ALSHAMS GLOBAL BVI LIMITED
versus
REGISTRAR OF DEEDS N.O.
and
EQUITY PROPERTIES (PVT) LTD

HIGH COURT OF ZIMBABWE
MANGOTA J
HARARE, 20 June & 29 August 2022

Opposed Matter

Advocate *T Mpofu*, for the applicant
Advocate *F Mahere*, for the second respondent

MANGOTA J: I heard this application on 20 June 2022. I decided it on the basis of the preliminary points which counsel for the second respondent raised. I delivered an *ex tempore* judgment in which I struck the application off the roll and ordered each party to meet its own costs.

On 27 June 2022 the second respondent wrote requesting written reasons for my decision. My reasons are these:

On the day that the application was scheduled for hearing, Ms *Mahere*, for the second respondent, raised two preliminary points. These were that:

i) the applicant filed its Heads out of time, is barred and should not, therefore, be heard until it is condoned and has uplifted the bar – and
ii) the current application, HC 6264/21, should be stayed pending the application which the respondent made for consolidation of all matters which are related to HC 6264/21.

The applicant opposed the second respondent's *in limine* matters. It stated that it agreed with Mr *Magwaliba* who represented the second respondent then on time-lines within which parties were to file Heads in respect of the present application. It alleged, on the second issue, that HC 6264/21 could not wait for consolidation of all matters which were/are related to it. It insisted that HC 6264/21 had been filed through the urgent chamber book and could not, therefore, await consolidation. It applied, through counsel, for condonation as well as upliftment of the bar.

In raising the *in limine* matter which related to filing of Heads by the parties, the second respondent placed reliance on the order which my sister TSANGA J issued on 4 February 2022. The order reads, in part, as follows:

> "1. …….
> 2. ……
> 3. The applicant shall file its Heads of Argument on 16 February 2022;
> 4. The second respondent shall file its Heads of Argument on 2 March 2022."

In directing as she did, TSANGA J remained alive to the fact that the applicant and the second respondent would comply with her directions as contained in her order of 4 February 2022 and, in the process, pave way for the hearing of HC 6264/22 which she scheduled for hearing at 10.00 a.m. of 28 March 2022. The directions which she made are in the form of an order of court.

An order of court, it is trite, is simply what it is. It is binding on the parties for whom it is issued. It is sacrosanct. It is immutable. It cannot be varied or sidelined by the parties whom it binds. It should, therefore, be obeyed by them without fail.

The parties for whom the order is made are enjoined to comply with it until it is set aside by way of rescission, review or appeal or until it is discharged. They should obey it without fail. They should comply with it. They cannot wish it away or negotiate outside its terms as the applicant and the second respondent sought to do in the present application. Parties to a court order have neither the capacity nor the ability to side-line an extant order of court without the involvement of the court which made it for them to obey it. Whenever they do so, they will be acting outside the law and no court will sanction their unwholesome conduct under such circumstances. Where they choose between them to act outside the order, they are, no doubt, acting in contempt of the court. This is a *fortiori* the case where legal practitioners are involved. These are presumed to know the law, court orders included, in a manner which is different from ordinary members of the larger society.

In *casu,* neither the second respondent which raised the first *in limine* matter against the applicant nor the latter party complied with the order of TSANGA J. Both parties acted outside the order which the court issued. They each filed its Heads outside the *dies* which the court stipulated.

The applicant, the record shows, filed its Heads on 10 March 2022. The order directed it to file its Heads on 16 February 2022. The second respondent which clamoured for the bar of the applicant filed its Heads on 28 March 2022 against the order of court which directed it to file its

Heads on 10 March 2022. Both parties were, therefore, barred. They each filed its Heads outside the *dies* which the court stipulated for it to file Heads. Both of them should have applied for condonation as well as for upliftment of the bar which operated against each one of them.

The second respondent's statement which is to the effect that it could not file its Heads before the applicant's Heads were served upon it cannot hold. It cannot do so because nothing prevented it from filing its Heads on 2 March 2022 and, therefore, within the *dies* subject to it filing its supplementary Heads after its receipt of the applicant's Heads where it remained of the view that matters which the applicant raised in its Heads had not been addressed in its main Heads.

The applicant's statement which is to the effect that it agreed with counsel for the second respondent to file Heads at a date which was/is later than 16 February 2022 does not hold. The parties could not, on their own, decide to side-line the extant order of court. If parties are allowed to vary court orders in the manner which the applicant and the second respondent sought to do, then court orders would lose their meaning and effect.

Where, therefore, parties want to have the order of the court varied, they should approach the court and move it to vary its own order. They do not have the capacity to vary it outside the court which made the order. Allowing them to vary the order without the involvement of the court would spell disaster for the court and them. Nothing prevented the applicant and the second respondent from approaching the court and moving it to vary its own order for the convenience of the court and them.

Because both the applicant and the second respondent flouted an extant order of court, their papers are improperly before me making the application to be incurably defective on both sides of the legal divide. None of them can be heard under the stated set of circumstances. The inevitable conclusion which they created for themselves out of their unwholesome conduct is that the application the papers of which are improperly before me cannot be heard. Both of them are directed to apply for condonation of late filing of Heads and upliftment of the bar which operates against each one of them.

The applicant made an attempt, through counsel, to apply for condonation and the upliftment of the bar. I emphasize the word '*attempt*' because it proceeded in terms of r 39(4)(b) of the High Court Rules, 2021. The application which it filed failed to meet the requirements for an application for condonation let alone the one for upliftment of the bar.

But for the bar which remained operational against both parties, the second respondent's stay of the application pending consolidation of matters which relate to HC 6264/21 would not have seen the light of day. It could not stay a matters which initially was enrolled with the court on the basis of urgency although the court which considered it remained of the view that the same was not urgent.

I remain satisfied that the application the papers of which are improperly before me is fatally defective to a point where neither party can be heard. The application is, accordingly, struck off the roll and each party is ordered to meet its own costs.

Atherstone & Cook, applicant's legal practitioners
Chambati, Mataka &Makonese Attorneys at Law, respondent's legal practitioners