

**MOIDEEN MANUEL**

**And**

**KNOESEN TRADING (PVT) LTD**

**Versus**

**VICTOR ROSS MANICKUM**

**And**

**THE DEPUTY SHERIFF**

IN THE HIGH COURT OF ZIMBABWE  
NDOU J  
BULAWAYO 13, 16 & 29 NOVEMBER 2012

1<sup>ST</sup> & 2<sup>ND</sup> applicants in person  
*M. Ncube* for 1<sup>ST</sup> respondent

Judgment

**NDOU J:** The applicants seek a provisional order in the following terms:

“Terms of the final order sought

- A. That you show cause to this honourable court why a final order should not be made in the following terms:
1. That the 1<sup>st</sup> and 2<sup>nd</sup> respondents and all those claiming under or through them immediately restore 1<sup>st</sup> and 2<sup>nd</sup> applicants’ occupation of number 91 R. Mugabe Way, 9<sup>th</sup> Avenue/R. Mugabe Way, Bulawayo [*sic*].
  2. That the 1<sup>st</sup> and 2<sup>nd</sup> respondents and all those claiming under or through them henceforth refrain from anyway interfering with 1<sup>st</sup> and 2<sup>nd</sup> applicants’ business and occupation of number 91 R. Mugabe Way, 9<sup>th</sup> Avenue/R. Mugabe Way, Bulawayo.

Interim relief granted

- B. That pending the determination of all pending matters the applicant is granted the following relief:

1. The Writ of Execution and Eviction dated the 26<sup>th</sup> day of October 2012 be and is hereby stayed pending facilitation of the application for rescission of judgment under case number HC ...../2012 [sic].
2. If paragraph 1 of the order has already been affected that 1<sup>st</sup> and 2<sup>nd</sup> respondent immediately upon service of the order restore 1<sup>st</sup> and 2<sup>nd</sup> applicants occupation of number 91 R. Mugabe Way, 9<sup>th</sup> Avenue/R. Mugabe Way Bulawayo" [sic]

The salient facts of this matter are the following. On or about the 31<sup>st</sup> May 2012, 1<sup>st</sup> respondent issued summons against the applicants claiming an order of eviction of the applicants and payment of outstanding rentals. The summons was served on the applicants on the 6<sup>th</sup> June 2012. On the 15<sup>th</sup> June 2012, the applicants and 1<sup>st</sup> respondent had a meeting where they attempted to reach an out of court settlement. After the meeting, the applicants requested to consult their legal practitioners over the matter. They were afforded that opportunity and the meeting was postponed to the 22<sup>nd</sup> June 2012. On the 22<sup>nd</sup> June 2012, it was agreed that the rentals for the premises would be increased to US\$1 200,00 and various other resolutions were also made with the view of settling the matter out of court. On 25<sup>th</sup> June 2012, the applicants approached the 1<sup>st</sup> respondent and indicated that they were unable to abide by the terms of the meeting. As such, they rejected offer of the new rentals and the agreement fell away. On the 19<sup>th</sup> July, the applicants were advised that they were *in mora* and as such litigation would continue. As a consequence of this fact, the 1<sup>st</sup> respondent successfully applied for, and obtained default judgment.

The applicants were subsequently given notice of eviction on 2<sup>nd</sup> November 2012. They were scheduled to be evicted on the 7<sup>th</sup> November 2012. The applicants were fully evicted on the 12<sup>th</sup> November 2012. In fact, on 12 November 2012, the applicants themselves wrote a letter to 1<sup>st</sup> respondent indicating that they were moving out of the premises as per the court order. The letter states, *inter alia*, "We would like to inform you that we have vacated the above-mentioned premises as per your eviction letter dated 7<sup>th</sup> November 2012 ..." In simple terms the applicants moved out of the premises on their own volition so to speak. So when this application was filed, the applicants had already left the premises. Basically, what is sought here is the restoration of occupation. It is trite that an interim interdict is not a remedy for past invasions of rights and will not be granted to a person whose rights in a thing have already been taken from him by operation of law at the time he makes an application for interim relief – *Meyer v Meyer* 1948 (1) SA 484 (T); *Stauffe Chemicals v Monsanto Co* 1988 (1) SA 805 (T) 809F-G; *Airfield Investments (Pvt) Ltd v Min of Lands & Ors* 2004 (1) ZLR 511 (S) at 517E-H and *Todzaniso v Ladas & Ors* HB-84-11.

On this point alone, the application is devoid of merit. In the circumstances the application is dismissed with costs.

*Phulu & Ncube*, 1<sup>st</sup> respondent's legal practitioners