UNIVERSITY OF ZIMBABWE
versus
B.M. SIBANDA
and
SHERIFF OF THE HIGH COURT

HIGH COURT OF ZIMBABWE
MATANDA-MOYO J
HARARE, 28 November 2016 & 7 December 2016

Urgent chamber application

T Chihuta, for the applicant
T Todhlanga, for the respondents

MATANDA-MOYO J: On 28 November 2016 I removed this matter from the roll of urgent matters. I have been requested for reasons and these are they;

The applicant applied for registration of an arbitral award which award was registered by this court an 12 October 2016. The applicant became aware of such order on 24 October 2016. On 11 of November 2016 the applicant applied for rescission of the registration. Such application is still pending before this court. On 21 November 2016 the applicant's property was placed under judicial attachment by the Additional Sheriff. The removal date was put on 24 November 2016.

Following the attachment the applicant filed an urgent application on 23 November 2016 for stay of execution.

Counsel for the respondent argued that the applicant failed to treat the matter as urgent. The applicant was aware as from 24 October 2016 that the arbitral award had been registered. The need to act arose on the 24th October 2016 but the applicant decided to do nothing. Even though the applicant filed a rescission of judgment such application did not have the effect of suspending the order sought to be rescinded. Filing an application for stay of execution a month later is inordinate. The respondent prayed that the application be removed from the roll of urgent matters.

The applicant opposed the point *in limine* and argued that the matter was not urgent and that it had acted urgently. The applicant argued that the trigger was not the registration of the award but the attachment of the 21 November instant. By bringing this application on the 23rd the applicant treated the matter urgently. The applicant also submitted that this court should find that it did not sit and do nothing about the default order. It sought rescission of that judgment. The respondent should not have executed upon a judgment which has been challenged.

The applicant conceded that it knew from the 24th of October 2016 that this court had registered an arbitral award. The purpose of such registration was execution. In that same letter written to the applicant on 24th October the respondent made it clear that should the applicant fail to settle the claim within fourteen days he would proceed with execution. In response to that the applicant filed a rescission of judgment application. The applicant only filed this urgent application for stay of execution a month later.

It is trite that a matter is not urgent simply because it has been brought via the urgent chamber book. The applicant must satisfy the court that indeed the matter cannot wait. The applicant must also show that when the need to act arose, the applicant acted upon the matter. See *Kuvarega* v *Registrar General and Another* 1998 (1) ZLR 188 (H) where they found that self-created urgency is not the sort of urgency contemplated by the rules. "urgency which stems from a deliberate or careless abstention from action until deadline draws near is not the type of urgency contemplated by the rules".

It is trite that an application for rescission of judgment does not have the effect of suspending the order sought to be rescinded. A party can proceed to execute in the face of such application. There is no law which prohibits a holder of a default order in his favour from executing simply because an application for rescission of judgment has been noted. It is an order for stay of such order which prevents execution. Therefore in this matter the crucial date was the date on which the applicant had knowledge that there was an order against it liable for execution. That date was the 24th of October 2016 and not the date of attachment. The need to act arose on the 24th of October. The applicant with such knowledge deliberately sat back and did nothing to make sure that the respondent would not execute upon such order. The applicant failed to consider the matter as urgent. Such a person cannot come to court and expect the court to treat its matter as urgent when itself failed to do so. Under those circumstances the court would refuse such indulgence and proceed to deal with other matters before it.

It is for the above reasons that I removed the matter from the roll of urgent matters.

Ziumbe & Partners, applicant's legal practitioners
Thondhlanga & Associates, 1st respondent's legal practitioners