather than one of substantive law, *viz.* one relating to the substantive pronouncement or ruling of the court. The court cannot be moved to exercise its discretion to rescind under r 449 so as to negate "the sense and substance" of the earlier judgment or order. To invoke and apply the rule for that purpose would in effect amount to an appeal against the judgment or order on the ground that it constitutes an erroneous interpretation or application of the law. This is obviously not the purpose for which r 449 was designed.

Turning to the case at hand, it is reasonably clear that the court in Case No. HC 9554/16 was not alerted to the fact that the first respondent was not the registered owner of the property in question but the mere purchaser thereof. That being the case, it could not have delved into the legality or otherwise of granting an eviction order in favour of a mere purchaser who was not in actual physical possession or effective control of the property. There was clearly an error of fact in the proceedings relating to the legal status of the first respondent. Consequently, there was also an error of procedural law arising from the court's failure to address the legal ramifications of that fact and accordingly determine the correlative rights of the first respondent. In short, there was an error of fact on the record of the court's proceedings combined with a resultant error of procedural law. The court clearly erred in granting a default judgment on the pleadings and supporting papers before it. Furthermore, the substantive order of the court does not relate in any way to the legal status of the first respondent and his right to evict any person from the property in question. Accordingly, on the view that I have taken as to the proper parameters of r 449, the rescission of that order would not entail any violence to its sense or substance nor would it involve any substantive revision of the judgment or order of the court.

In the premises, I take the view that there was an error, within the contemplation of r 449(1)(a), insofar as the fact that the first respondent was a mere purchaser and not the registered owner of the property in question had not been drawn to the attention of the court that granted the default judgment in Case No. HC 95564/16. On this basis, the first ground of appeal must succeed and the default judgment should be set aside.

Although this conclusion renders it somewhat unnecessary to deal with the remaining grounds of appeal, I take the view that they should be addressed and determined for the sake of completeness and because of the relative importance of the legal questions that they raise.

Impact of Section 74 of the Constitution

Section 74 of the Constitution enshrines the freedom from arbitrary eviction in the following terms:

> "No person may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances."

Mr *Madhuku* submits that the appellant had been in occupation of the property for almost nine years, having occupied it throughout that period as his home. This fact was not brought to the attention of the High Court when it granted its default judgment ordering the eviction of the second respondent and all other occupiers of the property. If it had, so he argues, the court would not have granted the default judgment. Section 74 of the Constitution required the court to consider "all the relevant circumstances" before granting the eviction order. He further submits that what this phrase means is that a person cannot be evicted from his home without having been heard. In this case therefore, the court ordered the appellant's eviction from his home without having considered all the relevant circumstances.

Mr *Mutasa* counters that s 74 does not preclude eviction under a court order made after consideration of all the relevant circumstances. In the instant case, it did not

matter that the High Court was not aware of the fact that the appellant had established his home on the property. This fact would not have prevented his eviction and the eviction order would have been granted anyway, even if the court had been aware of that fact. This was because the appellant only occupied the property through a sale from the second respondent whose own right to occupy pursuant to a sale from the first respondent had already been cancelled. Additionally, the appellant's home was established on an illegal subdivision of the property and would therefore not have been protected against eviction.

Mr *Madhuku* retorts that s 74 does not allow any consideration of the facts without the person affected having been heard. A consideration of all the relevant circumstances necessarily requires that the home owner must first be heard before any eviction order can be granted.

Both at international law and under national constitutional law, fundamental rights are categorised as either being substantive or procedural in nature or as an amalgam of these two categories. The right guaranteed by s 74 of the Constitution has the features of a substantive socio-economic right, but is couched as a procedural right with socio-economic implications. In evaluating the equivalent of s 74 in the South African Constitution, in the case of *Port Elizabeth Municipality* v *Various Occupiers* 2005 (1) SA 21 (CC) at para. 32, it was observed that:

> "... the Constitution imposes new obligations on the courts concerning rights relating to property not previously recognised by the common law. It counterposes to the normal rights of possession, use and occupation, a new and equally relevant right not arbitrarily to be deprived of a home. The expectations that normally go with title could clash head on with the genuine despair of people in dire need of accommodation."

Before addressing the elements of this new right, it is pertinent to consider what is meant by the word "home" as used in s 74. According to the *Concise Oxford Dictionary of English* (7th ed.), cited with approval in *City of Harare* v *Mukunguretsi & Ors* SC 46-18, at p. 6, a "home" is defined as a "dwelling place; fixed residence of a family or household; dwelling-house". The word embraces both permanent and temporary places of abode, including rented apartments, housing provided to employees, traditional dwellings as well as shacks and informal dwellings. See *Ross* v *South Peninsula Municipality* 2001 (1) SA 589 (C). The term has also been defined to mean a shelter against the elements providing some of the comforts of life with some degree of permanence. See the *Port Elizabeth Municipality* case (*supra*) at 228. *In casu*, there can be no doubt that the accommodation used by the appellant, where he had dwelt for almost nine years, falls within the definition of a "home" for the purposes of s 74 of the Constitution.

The essential elements of the protection afforded by s 74 are twofold. The first is that no person may be evicted from his home or have his home demolished "without an order of court". This is a basic procedural requirement to ensure that the law is followed in conformity with due process. This was underscored in the *City of Harare* case (*supra*), at paras. 12 & 15, as a prerequisite to the lawful demolition of the respondents' homes. *In casu*, there was an order of court granted in Case No. HC 9554-16 and, therefore, it cannot be disputed that the appellant was evicted pursuant to an order of court.

The second element relates to the possible arbitrariness of an eviction and necessitates that the court seized with the matter must consider "all the relevant

circumstances" before it grants an order of eviction or demolition. With respect to the South African equivalent of our s 74, *i.e.* s 26, the provision has been construed to confer not only a procedural right but also a substantive benefit to include the issue of whether or not the prospective evictee has access to alternative housing.

In South Africa, s 26(3) of the Constitution has been effectuated through the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act. The aim of this Act is to protect both landowners and occupiers, including illegal occupants and defaulting tenants. In interpreting the Act, the courts have evolved three major principles. The first principle is that people should generally not be evicted into a situation of homelessness without temporary alternative accommodation. The second principle is that people facing eviction from their homes should be given a meaningful opportunity to participate in the resolution of the eviction dispute. The third principle is that evictions, which might lead to homelessness, are never purely private disputes. They always involve the State, national or local, whose duty to provide emergency housing may be triggered by an eviction. The application of these principles is illustrated by the decision in *Modder East Squatters & Anor* v *Modderklip Boerdery (Pty) Ltd* 2004 (8) CLR 821 (SCA) at para 36:

> "In deciding whether it is just and equitable to grant an order for eviction, the court must have regard to:
> (a) the circumstances under which the unlawful occupier occupied the land and erected the building or structure;
> (b) the period the unlawful occupier and his or her family have resided on the land in question; and
> (c) the availability to the unlawful occupier of suitable alternative accommodation or land."

In the final analysis, what is required in considering all the relevant circumstances is a balancing exercise between the rights and interests of all the parties involved in or affected by the eviction dispute. In the instant case, the relevant circumstances are relatively clear. The appellant was a *bona fide* occupier who was not aware that the subdivision that he occupied was illegal. He had been residing on the land in question for almost nine years. What is not apparent from the record is whether he had suitable alternative accommodation or land to occupy consequent upon his eviction from the property.

What emerges from the foregoing factual conspectus is that the appellant had a direct and substantial interest in the matter notwithstanding that his occupation of the property might have been illegal. In terms of s 74 of the Constitution, he had a procedural right to be heard *apropos* all the relevant circumstances pertaining to his occupation of the property. Had these circumstances been brought to the attention of the High Court in Case No. HC 9554/16, it would have been dutibound by the dictates of s 74, firstly, to afford the appellant an opportunity to be heard and, secondly, to consider and assess all the relevant circumstances before granting the eviction order in favour of the first respondent.

The court *a quo* found that the eviction of the appellant was not arbitrary because it was carried out pursuant to a court order. While this reasoning may be partially correct, it does not take into account all the requisites enjoined by s 74 of the Constitution. It is self-evident from the record of proceedings in Case No. HC 9554/16 that the appellant, not being a party to those proceedings, was not afforded his procedural right to be heard

before being evicted from his home and that, consequently, all the relevant circumstances pertaining to his occupation of the property were not considered or assessed by the court in granting the default judgment.

In the premises, I am satisfied that there was an error of procedural law, within the meaning of r 449(1)(a), *ex facie* the record of proceedings in Case No. HC 9554/16, inasmuch as the fact that the appellant had established a home on the property in question had not been drawn to the attention of the court that granted the default judgment. Consequently, the court *a quo* erred in not granting the application for rescission of the default judgment so as to enable the appellant to exercise his procedural rights in conformity with s 74 of the Constitution. Rescinding the judgment would entail that the matter is dealt with on the substantive merits and that all the relevant circumstances of the case are fully ventilated and considered in deciding whether or not the eviction order sought by the first respondent should be granted and, if it is to be granted, in determining the conditionalities, if any, to which the eviction order should be subjected. It follows that the second ground of appeal must also be upheld.

Invocation and Application of Planning Legislation

In motivating the third ground of appeal, Mr *Madhuku* submits that s 39 of the Regional Town and Country Planning Act [*Chapter 29:12*] did not apply to the circumstances *in casu*. This is because the fact that the property in question was not lawfully subdivided did not preclude the application of s 74 of the Constitution. Thus, the

fact that the appellant's home was established on an illegal subdivision was wholly irrelevant.

As a general rule, s 39(1) of the Act prohibits any subdivision of property or any agreement for the change of ownership of any portion of property except in accordance with a permit granted in terms of s 40 of the Act. The provision is couched in peremptory terms and the stipulated prerequisite of a permit is mandatory. See *X-Trend-A-Home (Pvt) Ltd* v *Hoselaw Investments (Pvt) Ltd* 2000 (2) ZLR 348 (S).

There is therefore no doubt that the purported subdivision *in casu* and the agreement of sale between the second respondent and the appellant were prohibited and invalid. Consequently, the appellant's occupation of the property was illegal as it was based on a nullity. The court *a quo* was therefore correct in concluding that the sale agreement was null and void *ab initio* and therefore unenforceable. However, it is evident that the appellant's claim *a quo* was not based on any alleged legality of the subdivision or the agreement of sale. Rather, it was predicated on the status of the first respondent as a mere purchaser without *locus standi* to sue for eviction and on the further argument that the appellant was entitled to the protection conferred by s 74 of the Constitution.

There is no doubt that the appellant has no substantive real rights in the property in question. Nevertheless, although s 74 of the Constitution does not confer any substantive real rights, it operates to guarantee the procedural rights that I have elaborated above on any person who stands to be evicted from his home. Moreover, the ambit of the

protection accorded by s 74 is not confined to strictly legal occupants of land or property. Having regard to the plain and ordinary connotation of a "home", that protection extends as well to unlawful occupiers of any property that can be characterised as constituting a home. In this context, therefore, there is no basis for the invocation and application of s 39(1) of the Act.

Furthermore, and by the same token, the appellant's challenge to his eviction on the ground that the first respondent was a mere purchaser had nothing to do with the legality or otherwise of the appellant's occupation of the property in contravention of s 39(1) of the Act. That provision and the transactions that it proscribes were entirely irrelevant to the first respondent's legal standing to sue for eviction. What was more relevant in that respect was the enquiry as to whether the first respondent, as a mere purchaser, had *vacua possessio* or actual physical possession or effective control of the property concerned.

It follows from the foregoing that the reliance placed by the court *a quo* on s 39(1) of the Act was clearly misplaced in the context of the grounds upon which the appellant sought rescission of the default judgment. The court therefore erred and misdirected itself in invoking and applying s 39(1) of the Act as that provision was entirely inapplicable to the circumstances of the matter before it. Accordingly, the third ground of appeal must also succeed.

Disposition

To summarise, the court *a quo* erred in declining to rescind the default judgment granted in Case No. HC 9554/16, having regard to the errors of fact and law evident from the record of proceedings in that matter, such errors being within the contemplation of r 449(1)(a) of the High Court Rules 1971. Furthermore, the court *a quo* erred in invoking and applying s 39(1) of the Regional Town and Country Planning Act to the facts and circumstances before it. In the result, all three grounds of appeal *in casu* are meritorious and must therefore be upheld.

It is accordingly ordered that:

1. The appeal be and is hereby allowed with costs.
2. The judgment of the court *a quo* is set aside and substituted with the following:

> "(i) The application is granted with costs.
> (ii) The default judgment granted in Case No. HC 9554/16 be and is hereby rescinded.
> (iii) The applicant be and is hereby joined in the proceedings in Case No. HC 9554/16 as the second defendant."

MAVANGIRA JA: I agree.

MAKONI JA: I agree.

Mundia & Mudhara, appellant's legal practitioners

Gill Godlonton & Gerrans, 1st respondent's legal practitioners