WHALSAY ENTERPRISES (PVT) LTD
versus
TENDAI CHINOMONA
(In his capacity as Executor in the Estate of the Late Sam Chinomona)
and
THE SHERIFF OF THE HIGH COURT

HIGH COURT OF ZIMBABWE
MATHONSI J
HARARE, 13 August 2014

Urgent chamber application

T.K.Hove, for the applicant
L. Uriri, for the 1st respondent
2nd respondent in default

MATHONSI J: The first respondent, who is the executor of the estate of the late Sam Chinomona, sued the applicant and the second respondent in case number HC721/08 for an order of eviction from Stand 5475 Seke Township, Chitungwiza. In that matter the parties were represented by counsel and on 19 March 2014, this court, per BERE J, granted an order for the eviction of the applicant and ancillary relief. In terms of that order the applicant was required to vacate the property within 30 days from the date the order was granted.

When the applicant failed to vacate in terms of the court order, the first respondent's legal practitioners wrote a letter to the occupants on 16 July 2014 requiring them to comply with the court order. On 24 July 2014, 8 days after being given notice to vacate, the applicant approached the Supreme Court seeking condonation for the late noting of an appeal against the judgement of this court. In his affidavit in support of that application, Whittington Rosen stated as follows:

> "REASONS FOR DELAY
> 13. I, being the applicant's representative, only became aware of the judgment on the 16th July 2014, when I received a letter from the 1st respondent's legal practitioners attaching the judgement. The letter was in itself a notice of eviction. Find attached copy of the letter marked Annexure B.
> 14. I then immediately contacted my legal practitioner, Mr T.K.Hove, and advised him to note an appeal against the judgement.
> 15. He in turn advised me that looking at the date the judgment was passed, it was now late and in need of a condonation.

16. I was never made aware of the fact that the judgement was to be handed down on the 19th of March 2014 after my legal practitioners during the trial had renounced agency. Even up to now I do not have the reasons for the judgement.
17. Accordingly, I became aware of the existence of the judgement only on the 16th July 2014."

The applicant has now made this urgent application seeking to have the order of BERE J set aside, cancellation of the notice to give vacant possession and in the interim an interdict against eviction.

Mr *Uriri* for the first respondent has taken points *in limine* and in particular, that the matter is not urgent by any stretch of the imagination. He submitted that the applicant's counsel Mr *Mbidzo* was in attendance at BERE J's chambers on 19 March 2014 when judgement was handed down. Mr *Hove* for the applicant suggested that Mr *Mbidzo* only came just after judgement had been handed down. To me it does not make a difference.

When the eviction order was granted the applicant was represented by Mr *D. Mbizo* as shown on the court order. The applicant's counsel was obviously aware that judgment had been handed down and it is inconceivable that such information was not shared with the applicant. It is also untenable that the applicant, as an interested party in the proceedings, did not bother to find out what the outcome of the litigation was and was content to sit back doing nothing for 4 months.

I find it completely unacceptable that the applicant did not take action against the court order for such a lengthy period of time only to spring into action when being called upon to vacate. To my mind, this is self-created urgency, the kind of urgency which stems from a deliberate inaction right up to the day of reckoning. It is not the kind of urgency contemplated by the rules of court.

Having come to that conclusion, I find it unnecessary to determine the other points *in limine*. This is because the applicant is clearly not entitled to jump the queue.

Accordingly, I refuse to deal with this matter as urgent.

T.K. Hove & Partners, applicant's legal practitioners
Sachikonye-Ushe Legal Practitioners, 1st respondent's legal practitioners