

STANLEY FARMS (PVT) LIMITED

versus

MAVINGTON CHIDONGO

and

AMON KUNJE

and

GARIKAI MAFA

and

COSMAS SHUMBAIMWE

and

AMON TARUONA

and

TAKESURE CHIDONGO

and

NETSAI MAKONYE

and

MATHEW MANDLALELA

and

MOSES MUGARI

and

RAVIOUS MUSHAYANGONI

and

TAVENGWA NYIKA

and

NCELE PAUL

and

PHILIMON PAUL

and

CLEOPAS PHIRI

and

WALLAS PHIRI

and

COLLEN TAVENGWA

and

WASTING TIME

and

ANDREW TSOKA

and

TARUVINGA ZIVANAI

and

OLIVER BWITITI

and

LIVINGSTONE NYAMADZAWO

HIGH COURT OF ZIMBABWE

MANGOTA J

HARARE, 18 May, 2021 and 13 January, 2022

OPPOSED MATTER

K Tundu, for the applicant
I Mataka, for the respondents

MANGOTA J: I heard this matter on 18 May 2021, I delivered an *ex tempore* judgment in terms of which I granted the applicant's prayer with costs.

On 19 October 2021, the High Court Registrar wrote advising me that my decision had been appealed. He requested reasons for the same. These are they:

The applicant is a legal entity. It is the owner and lawful occupier of two pieces of land ("the farm") which are in the District of Hartley which is now known as Chegutu. The pieces or the farm comprise(s):

- a) Dorith More which is 341,9506 hectares in extent - and
- b) Stanley which is 563,1007 hectares in size.

The applicant has been engaged in running battles with the respondents from as far back as 2015 when it successfully sued to evict them from the farm which they had invaded. It, accordingly, asserted its right to the farm. Reference is made in the mentioned regard to the order which the court issued in its favour under HC 12326/15. The order is dated 16 May, 2021. Its effect was to:

- i) evict the respondents from the farm - and
- ii) interdict them from entering the farm.

It is in the context of HC 12326/15 that the applicant filed this application. It moved me to declare the 1st, 4th, -21st respondents to be in contempt of court for failure to abide by the order which the court issued under HC 12326/15. It prayed that each respondent be committed to prison for a period of ninety (90) days.

Contempt of court proceeding are provided for under r 79 of the High Court Rules, 2021. Sub para(s) 1 and 2 of the same are relevant. They state as follows:

- "(1) The institution by a party of proceedings for contempt of court shall be made by chamber application.
- (2) Such chamber application shall set forth distinctly the grounds of the complaint and shall be supported by an affidavit of the facts."

The applicant, it is evident, set forth in a clear and unambiguous language its ground of complaint. The ground is that the respondents invaded its farm and their conduct, therefore, constitutes a thorn in its flesh. They, it asserts, continue to interfere with its operations at the farm. They, it insists, are interfering with its rights at the farm in violation of the order which the court entered in its favour on 16 May, 2017 and under HC 12326/15. They are, it submits, in contempt of the court order.

Civil contempt, in simple terms, refers to a situation where the plaintiff or the applicant obtains a court order against the defendant or the respondent which the latter becomes aware of and refuses or neglects to obey or comply with for no particular reason other than that he has decided to defy the court order. It places the court and the administration of justice into disrepute. It renders the court a toothless bull dog, if a comparison may be favoured.

Rome L.J defines the meaning and import of the concept of civil contempt of court. The learned Lord Justice states in *Hadkinson v Hadkinson* (1952) 2 ALL R 567 (CA) that:

“It is the plain and unqualified obligation of every person against or in respect of whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged the fact is that anyone who disobeys an order of the court is in contempt and may be punished by committal or attachment or otherwise.”

Nearer home, civil contempt of court was aptly defined in *John Strong (Pvt) Ltd v Wachenuka*, HH 44/10 wherein it was stated that:

“.....civil contempt is the wilful and *mala fide* refusal or failure to comply with an order of court. Before holding the respondent to have been in contempt of court, it is necessary for the court to be satisfied both that the order was not complied with and that the non-compliance was wilful on the respondent’s part... once the applicant has established that the respondent has failed to comply with the order, the *onus* shifts to the respondent to establish that he or she was not wilful and *mala fide*.”

Following the reasoning which NDOU J was pleased to enunciate in *Wachenuka v Moyo*, HB 78/03, I remain satisfied that the requisite for granting of an order for committal exists in this case. First, an order to move out of the applicant’s farm and never to return to the same was granted against the respondents. Second, the respondents became aware of the order which the court issued in the presence of their legal representative one *S Chihuri*. Third, the respondents disobeyed the court order as they remained at the farm after its issuance.

As NDOU J correctly observed, all orders of court, whether correctly or incorrectly granted, have to be obeyed until they are properly set aside. The applicant was able to show that it obtained a court order and that the same is extant. It also showed that the order was

issued against the respondents and that these continued to remain on its farm their knowledge of the court order notwithstanding. It, accordingly, discharged the *onus* which rested upon it to prove disobedience of the order of court. That being the case, wilfulness is, in such circumstances, inferred and the *onus* shifts onto the respondents who should rebut, on a balance of probabilities, the inference of wilfulness.

The respondents cannot be said to have rebutted the *onus* which shifted onto themselves. Their knowledge of the order which the court entered against them on 16 May, 2017 should have persuaded them to leave the farm on the date of the order or so soon thereafter. They did not have to wait for the applicant to enforce the same by way of a writ.

The writ of ejectment which the applicant issued on 30 May 2017 shows that the respondents chose to stay put at the farm. Indeed, the statement of the deponent to their opposing affidavit which they filed on 14 February 2019 does but confirm their continued violation of the court order. The statement reads:

“The few times that we send people to the farm is to check if our property is still there and safe.”

It serves little, if any, purpose for the respondents to assert, as they are doing, that they left the applicant’s farm but they left their property behind at the farm. Eviction, being what it is, does not allow any person who is claiming occupation through the evicted person to remain on the place where the eviction has occurred. Nor does it allow the evicted person to leave his goods at the place from where he has been evicted. The evictee, if the word may be properly employed, must move from the place where the court directed him to move with all his dependants as well as all his goods. He cannot, as the respondents are suggesting, leave any of his dependants or his goods behind. Whatever he leaves behind has the effect of interfering with the operations of the applicant who wants every space of his farm without having to worry about the safety of the goods of the respondents.

The respondents cannot escape the natural consequences of their unlawful conduct. They became aware of the court order from as far back as May 2017. They did not appeal or review it. The order is therefore extant. They did not comply with it from its date of issue to date. They have no valid reason for disobeying it. They have brought the administration of justice into contempt. They have resorted to unexplained self-help. Their conduct cannot be condoned let alone accepted. They have virtually no defence which is available to them.

The applicant proved its case on a balance of probabilities. The application is, accordingly, granted as prayed.

Chihambakwe Mutizwa & Partners, applicant's' legal practitioners
Chambati Mataka & Makonese, respondents' legal practitioners