(1) MINING INDUSTRY PENSION FUND HC 2267/10

Versus

STOMPIES TAKEAWAY

And

SOLOMON MUSARIRANWA

(2) MINING INDUSTRY PENSION FUND HC 2270/10

Versus

HOUSE OF VIVIENNE

And

VIVIENNE THANDEKA MOYO

(3) MINING INDUSTRY PENSION FUND HC 2272/10

Versus

CLIFFORD MUZONDO

And

RACHEL MUZONDO

IN THE HIGH COURT OF ZIMBABWE
KAMOCHA J
BULAWAYO 9 AND 17 MARCH 2011

K Ngwenya for applicant
N Mlala for all respondents

Oppose Court Application

KAMOCHA J: These applications were consolidated and heard at the same time as all the respondents are tenants of the applicant and all occupy commercial premises at Entumbane Complex in Bulawayo which is owned by the applicant. The applicant applied to the commercial rent board for a determination of fair rent in respect of all the commercial

premises occupied by all the respondents. The commercial and industrial premises rent board – "the board" fixed the monthly fair rental in respect of all commercial premises at Entumbane Shopping Complex at US$2,25 per square metre for each shop. The determination was made on 20 August 2010.

According to the applicant the respondents had not been paying any rentals for a very long period. That prompted it to issue summons out of this court seeking to cancel the leases between the parties and their evictions from the respective shops they occupied. It also sought payment of arrear rentals, arrear management costs and hold over damages.

The respondents entered appearance to defend and filed their respective pleas. The applicant held the view that they had no *bona fide* defences but were resisting its claims just to buy time. It then filed applications for summary judgment.

After hearing both lawyers I dismissed the applications for summary judgment holding that, this was not a proper case for such applications and indicated that my full reasons would follow. These are they.

The applicant was seeking orders directing the respondents to pay the various sums of money they allegedly owe in respect of arrear rentals, arrear management costs and interest thereon from 1 May 2010.

As alluded to *supra* the board fixed the monthly fair rentals in respect of all commercial premises at Entumbane Shopping Complex at US$2,25 on 20 August 2010. On 23 August 2010 the secretary of the board acting in terms of section 14 of the Commercial Premises (Rent) Regulations – "the regulations" gave written notification to the parties which read thus:-

> "Re: Application for a determination of a fair rent: MIPF versus Entumbane Complex Tenants
>
> Your C. Rushwaya/Mr of 6th May 2010.
>
> After having taken into consideration of all arguments raised by all parties involved that is to say Mr Kholwani Ngwenya for the landlord and Mr Hezel Ndlovu for the tenants, the board has fixed the net rent at US$2,25 per square metre.
>
> The board took into consideration the viability of the business in the suburban complex.
>
> You are also advised to give the tenants all the breakdown of the amenities such as City Council rates, ZESA and operation costs. This is with effect from your date of application i.e. 1st May 2010 to 31st December 2010."

On receipt of the above notification the respondents acting in terms of section 15 requested for the report of the board's reasons which they allegedly received only sometime in October 2010.

The board's report gives details of what it considered before it arrived at a decision. It considered submissions made by both applicant and respondents and gave details of its findings and observations. It finally gave reasons for fixing monthly fair rentals at US$2,25 per square metre. The report reflects that the determination was made on 20 August 2010.

The board, however, failed to do what it is required to do by law in section 13(1) of the regulations which recites thus:

> "13. Validity of determination or variation
>
> (1) Subject to the provisions of subsection 2, a board shall specify the date from which the determination of a fair rent made, or variation of such a determination granted, by it shall have effect which shall not be a date prior to the date on which the application for such determination or variation, as the case may be, was received by the secretary of the board." Emphasis added

The board ought to have specified the date from which the US$2,25 per mensem was to take effect. It had no choice in the matter. The secretary of the board has no authority to specify the date. That is the domain of the board. All he has to do in terms of section 14(a) of the regulations is to give written notification to the parties concerned of the decision of the board. He has no business in specifying the date from which the determination of a fair rent takes effect. The fact that the board failed to specify the date on which its determination would be effective does not give its secretary authority to do so. Any attempt by the secretary to do so has no legal force or effect. It is a nullity and nothing whatsoever can be derived from it.

Due to the board's failure to specify the effective date the parties are unable to say when the US$2,25 per mensem takes effect. The various amounts that applicant was claiming were calculated from 1 May 2010 specified by the secretary of the board. The figures cannot be allowed to stand as they are invalid.

The applications for summary judgment must, in the result fail and are hereby dismissed with costs.

Mabhikwa, Hikwa and Nyathi, applicant's legal practitioners
Cheda and Partners, respondents' legal practitioners