DAVID SAUNYAMA
versus
ERNEST JINGA
and
MOONWAVEPROPERTIES t/a MOPS ASSET MANAGEMENT
and
CHITUNGWIZA MUNICIPALITY
and
DEPUTY SHERIFF HARARE

HIGH COURT OF ZIMBABWE
MTSHIYA J
HARARE, 23 October 2015

Opposed application

N Bvekwa, for the applicant
K Musoni, for the applicant

MTSHIYA J: On 23 September 2015, upon hearing arguments from the parties I granted the following order in favour of the applicant.

"IT IS ORDERED THAT:

a) The 1st respondent and all those claiming rights of occupation through him be and are hereby evicted from stand 17085 Unit M Seke, Chitungwiza.
b) 1st respondent pays costs of this application on the level of legal practitioner and client."

I have now been asked to give reasons for granting the above order. These are they.

On 4 April 2013 this court granted the following order in favour of the applicant:

"1. The first respondent be and is hereby ordered to sign all papers necessary to facilitate cession of rights to the applicant's favour in respect of the stand number 17085 Unit 'M', Seke, Chitungwiza Municipality, Chitungwiza.
2. In the event that the first respondent fails to sign papers within (48 hours) of service upon him of this order, the Deputy Sheriff is directed to sign papers in his place and stead.
3. The third respondent is directed to facilitate the above cession and to update its records there with.
4. The first respondent shall p[ay costs of this application on the legal practitioner and client scale."

On 7 September, 2013, following an appeal by the first respondent against the above

court order, the Supreme Court issued the following order.

> "IT IS ORDERED THAT:
> The appeal be and is hereby struck off the roll with costs"

On 20 March 2014, again following an "application for extension of time to note an appeal" the Supreme Court again issued the following order

> "IT IS ORDERED THAT:
> The matter be and is hereby struck off the roll with costs on a legal practitioner and client scale."

In his opposition to the order I granted on 23 September 2015, the first respondent had this to say:

> "3. AD PARA 5-7
> Noted. However, it denied that the proceedings pending before the Supreme Court have been overtaken by events. This Honourable court cannot hear this matter unless and until the matter before the Supreme Court is determined first. The fact that cession has since been passed to the applicant, which I believe was done in error, cannot be used as a shield to do away with the proceedings in the Supreme Court.
>
> 4. AD PARA 8
> Denied. It is common cause whenever papers are filed with the Supreme Court, every judgement which is appealed against ceases to operate until such a time the appeal or application in the Supreme Court is dealt with first. The applicant together with the 2nd respondent acted in a ruthless manner in passing cession to the applicant despite having been served with papers filed at the Supreme Court, which applicant admits the case is still pending.
>
> 5. AD PARA 9-11
> Denied. Until such a time the application filed with the Supreme Court is heard, applicant cannot forcefully say and claim that he is entitled to evict me from the premises."

In response to the above the applicant

> "2. Ad paragraph 1 and 2
> There is no challenge in this Supreme Court. No appeal is pending. What the applicant only seeks is to be allowed to file an appeal.
>
> 3. Ad Paragraph 3
> It is quite correct that the proceedings have been overtaken by events. This is so because the judgement that the 1st respondent seeks to challenge has already been implemented. The 1st respondent should have applied to stay the execution. He did not. Because this cession has taken place, I am entitled to vindicate on the property. The cession was never done in error as the 1st respondent was served with the judgement and was always aware that, I proceeding with the taking of cession.
>
> 4. Ad Paragraph 4
> This is not a correct position of the law. An application pending in the Supreme Court cannot stop implementation of an order of this Court. Only an appeal can do that. There is no appeal pending in the Supreme Court. As I have indicated above there was nothing to stop

me from acting in the manner that 1 did. The 2nd respondent was only complying with an order of Court.

5. Ad Paragraph 5
This cannot be a defence to vindication. I have satisfied the requirements that allow me to take possession. I therefor insist in the application and the order sought."

It is a fact that there is no appeal in the Supreme Court and the respondent accepts that cession has passed to the applicant.

Taking into account the previous orders of the Supreme Court and the above averments from the applicant, I did not find any reason to justify refusal of the relief sought by the applicant.

I must point out that even if the first respondent's "chamber application for condonation for non-compliance with the rules of court and for reinstatement of appeal" (SC 126/15), had been placed before me, I would still have found it difficult to use that in order to deny the applicant his relief. The applicant has an executable judgement of this court which has not yet been appealed against. Furthermore it has not been stayed.

For the above reasons I granted the relief pointed at p 1 of this judgement.

Bvekwa Legal Practice, applicant's legal practitioners
Messrs Musoni Masarire Law Chambers, 1st respondent's legal practitioners