

SAVE SAFARIS (PVT) LTD

Versus

H.J. VORSTER (PVT) LTD

And

PARKS AND WILDLIFE MANAGEMENT AUTHORITY

And

**MINISTER OF LANDS, AGRICULTURE &
RURAL RESETTLEMENT N.O.**

And

NEVISON MAKETO

**IN THE HIGH COURT OF ZIMBABWE
MOYO J
BULAWAYO 9 & 23 SEPTEMBER 2021**

Urgent Chamber Application

V. Mhungu for applicant
C. S. Ncube for 1st to 4th respondents
B. Moyo for the 3rd respondent

MOYO J: This is an urgent chamber application wherein the applicant sought spoliatory relief for the repossession of Lot 4 Devuli Ranch also known as Mapari Ranch.

At the hearing of the matter I granted the order *ex tempore*. The 1st respondent has requested written reasons. Here are the reasons. 1st respondent had raised 2 points *in limine*. The 1st being that applicant was not properly represented as there was no resolution authorizing Leon Johannes du Plessis to represent applicant. A resolution was then tendered from the bar, the court accepted it and that point was settled. A 2nd point *in limine* was raised to the effect that there was already an *ex parte* order granted by the Magistrates' Court in 1st respondent's favour on 31 August 2021 which order would be in conflict

with the relief being sought by the applicants. The point *in limine* was opposed by the applicant in that they filed this urgent chamber application first before the *ex parte* application and that in fact the *ex parte* application was filed in reaction to this application and was meant to disarm the applicant in its bid to seek urgent relief from the High Court. I dismissed the point *in limine* relating to the *ex parte* application for the reason that it was granted on 31 August 2021, after this application had already been filed on 27 August 2021.

In the opposing affidavit 1st respondent did not explain when the *ex parte* application was filed and the circumstances of its filing to enable this court to know which application was filed first. In the absence of precise dates on the filing of the *ex parte* application, this court held the view that the urgent application having been filed on 27 August 2021, and the *ex parte* application having been granted on 31 August 2021 this court could not hold as a matter of fact that the *ex parte* application was filed first and in fact it held that there is a strong possibility that the *ex parte* order was sought when this urgent application was already pending and that in that case, this court would be correct in proceeding to hear this application and dismiss the point *in limine* as not being valid in the circumstances. I then dismissed that point *in limine* and held that I can exercise my jurisdiction in this matter.

On the merits, the facts of the matter are that the applicant and 1st respondent co-existed at the ranch being the subject matter of this dispute and that they both occupied different parts of the ranch. The status *quo* was to remain until outstanding litigation between the parties was finalized. Applicant then alleged that 1st and 4th respondents hired thugs on the 19th of August 2021 who committed acts of violence and also beat applicant's employees, abducted some and unlawfully deprived applicant of the possession of the property. Applicant's employees reported the acts of violence and injuries at Bikita Police Station. 1st and 4th respondents refute the allegations of dispossessing applicant of its portion of the ranch and aver that it were some 3rd parties not in its control. A ranger however alleged that a Maketo (whom applicant averred as the 4th respondent and also the deponent to the 1st respondent's opposing affidavit was present on the date of the commotion participated in the unlawful acts.

From the opposing affidavit, it is not disputed that applicant was in peaceful and undisturbed possession of the property prior to 19 August 2021 but 1st and 4th respondents deny participating in the unlawful actions to despoil the

applicant. So this court then found that the 2 parties did co-exist at the ranch as alleged by the applicant.

1st respondent's counsel was asked by the court to clarify what prompted the 1st respondent to approach the court through an *ex parte* application to seek the order that it sought of interdicting applicant from the ranch, 1st respondent's counsel submitted that it was because of the events of the 19th of August 2021, whereafter the applicant had been ejected by these other 3rd parties, 1st respondent decided to then seek an order to keep applicant away. It is on this submission by 1st respondent's counsel that the court then found that both 1st and 2nd respondents had something to do with the mayhem that occurred on the 19th of August 2021 and that 1st respondent's conduct post the 19th of August 2021 showed an inclination to keep the applicant out of the ranch.

It then became necessary in the court's view that the relief sought by applicant is justified in the circumstances since clearly while 1st and 4th respondents want to distance themselves from the mayhem that occurred on 19 August 2021, which resulted in the applicant losing possession of its portion of the ranch, however, 1st and 4th respondents (whom applicant accuses as the instigators of the mayhem and the unlawful dispossession, nonetheless, wanted to benefit from the dispossession of the applicant and in fact sought to perpetuate it by virtue of an *ex parte* order. It was for these reasons that the court found that there is indeed substance in the allegations made by the applicant and as a result found that applicant had made a case for the relief that it sought.

I then granted the order.

It is for these reasons that the application was granted in terms of the draft.

Mlotshwa & Maguwudze applicant's legal practitioners
Mabundu Ndlovu Law Chambers 1st to 4th respondents' legal practitioners
Civil Division of the Attorney-General's Office 3rd respondent's legal practitioners