

MARY MUKONYORA  
versus  
MUNICIPALITY OF CHITUNGWIZA  
and  
DR T. KASU N.O  
and  
RAYMOND WENYEVE N.O

HIGH COURT OF ZIMBABWE  
PHIRI J  
HARARE, 4 February 2020 & 4 March 2020

### **Urgent Chamber Application**

*L. Madhuku*, for the applicant  
*T Zhuwarara*, for the respondents

PHIRI J: This was an urgent chamber application in which the applicant was seeking restoration of possession of a motor vehicle, namely a Toyota Fortuner registration number ADR 1382.

The parties appeared before me on the 4<sup>th</sup> February, 2020 and agreed to submit written heads of argument which they promptly did.

After considering these heads of argument I hereby grant the relief which the applicant seeks.

Applicant submitted that she was despoiled of the motor vehicle in question when she attended a disciplinary hearing at the first respondent's head office in Chitungwiza.

Just after the disciplinary hearing on the 25<sup>th</sup> January, 2020 applicant avers that she was stopped by security details "right at the gate and ordered to leave the vehicle."

Applicant was advised that this was on the orders of the second respondent conveyed to applicant by third respondent.

Applicant's motor vehicle was "immediately clamped and some object was parked in front of it for it not to move. Efforts of intervention by applicant's legal practitioners were in vain.

The gate was closed and applicant had no option but to lock the motor vehicle and leave with the car keys.

This court agrees that this is a classical or textbook case of spoliation.

Respondents conduct amounts to self-help which this court has consistently frowned upon. Especially when one considers the “dramatic” circumstances of this case, and such conduct being exhibited by an organisation such as the first respondent.

Applicant has given that she was in peaceful and undisturbed possession and was forcibly and wrongfully disposed of the vehicle without her consent.

The respondents, in their opposing papers and heads of argument attempted to raise contractual issues between them and the applicant. They also raised issues of illegality.

In the cited case of *Yeko v Oana* 1973 (4) SA 735 (AD) it was stated that

“The fundamental principle of the remedy is that no one is allowed to take the law into his own hands. All that the spoliator has to prove is possession of a kind which warrants the protection accorded by the remedy and that he was unlawfully ousted.”

Also refer to the case of *Chisveto v Minister of Local Government and Town Planning* 1984 (1) ZLR 248 (H) where it was stated;

“Lawfulness of possession does not enter into it. The purpose of the mandament *van spolie* is to preserve law and order and to discourage persons from taking the law into their own hands. To give effect of these principles, it is necessary for the status quo ante to be restored until such time as a competent court of law assess the relative merits of the claims by each party... In fact, the classic generalization is sometimes made that in respect of spoliation actions even a robber or thief is entitled to be restored possession of stolen property.”

#### Costs

This court awards costs on a legal practitioner and client scale on the basis that respondents took the law into their own hands and tried to justify their patent unlawful conduct by opposing this application.

*Lovemore Madhuku Lawyers*, applicant’s legal practitioners  
*Kantor & Immerman*, respondent’s legal practitioners