Judgment No. HB 32/2003
Case No. HC 3977/2000

ROBERT ANDERSON (PVT) LTD

Versus

MARION BLUMEARS

And

DEPUTY SHERIFF

IN THE HIGH COURT OF ZIMBABWE
MALABA J
BULAWAYO 15 JUNE 2001

Applicant in default
Job Sibanda for the respondents

MALABA J: On 15 June 2001 I discharged with costs a provisional order granted to the applicant on 8 September 2000 in case HC 3219/00 staying the removal of goods belonging to the applicant attached in execution of a determination made in favour of the first respondent by a Labour Relations Officer on 23 May 2000 pending finalisation of an appeal to the Labour Relations Tribunal and interdicting the second respondent from removing the said goods.

Three months later on 4 September the applicant's legal practitioners wrote to the Assistant Registrar requesting that I reduce the reasons for the *ex tempore* judgment delivered orally to writing for purposes of lodging an appeal. I must say that the intended appeal would be way out of time. Be that as it may the following are my reasons for the order I made.

The determination made by the Labour Relations Officer was to the effect that the applicant was guilty of unfair labour practices. The applicant had been represented at the hearing by one of the officers who did not deny the allegations of

unfair labour practices levelled against the applicant by its former employee, the first

respondent.

Six months after the determination the applicant made an application to the Labour Relations Tribunal seeking "leave to appeal" against the determination of the Labour Relations Officer. The application was fatally defective.

The relief sought could not be granted by the Labour Relations Tribunal. The Labour Relations Tribunal has no power to grant "leave to appeal" against a determination of a Labour Relations Officer. It can of course consider an application for condonation of late noting of an appeal. In any case there was no basis upon which an appeal could lie directly to the Labour Relations Tribunal from a determination of Labour Relations Officer by passing the Senior Labour Relations Officer.

The decision of the Labour Relations Officer was as a matter of fact never appealed against. On its irregular application for "leave to appeal" the pplicant alleged that the determination was made in its absence. It pleaded lack of "wilful default" as the ground on which it wanted the determination set aside. It then went on to allege that it had prospects of success. On the papers the applicant was challenging a determination granted in default.

The applicant had been represented at the hearing. The fact that its representative said nothing in answer to the complaint made against it by the first respondent did not mean that the determination was made in its absence. So the decision which the applicant sought to appeal against was not the decision actually made against it. An application for "leave to appeal" which had not been granted

would not constitute an "appeal pending" before the Labour relations Tribunal. There was no appeal pending before the Labour relations Tribunal at the time the

provisional order was granted to the applicant.

Whilst the applicant had succeeded in securing a provisional order on 8 December 2000 for clearly wrong reasons it did not take steps to have it confirmed until the first respondent set the matter down for hearing on 15 June 2001. The applicant was served with the notice of set down on 15 May 2001. Showing yet another disdain for the rule of court the applicant did not appear at the hearing of the application for the discharge of the provisional order. No explanation as forthcoming for the default from the applicant's legal practitioners who were quick to write the letter of 4 September 2001.

There were therefore good reasons for the discharge of the provisional order.

C.K. Mkinya & Associates applicant's legal practitioners
Job Sibanda & Associates respondents' legal practitioners