

Judgment No. S.C. 80/99
Civil Appeal No. 284/98

ZIMBABWE BANKING CORPORATION LIMITED v
(1) PINDI ELECTRICAL AND HARDWARE (PRIVATE)
LIMITED
(2) LOVEMORE NYASHA BVUMBE
(3) CHARLES ITAYI BVUMBE (4) ERROL BVUMBE

SUPREME COURT OF ZIMBABWE
GUBBAY CJ, McNALLY JA, EBRAHIM JA, MUCHECHETERE JA &
SANDURA JA
HARARE, JUNE 21 & JULY 19, 1999

A P de Bourbon SC, for the appellant

P Nherere, for the respondents, at the request of the Court

GUBBAY CJ: This is an appeal against the judgment of MUBAKO J which is reported *sub. nom.* in 1998 (2) ZLR 211 (H).

The appellant instituted proceedings against the four respondents for payment of monies outstanding on the overdraft of the first respondent company, which had been guaranteed by the three remaining respondents. The entry of appearance to the action was made by the second respondent both for himself and on behalf of the first respondent. The two other respondents also entered appearance.

Being of the opinion that the appearance entered by the first respondent was invalid and that, in consequence, it was barred, the appellant applied for the grant

of default judgment against it. It was refused on the ground that assuming the second respondent was a director or officer of the first respondent, he would have been entitled to enter appearance on behalf of the first respondent. In reaching that conclusion, the learned judge relied on the proviso to s 9(2) of the Legal Practitioners Act [*Chapter 27:07*].

In *Lees Import and Export (Private) Limited v Zimbabwe Banking Corporation Limited S-78-99*, which was argued together with this matter, the view is expressed that the effect of the aforementioned proviso is simply to preserve from the impact of s 9(2)(a) whatever rights of representation a director or other officer of a juristic person might enjoy under existing legislation. It follows therefore that the rationale of the learned judge was erroneous.

Nonetheless, as was held in the *Lees Import and Export* case, where it can be shown that a natural person has the status and authority which in law makes his or her acts, intentions and knowledge those of a company, he or she is to be regarded as the company itself - its alter ego - and not merely as its agent or servant. Accordingly, in such a situation, to deny the company the right to institute and defend litigation before the superior courts of this country other than where represented by a practising legal practitioner, amounts to an infringement of its entitlement to the protection of the law and to be afforded a fair hearing by an independent and impartial court, as enshrined in subs 18 (1) and (9) of the Constitution of Zimbabwe.

If, then, it can be established by the second respondent that he is the alter ego of the first respondent, the appearance to defend which was entered will be

good and the refusal of default judgment justified. That is, of course, an issue still to be determined.

In the result, the appeal is allowed to the following extent:

1. The order dismissing the application for default judgment with costs is set aside.
2. The case is remitted to the High Court for it to decide, after the reception of evidence, whether Mr Lovemore Nyasha Bvumbe is the alter ego of Pindi Electrical and Hardware (Private) Limited with the requisite authorisation to sign the entry of appearance to defend.

An order for the costs of the appeal was not sought by either of the parties and is not made.

McNALLY JA: I agree.

EBRAHIM JA: I agree.

MUCHECHETERE JA: I agree.

SANDURA JA: I agree.