AFRICOM HOLDINGS (PVT) LTD
versus
TELECONTRACT (PRIVATE)LIMITED
and
THE DEPUTY SHERIFF

HIGH COURT OF ZIMBABWE
MATHONSI J
HARARE, 12 May 2015

Urgent chamber application

A Moyo, for the applicant
N Chimuka, for the 1st respondent
2nd respondent in default

MATHONSI J: The plaintiff in HC1984/15, who is the first respondent herein, sued the defendant therein, who is the applicant herein, for payment of $12 085-00 together with interest and costs of suit being money allegedly due for internet services rendered during the period extending from August 2013 to April 2014.

The summons was served on the applicant on 7 March 2015 and although acknowledging receipt of the summons on that date, the applicant did not enter appearance to defend. In the absence of opposition, the first respondent moved for default judgement which was duly entered on 8 April 2015. The first respondent is yet to issue a writ and execute that judgement.

On 29 April 2015, the applicant filed an application for rescission of judgement in HC 3902/15 and in the founding affidavit deposed to by its acting company secretary, Matou Tlou, the applicant stated after receiving the summons it sought to verify some of the issues raised in the summons before entering appearance to defend. In particular it wished to verify the ownership of the duct forming the basis of the claim as it suspected that the duct in question belonged to it. The verification process was done with City of Harare who took time to respond. When it did, the applicant was already barred. For that reason the applicant was not in wilful default.

Regarding its defence to the claim of $12 085.00 the applicant stated that the rental for

duct space claimed by the first respondent is not due in respect of $4 800.00 for the space from Karigamombe up to CocaCola turn off because that duct is owned by the applicant and not the first respondent. The remainder of the claim is not due because the first respondent has not clearly specified in its invoices which duct it is claiming for. The applicant goes on to say at para 13 (iv) that:

> "Further, there is no agreement filed of record by the respondents clearly spelling out their agreement with applicant for the use of the duct space rental in question. The issue was actually raised sometime back and for that reason the respondent was told that no payments would continue to be made since the duct was not owned by respondent." (The underlining is mine)

So the applicant has always known that the first respondent does not own the duct. It has long taken the position that it will not pay anymore for that reason. That not-withstanding, when the need to act arose, when it was served with the summons, it saw no wisdom in entering appearance.

The applicant has now filed this urgent application which was only filed on 5 May 2015, exactly 2 months after it received the summons, seeking a stay of execution to enable it to prosecute a rescission of judgement application which it has made in HC 3902/15.

This court stands ready at all times to entertain litigants that approach it as a matter of urgency when the need to act arises, because it is indeed the function of the court to do so. The court will however be very slow, and indeed will refuse to be abused by litigants who create urgency by their own free will and then choose to come to court when they please and at their own good time and expect the court to then drop everything.

Let me repeat what I have said before:

> "Self-created urgency, that urgency which stems from deliberate inaction until the day of reckoning is nigh, is not the urgency contemplated by the rules of this court. A party that refrains from taking action when the need to do so arises only to dash to court at the eleventh hour as if the subject matter has just arisen will be stopped dead on the tracks because the court will not entertain a calamity of the litigant's own making."
> (See *Tigere* v *Police Service Commission* HH439/15)

I have said that the applicant knew that it was contesting the claim and "actually raised the issue sometime back". However when it received the summons it started dilly dallying and did not enter appearance. Even then on 7 March 2015 when it discovered it was being sued for what it was disputing, it did not act to stop the consequences. It says it sought to verify ownership, but there is nothing new that it has presented in this application. There can be no worse case of the self-created urgency. If you know that you are being sued and you know the

consequences of inaction but you wilfully refrain from doing anything to curtail the danger, you cannot be allowed to come at your own time and demand audience.

In the result, it is ordered that;

1. The hearing of the matter as urgent is hereby refused.
2. The applicant shall bear the costs of this application.

Allen Moyo Attorneys, applicant's legal practitioners
Mawere & Sibanda, 1st respondent's legal practitioners