

ELIAS HWENGA  
and  
MERCY HWENGA  
versus  
FBC BANK LIMITED  
and  
THE SHERIFF OF ZIMBABWE

HIGH COURT OF ZIMBABWE  
KWENDA J  
HARARE, 21, 23 & 31 May, 2018 and 1 June 2018 & 13 June 2018

### **Urgent Chamber Application**

*F Chinwawadzimba*, for the applicants  
*K Kachambwa*, for the respondents

KWENDA J: The applicants have filed this urgent application for an order staying/suspending the execution sale of their dwelling at Stand 309 The Grange Township subject to the fulfilment of alternative settlement offers.

Advocate *Chinwawadzamba* appeared for the applicants. The court noted that the applicant had filed papers as self-actors and there was no assumption of agency on file. Advocate *Chinwawadzimba* waved to me what she said was a ‘brief’ by Govere Law Chambers instructing her to appear and argue the matter. The matter proceeded on the understanding that the applicants were represented by Govere Law Chambers and a formal assumption of agency would be filed by the law firm in due course. In argument Advocate *Chinwawadzimba* conceded that the application is fatally defective in form. Among other things:-

- (i) it is in the form of a urgent chamber application envisaged in rule 244 as opposed to an chamber application in terms of rule 348A(5b)
- (ii) the application lacks clarity and seriousness in view of several alternative settlement offers which are not reconcilable.
- (ii) the draft order is meaningless
- (iii) the draft order is in form of a provisional order

The advocate conceded that the application lacked merit and offered to withdraw the application. First respondent agreed that the matter could be withdrawn.

The court ordered *Adv Chinwawadzimba* to regularise her authority to appear on behalf of the applicants since there appeared to be no law firm acting for the applicant and yet an advocate, in practice, appear only in terms of a brief by a law firm. I ordered her to cause the instructing law firm to file a proper assumption of agency as well as a notice of withdrawal.

On 23 May 2018 I received, on file, a notice of withdrawal purportedly issued from Govere law Chambers on the same date. No assumption of agency had been received. I put the file away and marked it withdrawn by applicants, on the assumption that a proper assumption had probably been issued by Govere Law Chambers at the Registry.

As it turned out, the purported of withdrawal had not been served on the respondents' legal practitioners. On 28 May 2018, the respondents' lawyers followed up on the assumption of agency as well as the notice of withdrawal. Meanwhile my clerk followed up at Govere Law Chambers who advised that they did not act for the applicant and dissociated themselves from the purported brief claimed by Advocate *Chimwawadzimba*, as well as the Notice of withdrawal filed of record.

I reset the matter down on 31 May 2018. The legal practitioners appeared before me again. Advocate *Chinwawadzimba* maintained her position that she had been briefed by Govere Law Chambers. I pointed out to her that my assistant who was present during the proceedings had spoken to Mr Govere who gave out that his law firm was not at all involved in the matter.

The respondents' counsel moved for the dismissal of the application because there was no appearance for the applicant. Advocate *Chinwawadzimba* conceded that she had no meaningful submissions to make on the merits. However she requested to be accorded until the end of the day to cause proper assumption and renunciation notices to be filed by Govere Law Chambers failure of which the application could be dismissed

I stood down the matter to the end of the day on 31 May 2018. In the afternoon I received notices of assumption of agency and renunciation purportedly emanating from Govere Law Chambers. I noticed that the three documents now before me to *wit*; two notices of withdrawal and a renunciation of agency bear different signatures which had some queer loops. All documents do not have the usual lawyers' references, a practice common in most, if not all law firms. I directed my clerk to contact Govere Law Chambers to confirm the authenticity of the process filed. Once again Mr Govere disowned the process. I directed, through the

Registrar, Mr Govere to put the position of his law firm in writing. On the 1<sup>st</sup> June I receive a letter from Govere Law Chambers to the following effect:-

“ RE: ELIAS HWENGA AND ANOR VS FBC BANK LTD AND ANOR

The above matter refers and further to the directive from the Honourable Justice Kwenda dated 1<sup>st</sup> June 2018 as further read with letters from Messrs Mawere and Sibanada legal practitioners dated 28<sup>th</sup> may 2018 and 31<sup>st</sup> May 2018.

We hereby categorically place it on record that our law firm is not handling the abovementioned matter and never instructed the said Adv *Chinwawadzimba* to act as Counsel in the said case. More pertinently, our law firm has never received instructions from any of the parties. Moreover, our law firm has never filed a notice of assumption of agency or notice of withdrawal in the said case.  
...”

All documents filed of record have been disowned by the law firm which purports to have issued them. Clearly the applicant did not appear and Advocate *Chinwawadzimba* was misleading the court. In fact she must have prepared the papers after direct liaison with client because the applicants’ address for service is written as follows:-

APPLICANTS

c/o F Chinowadzimba  
4<sup>th</sup> floor Tanganyika House

**HARARE**

Advocate *Chinwawadzimba*’s persistence in filing forged documents before me is dishonourable and unworthy conduct and outright contemptuous, which calls for censure by this Court as well as the Law Society of Zimbabwe.

Since the matter had already been argued I will not allow a withdrawal or alternatively there is no appearance by the applicants. I have to dismiss the application.

In the result I order as follows.

1. Application be and is hereby dismissed with costs.
2. Advocate *Chinwawadzimba* shall pay first respondent’s costs on a legal practitioner client scale *de bonis propriis*

*Govere Law Chambers*, applicants' legal practitioners  
*Mawere & Sibanda*, 1<sup>st</sup> respondent's legal practitioners