

INFINITY CAR SALES

And

JAMES CHAPOTERERA

And

ARTHUR NHIDZA

Versus

FIRST TURN INVESTMENTS t/a SHAR CAR SALES

And

MESSENGER OF COURT N.O.

IN THE HIGH COURT OF ZIMBABWE
MAKONESE & TAKUVA JJ
BULAWAYO 17 FEBRUARY 2020 11 MAY 2020

Civil Appeal

K. M. Nxumalo for the appellant
D. Dube for the respondent

MAKONESE J: This is an appeal against the judgment of the magistrate sitting at Bulawayo, handed down on the 19th February 2019.

The appeal was heard on the 17th February 2020. After hearing oral arguments we dismissed the appeal with costs. We have been asked to furnish the reasons for judgment. These are the reasons.

Factual background

On the 8th of February 2019 the respondents filed an *ex parte* application in the Magistrate's Court seeking an order for spoliation. The respondents sought and obtained the following relief;

- “(a) The applicant, its agents, assignees and or employees be restored vacant possession, control and use of stand number 382 Bulawayo Township also known as Fairway Building, corner 10th Avenue and George Silundika Street, Bulawayo.
- (b) That the 4th respondent assists the applicants in enforcing clause (a) above in the event of breach.”

The basis of the application for spoliation was that the respondents who had been in occupation of premises at stand number 382 Bulawayo Township, also known as Fairway Building, by virtue of a lease agreement were threatened with eviction from these premises by the appellants. The respondents were barred from accessing the premises and appellants sought to take over control of those premises without a valid court order. The respondents successfully obtained an order from the court *a quo* and sought restoration of the occupation and possession of the premises. The applicants noted an appeal against the interim order for spoliation with this court on the 22nd of February 2019. The appellants contended in their grounds of appeal that the court *a quo* erred both in law and fact by entertaining an application made contrary to the rules of the Magistrates’ Court. Further, the appellant averred that the court *a quo* erred in granting an interlocutory order based on falsehoods, in that the respondents had alternative remedies. The rest of the grounds of appeal are clearly superfluous and irrelevant.

Whether the appeal was defective at law

In his response to the notice of appeal the learned magistrate in the court *a quo* had this to say:

“I read the appellant’s grounds of appeal and need to indicate that the order appealed against is an interim order which is not appealable. The appellant had a remedy in terms of the Rules. If it was affected by the interim order, appellant could have anticipated the return date in terms of Order 22 Rule 7 (4) of the Magistrates’ Court Civil (Rules) 2018 instead of making this appeal.

Secondly, the appellant could have waited for the return date in order to have the *rule nisi* discharged.

It is trite law what interim orders are not appealable.

In view of this, this appeal is baseless and should be dismissed.”

The same issues were raised in respondent’s heads of appeal which are part of the record. At the hearing of the appeal, appellant’s legal practitioner was content to state that he stood by the heads of argument. It would seem that the appellants were either not properly advised in this matter or are simply abusing court process. That the appeal had no merit is beyond dispute. It is a well established principle of our civil law that an appeal does not lie against an interim order. The reason for this is simple. The interim order merely provides interlocutory relief. An interim order is a temporary order of the court pending a final hearing. Orders of this nature are not final and generally it is not in the interests of justice for interim relief to be subject to appeal as this would defeat the very purpose of that relief. See; *Masedza & Ors v Magistrate Rusape & Anor 1998 (1) ZLR 36 (H)*. The order appealed against did not provide final relief. The appellants chose not to comply with the rules and forged ahead with an appeal. At the hearing of the appeal the appellant’s legal practitioner advanced no meaningful argument save to state that the appellant would abide by the written heads of argument. No meaningful argument was placed before us to support the appeal. The interim order was granted by the court *a quo* after a careful consideration of the application. The requirements for a spoliation were satisfied. In the case of *Ricnod Supplies Ltd & Anor v Mandizera & Ors* HB-262/18, this court restated the requirements for an order for spoliation which are:

- (a) The applicant must have been in peaceful and undisturbed possession of the property in question.
- (b) The respondents despoiled them of possession unlawfully without following due process.

It is clear from the record that the court *a quo* was satisfied that the requirements for spoliation were met. An order for the appropriate relief was accordingly granted. It must be stated that the purpose of spoliation proceedings is to provide a quick remedy against a party who has taken the law into his own hands by despoiling another of his possession. We could therefore find no fault in the order granted by the court *a quo*.

The appeal was defective in that it sought to overturn an interim order which by all accounts should have been challenged on the return date. The order was not appealable at law. It is of concern that appeals are being filed in this court in order to delay and frustrate the execution of orders of the lower courts. The net result and effect of such appeals is to simply clog the court system with frivolous appeals. In appropriate cases, this court shall order costs *de bonis propriis* as a measure of curtailing the abuse of legal process. As I have indicated the bulk of the grounds of appeal were frivolous, meaningless, vague and completely irrelevant.

For the foregoing reasons, we dismissed the appeal with costs.

Takuva J I agree

Ncube Attorneys, appellant's legal practitioners
Mathonsi Ncube Law Chambers, respondent's legal practitioners