

JOHN NYAKAMHA
versus
LOBELS BREAD (PRIVATE LIMITED)

HIGH COURT OF ZIMBABWE
FOROMA J
HARARE, 9 March 2023

Ruling on Chamber Application

FOROMA J: The applicant's response to the query raised on 16 January 2023 erroneously dated 16 January 2022 is acknowledged. Applicant should note that a respondent who has failed to take appropriate action in response to court proceedings (in this case an ordinary chamber application) within the *dies induciae* given is not always automatically barred on account of such default. Such party can always comply outside the *dies induciae* provided no judgment has since been obtained by the party who has approached the court for relief if there is no bar operating against him. Just to illustrate the point – a defendant who files an appearance to defend an action by a plaintiff within the *dies induciae* is required to file a plea within 10 days of filing an appearance to defend in terms of r 37(3) of the High Court Rules 2021 (SI 202/2021). However if such defendant does not file a plea or other answer to plaintiff's summons and declaration within the 10 days the rules do not provide that he is automatically barred. If the plaintiff elects to bar defendant from filing a plea after the expiry of the 10 days aforesaid the plaintiff would have to proceed and obtain bar in terms of r 39 of the High Court Rules aforesaid. For as long as a bar is not obtained the defendant remains entitled to file its plea at any time after the expiry of the 10 days *dies induciae* aforesaid before a default judgment is obtained. The court's ruling *in casu*, is therefore that as there is no automatic bar nor is there a procedure for barring a party in the processing of Chamber applications. The respondent's notice of opposition was accordingly validly filed.

In the circumstances the application for dismissal of respondent's claim per HC 6068/22 having been opposed cannot be processed as an unopposed application. The application is accordingly refused.