SUNNY ZIMBABWE INTERNATIONAL (PVT) LTD
versus
JOSEPH CHINOTIMBA
and
THE SHERIFF OF ZIMBABWE

HIGH COURT OF ZIMBABWE
CHIKOWERO J
HARARE, 24 June 2019 and 10 July 2019

Urgent Chamber Application

W. Jiti with *T. Machaya,* for he applicant
C. Venturas, for the both respondents

CHIKOWERO J: After listening to oral argument on 24 June 2019 I dismissed the application with costs on the legal practitioner and client scale.

I gave brief oral reasons at the hearing.

I have now been requested to furnish full reasons for the judgment because the applicant intends to appeal.

These are the reasons.

The background facts are set out in the matter of *Sunny Zimbabwe International (Private) Limited* v *Joseph Chinotimba, Venturas and Samkange Legal Practitioners*, *Brighton Pabwe, the Sheriff for Zimbabwe and Ecobank Zimbabwe Limited* HH 327/19.

I will not repeat the full facts.

In brief they are as follows. Default judgment was entered in HC 9772/18 in favour of the first respondent against the applicant and its directors. The judgment required applicant and the directors to pay a certain amount in United States dollars together with interest and costs.

Thereafter a Writ of Execution Against Movable Property was prepared. Movable property and funds in a foreign currency account, both belonging to applicant, were attached.

After paying portion of the judgment debt in United States dollars the applicant then unilaterally paid what it considered to be the balance in RTGS$.

The first respondent rejected the latter as the court order required payment in United States dollars.

The applicant then filed an urgent chamber application for stay of execution. The terms of the final order as well as the interim relief sought appear on pp 3 and 4 of the cyclostyled judgment in HH 327/19.

CHITAPI J, who heard the matter, dismissed the application for a provisional order. It is his interlocutory judgment that appears under HH 327/19.

A reading of that judgment makes it abundantly clear that the learned judge was alive to the fact that he was required to deal only with the application for interim relief. That he did. He dismissed the application.

By no stretch of the imagination can it be seriously contended, as Mr *Jiti s*ought to argue before me, that CHITAPI J's interlocutory judgment had final and definitive effect on the main matter.

It did not dispose of any issue or any portion of the issue in the main matter. It did not irreparably anticipate or preclude some of the relief which would or might be given at the hearing. See Gillespies *Monumental Works (Pvt) Ltd* v *Zimbabwe Granite Quarries (Pvt) Ltd* 1997 (2) ZLR 436 (H), *Chikafu* v *Dodhill (Pvt) Ltd and Ors* 2009 (1) ZLR 293 (S).

Essentially, pending the return date, the applicant wanted suspension of the writ of execution in terms whereof its property was attached. So it wanted temporary stay of the process of execution.

On the return date, it essentially sought a declaration that the RTGS$ payment it had made, which was rejected by the first respondent, discharged the indebtedness under the default judgment. Consequently, on that return date, it would seek not the temporary stay of the process of execution but the complete setting aside of the writ of execution. In other words, it would be seeking permanent stay of execution.

A reading of pp 4 para 2, p 6 paras 2 and p 7 para 2 makes it clear that what was only dealt with was the interim relief sought. The decision thereon did not dispose of the applicant's argument, reserved for full argument on the merits, that the RTGS$ payment liquidated the balance on the United States Dollar denominated sum on the Court Order.

It is correct that the learned judge expressed his *prima facie* opinion on the prospects of that argument succeeding but he left that issue open for argument at the appropriate time. See T*otal Marketing Zimbabwe (Pvt) Ltd* v *Pollylamp Investments (Pvt) Ltd* 2007 (2) ZLR 60 (S)

Leave to appeal was neither sought from nor given by CHITAPI J. There was therefore no valid appeal pending before the Supreme Court. I therefore dismissed the urgent chamber

application for stay of execution. See *Mohamed* v *Noormahomed and Another* ZLR 2010 (2) 260 (H)

I dismissed the application with costs on the higher scale because I took the view that it was an abuse of Court process. The sole ground of appeal is clear evidence that the learned judge's decision, even if leave to appeal were not required, was not in fact appealed against. Cognisant of my sworn duty to administer justice, I could not shut my eyes to the manifest fact that the ground of appeal was meaningless. It meant to me that there was in any event no appeal at all, but a piece of paper filed with the Registrar of the Supreme Court. I did not think it proper to sanction such a flagrant abuse of court process by staying execution pending nothing.

Zimudzi and Associates, Applicant's legal practitioners
Venturas and Samkange, respondents' legal practitioners