

**COOLLAND TRADING (PVT) LTD**

**And**

**HAWKFLIGHT ENTERPRISES (PVT) LTD**

**And**

**MNCANE NCUBE**

**And**

**NTOMBIZANELE NGWENYA**

**Versus**

**PHILLIP NDLOVU N.O. (in his capacity as provisional  
Liquidator for Ralema Investments (Pvt) Ltd & Tradepower (Pvt) Ltd)**

IN THE HIGH COURT OF ZIMBABWE  
KAMOCHA J  
BULAWAYO 20 & 26 JANUARY 2017

**Ordinary Chamber Application**

*T. Masiye-Moyo* for the applicant  
*Advocate H. Moyo* for the respondent

**KAMOCHA J:** The respondent requested for the reasons for the court order granted in chambers. These are they. On 27 March 2015 Phillip Ndlovu acting in his capacity as provisional liquidator of Tradepower (Pvt) Ltd, Chitrins Garage (Pvt) Ltd, Ralema Investments (Pvt) Ltd and RST Investments (Pvt) Ltd applied for a chamber application which was granted. The application was submitted in terms of the provisions of section 221 (2) of the Companies Act [Chapter 24:03]. *Inter alia* the provisional liquidator obtained leave to sue the applicants when none of the applicants were cited in that application and the application was accordingly not served upon any of the applicants.

When the applicants became aware of the court order, they realised that it adversely affected them yet it was granted without any of them being served, let alone being heard.

They then filed this chamber application seeking to be cited as parties in the application so that they could exercise their rights to be heard. It was their view that the order granted in the application permitted the provisional liquidator to initiate any suits, including frivolous and vexatious suits while fully enjoying the protection afforded to him in that capacity.

They contended that they were entitled to oppose the application by the provisional liquidator for leave to sue so that they could convince the court that the suit was frivolous and vexatious.

Finally, they contended that the order was erroneously sought and granted in the absence of the applicants when in fact such order clearly affected them. The order clearly violated the rules of natural justice in particular the *audi alteram partem* rule.

In the result, I held the view that there was merit in the application and granted it in chambers in terms of the draft.

*Masiye-Moyo & Associates*, applicant's legal practitioners  
*Messrs Joel Pincus, Konson & Wolhuter*, respondent's legal practitioners