

ZIMNAT LION INSURANCE COMPANY LIMITED
versus
NATIONAL SOCIAL SECURITY AUTHORITY
and
HOUSING CORPORATION ZIMBABWE (PRIVATE) LIMITED

HIGH COURT OF ZIMBABWE
TAKUVA J
HARARE; 25 November 2024 and 06 May 2025

Court Application for declaratur

T Chagonda, for the Applicant
E Chiweshenga, E Homera for, the 1st Respondent
No appearance for the 2nd Respondent

TAKUVA J: This is a court application for a declaratory order in terms of s 14 of the High Court Act [*Chapter 7:06*]

Background Facts

The first respondent in this matter, a body corporate formed in terms of the NSSA Act [*chapter 17:04*] entered into an agreement with the second respondent, a company incorporated in terms of the laws of Zimbabwe. This was a Housing Offtake Agreement whereby the second respondent undertook to construct and deliver housing units to the first respondent. The applicant, an insurance company, became involved in this agreement after being approached by second respondent to issue a performance bond of 16 million United States Dollars, unconditional and irrevocable, in favour of the first respondent. The applicant agreed and therefore signed an Advance Payment Guarantee. Dispute arose between the first and second Respondent which led to the first respondent demanding their payment from the applicant on 25 July 2018. However, payment was not made since the applicants had to await the finalisation of the second respondent's Arbitration proceedings that it had initiated between itself and the first respondent in which the second respondent succeeded. These proceedings led to a further application in this court which was however appealed against and the judgment for that matter is still reserved in the Supreme court. The first respondent is appealing to have the Arbitral Award set aside.

Relief sought

1. The Advance Payment Guarantee issued by the Applicant in favour of the first Respondent on the 29th of July 2017 at the instance of the second Respondent was affected by Statutory Instrument 33 of 2019 to the extent that the sum of sixteen million United States Dollars became RTGS 16 million.
2. The amount reflected in paragraph 1 above, was affected by Statutory Instrument 60 of 2024 to the extent that the sum of RTGS 16 million has become ZIG 6 400.00.
3. The first Respondent shall pay the costs of suit on a legal practitioner and client scale.

Issue for determination

The applicant in this matter seeks for the court to reach the conclusion that the performance bond in this matter was affected by Statutory Instrument 33/19S specifically s4(1)(d):

“.....that, for accounting and other purposes, all assets and liabilities that were, immediately before the effective date, valued and expressed in United States dollars (other than assets and liabilities referred to in s 44C(2) of the principal Act) shall on and after the effective date be deemed to be values in RTGS dollars at a rate of one-to-one to the United States dollar.....”

The applicant claims their rights in this matter stem from the fact that may be interest are potentially affected if the Supreme Court finds in favour of the first respondent. first respondent has made its future plans clear in that they are to claim their guarantee of 16 Million USD from the Applicant if the courts rules in their favour. It is against this fact that the applicant's concern arises from. Applicant needs to the court ascertain the currency in which the payment should be made which in their view is ZIG equivalent to the converted RTGS 1:1 ratio for 16Million USD according the Statutory Instrument.

The court should however address a point that will lean more towards the first respondent's point of view in that this matter is premature. What the applicants ask of from this court is something that can be potentially extinguished by the Supreme Court ruling. Applicant wishes to put out a fire that does not exist from the mere promise that a party plans to start one in future. The relief sought in this application cannot be separated from the main as the applicants themselves admit that their fears are borne from what the Supreme Court might meaning that decision has a bearing on this application. The applicant's involvement and position in this triad is dependent on the situation on the relationship between the first and the second respondents in this matter. Accordingly, applicant cannot rush to ascertain the currency of a liability that is still unknown to it.

Furthermore, deciding the currency issue in this application does not have an impact on the current proceedings before the Supreme Court. It is however, misdirected in that a judgement that is not in favour of the second respondent in this matter might lead to an appeal before the same Supreme Court dealing with the substantive matter thus creating an unnecessary muddle. If this court is to deal with this matter and the Supreme Court upholds the Arbitration award, the decision in this case becomes merely academic hence there is reason to await the decision of the superior court seized with the matter.

Nonetheless, this is not to say that I do not appreciate the concern brought by the applicants. SI 33/19 came with its effects but whether or not this specific performance bond was also affected, is an issue that ought to be solved when the first and second respondents resolve their issues through the decision of the Supreme Court. I don't see any prejudice that the applicants will suffer if the Supreme Court matter is first finalised and if the first respondent indeed succeeds, the issue of currency may then be pursued. It is my considered view that this will be a cleaner approach to the matter in order to uphold consistency in our courts. No declaration of rights as between the Applicant and the first Respondent can be made. No conversion can arise of an obligation that is currently unknown.

Disposition

Matter be and is hereby stayed pending the finalisation of the Supreme Court matter under case No. 334/23.

TAKUVA J:.....

Atherstone And Cook, applicant's legal practitioners
Zvimba Law Chambers, respondent's legal practitioners

