W. MANDAZA

and

CKP QUALITY FOODS (PVT) LTD

versus

BEN MUCHENJE

and

DEPUTY SHERIFF – HARARE, NO

HIGH COURT OF ZIMBABWE

MATHONSI J

HARARE, 9 May 2012

*Ms Chiurawa*, for the applicants

 *Mr Manyurureni,* for the 1st respondent

 MATHONSI J: This is an application for a stay of execution pending interpleader proceedings and possibly a rescission of judgment application. No interpleader proceedings have been commenced presumably because the claimant has not even brought the said claim to the attention of the deputy sheriff.

In addition, the applicants themselves have not instituted the rescission of judgment application at all. That is not the only problem that the applicants have. Assuming they had knowledge of the default judgment on 23 March 2012 when the notice of attachment was served they should have filed the application for rescission of judgment by 23 April 2012 which is when the 30 days provided by the rules expired. They did not. Clearly therefore the applicants are out of time to file such application.

From the look of it, no application for condonation has been filed and no condonation has been granted. Therefore the applicants cannot file an application for rescission because they have no right to. This therefore is an application for a stay pending nothing at all.

As if that was not enough, the application does not pass the test for urgency as envisaged by the rules. The applicants were served with summons commencing action on 26 April 2011. They did not do anything about the matter at all until 27 April 2012, when this application was made, exactly a year later.

Indeed, even after being served with a notice of attachment on 23 March 2012 nothing was done until after removal and more than a month later when this application was filed.

In my view this is self-created urgency, urgency which stems from a deliberate failure to act. It is not the urgency contemplated by the rules.

In the result the application is dismissed with costs.

*Kanoti & Associates*, applicant’s legal practitioners

*Manyurureni & Company,* respondents’ legal practitioners