KAPPJACK TRADING (PVT) LTD

versus

ADESHU MAK INVESTMENTS (PVT) LTD T/A

and

DEPUTY SHERIFF HARARE

HIGH COURT ZIMBABWE

BERE J

HARARE, 28 February 2012

Adv. *Ochieng*, for applicant

*D. Halimani*, for respondents

BERE J: When this matter was first placed before me on 23 February 2012 I was of a very strong view that the matter did not deserve to be treated on urgent basis because of the apparent casual approach adopted by the applicant in its handling this matter.

Apparently the applicant’s lackadaisical approach was confirmed by his own legal practitioners when they wrote to me pleading for the court to review its position. What runs through the applicant’s letter of 24 February 2012 is a clear appreciation of the failure by the applicant to move with reasonable pace to deal with the default judgment against it. There was an attempt in that letter to blame the respondent’s counsel for not having acted as counsel for the applicant when in fact it is clear that the brief held by the respondent’s counsel was from the respondent and not from the applicant.

From the time the applicant got to know it was barred it had sufficient opportunity to have the bar uplifted but did not move swiftly to have that done.

Not only that but even when judgment was granted against it the applicant did not seek to have execution stayed pending rescission of that judgment.

Everything in this matter points to a situation where the applicant’s instant application was a prompt reaction to the execution by the respondent. I am satisfied this really was self-created urgency and such urgency has been stated on times without number that it is misplaced.

I have not been persuaded to accept that the applicant lacks sophistication to the extent that the court should sympathise with its inaction. I am satisfied that doing so would be really to miss the point. From close range the applicant has that posture of sophistication or enlightenment and it ought to have moved with reasonable speed to deal with this matter in a more sensible manner as opposed to waiting to react to the execution legitimately pursued by the respondent as a natural consequence of the judgment in its favour.

I decline to treat this matter as one of urgency. Application is dismissed with costs.

*V. Nyemba & Associates*, applicant’s legal practitioners

*Wintertons*, 1st respondent’s legal practitioners