

**Marble Spec Enterprises  
Versus  
Danish Shayamano  
And  
Ngara N.O**

HIGH COURT OF ZIMBABWE  
HUNGWE J:  
HARARE, 9 February 2006

**Application for review**

HUNGWE J: This is an application for a review of proceedings in the Small Claims Court wherein the applicant was ordered to pay \$1 000 000.00 to the first respondent.

Applicant is a juristic person. It cannot bring a claim in the Small Claims Court. It however can be dragged to that Court as a defendant or respondent in terms of section 6 of the Small Claims Act [*Chapter 7:12*]. The decision of the Small Claims court is final. It cannot be appealed against. It can however be brought on review by this court. The grounds upon which this court may review any proceedings are set out in Section 27 of the High Court Act, [*Chapter 7:06*].

These are:

- (a) absence of jurisdiction on the part of court, tribunal or authority concerned;
- (b) interest in the cause, bias, malice or corruption on the part of the person presenting over the court or tribunal concerned or the part of the authority concerned, as the case may be,
- (c) gross irregularity in the proceedings or the decision.

In this application for review, the applicant seeks an order setting aside the decision of the Small Claims Court and that a trial *de novo* be held. Applicant states in its founding affidavit that the grounds for review are that its director, the deponent to the applicant's affidavit who represented it in the court *a quo*, was not given an opportunity to be heard.

The basis of this claim is that the trial took less than five minutes and that the trial court expressed the view that as applicant was a company and the claim was for \$1 000 000.00, the applicant had to pay this sum and not waste the court's time disputing its liability. In the result applicant is of the view that the court *a quo* displayed bias against its case.

A perusal of the record of proceedings however does not support the views expressed in the applicants' affidavit. The record shows that both parties were given the opportunity to state their respective cases. The magistrate then set out the reasons in a written judgment, why he gave judgment in favour of the first respondent. His reasons amount to a finding that the applicant owed 1<sup>st</sup> respondent the sum of \$1 000 000.00 for services rendered by 1<sup>st</sup> respondent as an employee of the applicant. He disbelieved the applicant's claim that 1<sup>st</sup> respondent was a trainee who was not entitled to remuneration. There is no contract, oral or written, to support the applicant's claims. The terms of such a contract were not spelt out even in the affidavit filed in support of the present application.

The applicant had therefore not made out the ground of review that it relied on.

Although the magistrate presiding over the claims did not allow parties to cross examine each other, he did examine the applicants' director on the claim.

The proceedings in the Small Claims Court are informal. The presiding officer has wider latitude to control proceedings. He may disallow cross-examination if he thinks or considers it to be unfair, oppressive, unduly prolonged or unnecessary. He is entitled to question or cross-examine any party in order to ascertain facts.

In view of the above the onus on the applicant to show gross irregularity becomes heavier than in the usual case. As pointed out above the applicant has not discharged this *onus*.

Besides, the applicant has not complied with the High Court Rules in this application for review. Such an application is to be made by way of court application directed and delivered by the party seeking to review such decision to the magistrate, and to all the parties affected. The Court Application shall state shortly and clearly the grounds upon which the applicant sought to have the proceedings set aside.

Review proceedings shall be instituted within eight weeks of the termination of the action or proceedings in which the irregularity or illegality complained of is alleged to have occurred.

The clerk of the inferior court whose proceedings are being brought on review shall within twelve days of the date of service of the application for review, lodge with the register, the original record together with two typed copies, which copies shall be certified as true and correct copies.

None of the above requirements were met by the present applicant. It is no excuse that the applicant is a self-actor. It should have complied with the Rules of Court. As it is the other parties cited in the review were never served with a copy of the court application. There is therefore no indication as to what their attitude to this court application for review is.

In view of the above, the application is dismissed.

