STRAUSS LOGISTICS ZIMBABWE (PRIVATE) LIMITED
versus
GIFT ABRAHAM
and
199 OTHERS

HIGH COURT OF ZIMBABWE
DEME J
HARARE, 28, 29 July & 14 September 2022

Urgent Chamber Application

Adv *T Magwaliba* with *Mr C Daitai*, Ms *E Chimombe* and Mr *S Banda*, for the applicant
Mr *O Shava* with Mr *Mutsvandiani*, for the respondents

DEME J: The applicant approached this court on an urgent basis seeking the relief for the return of motor vehicles based on the principles of spoliation order or vindicatory action. The applicant's relief was couched in the following way:

"1. The 1st up to 199th respondents shall:-
1.1 In respect of unloaded and empty vehicles constituting horses and trailers belonging to the applicant which are in their possession forthwith return such vehicles to the applicant's premises at No. 116 Dagenham Road, Willowvale, Harare upon the service of this order on the 200th respondent or their legal practitioners.
1.2 In respect of loaded vehicles constituting horses and trailers belonging to the applicant which are in their possession forthwith deliver any products presently loaded on the trucks and return to the applicant such motor vehicles at the applicant's premises at No. 116 Dagenham Road, Willowvale, Harare.
2. The 200th respondent shall not interfere with the applicant or the Sheriff or his lawful assistants or 1st up to 199th respondents during the process of delivery to the applicant of its motor vehicles referred to in paragraphs 1.1 and 1.2 of this order.
3. The 200th respondent shall pay costs of this application on a legal practitioner and client scale."

Facts for this matter are common cause save as may be highlighted. The 1st up to 199th respondents were, at the material time, the employees of the applicant. They were employed as drivers. The 200th respondent is the trade union for the 1st up to 199th respondents. The applicant, which is based in Zimbabwe, is involved in the business of transport and logistics for various types of cargo. It owns trucks which transport cargo to many countries including Mozambique, South Africa, Botswana and Zambia.

According to the applicant, the 1st to 199th respondents were, at the material time, in possession of various trucks for the applicant, a point which is vehemently opposed by the respondents who averred that 103 trucks were parked at the applicant's premises having been

forcibly taken from some of the respondents. The 1st up to 199th Respondents embarked on an industrial action on 8 June 2022 which was later held to be unlawful by the Minister of Public Service, Labour and Social Welfare (hereinafter called "the Minister") on or about 22 June 2022 on the basis that the respondents did not follow the procedure set out in s 104 of the Labour Act [*Chapter 28:01*] (hereinafter called "the Labour Act"). The applicant, on 5 July 2022, applied before the Labour Court for the disposal order in terms of s 107 of the Labour Act. On 29 July 2022, the Labour Court, in its determination of the disposal order, ruled that the 1st-199th respondents should terminate the industrial action within seventy-two hours failing which the applicant may institute disciplinary action against any individual who refuses to comply with the order.

The applicant alleged that it enjoyed peaceful and undisturbed possession of the trucks and trailers and consequently moved the court to grant the present application for the return of the motor vehicles. The applicant further alleged that the 1st up to 199th Respondents have repudiated their employment contracts by continuing with the unlawful industrial action. The applicant further affirmed that the respondents have failed to return its property which exposes the applicant to financial loss. The applicant, alternatively, prayed for the return of the property based on the vindicatory action on the basis that it owns the trucks and trailers. According to the applicant, the 1st up to 199th respondents are no longer taking instructions from it, as the employer but they are now influenced by the 200th respondent which has resulted in serious financial loss for the applicant.

At the hearing of the matter, both parties raised points *in limine.* The applicant raised the point *in limine* to the effect that the opposing affidavit filed on behalf of the 1st to 199th respondents is improperly before the court on the basis that the Workers Committee which authorized the deponent of the Opposing Affidavit, by way of a resolution, to represent the 1st to 199th respondents has no capacity to represent 1st to 199th respondents. The Opposing Affidavit deposed to by Mr Mandizha, who is the Chairperson of the Workers Committee is out of order, according to the applicant's counsel, Adv *Magwaliba*. He further submitted that Mr Mandizha did indicate that he was authorized by the Workers Committee to represent the other respondents. On this basis alone, the applicant's counsel maintained that the Opposing Affidavit is made fatally defective. According to the applicant's counsel, Mr Mandizha did not make oath on his own behalf nor did he aver that he was authorized by the 1st to 199th respondents. Adv *Magwaliba* relied on the case of *Gweru Water Workers Committee* v *City of*

Gweru[1]. Adv *Magwaliba* motivated the court to regard the matter as unopposed as the Opposing Affidavit is improperly before the court.

This was opposed by the respondents. Mr *Shava*, on behalf of the respondents, submitted that there was an agreement with the counsel for the applicant that one of the respondents would depose onto the Opposing Affidavit on behalf of the rest of the respondents having realized the impossibility of having every respondent signing an affidavit given the urgency of the matter. Mr *Shava* further submitted that the *locus standi* of the Workers Committee was improperly raised as the Workers Committee is not suing or being sued in the present application. He urged the court to dismiss the point *in limine.*

The respondents raised a point *in limine* of urgency. Mr *Shava* submitted that the matter is not urgent as it was brought before the court many days after the need to act had arisen. According to the respondents, the need to act arose on 8 June 2022 when the 1st to 199th respondents embarked on an industrial action. From this date, the applicant was supposed to have swiftly approached this court and not to wait for numerous days before filing this application. Mr *Shava* also submitted that it was clear to the applicant that the Labour Court has no jurisdiction to determine the dispute of this nature. Mr *Shava* further maintained that rather, the applicant chose to pursue other ancillary matters before the Labour Court and failed to prioritise this matter if it verily believed that this matter for the recovering of its vehicles was urgent. By doing this, according to the counsel for the respondents, the applicant set its own timetable for doing things. Mr *Shava* also contended that the applicant failed to offer a reasonable explanation for the delay in filing the present application. According to the counsel for the respondents, the delay is inordinate.

The applicant opposed this point *in limine*. Adv *Magwaliba* submitted that this matter is urgent as the acts of the respondents may result in the applicant's liquidation and insolvency. According to Adv *Magwaliba*, the job action of the 1st to 199th respondents was declared to be unlawful by the Minister on 22 June 2022. The Minister further ordered the 1st to 199th respondents to cease the job action within twenty-four hours. He further submitted that the 1st to 199th respondents had the option of returning the vehicles to the applicant's premises pending their industrial action which they did not do. Adv *Magwaliba* further argued that the present application meets the threshold of commercial urgency. He referred the court to the case of Silver's Trucks (Pvt) Ltd v Director of Customs[2]. Adv *Magwaliba* submitted that the need to

[1] 2015 ZLR 945 (S).
[2] 1999 (1) ZLR 490 (H).

act did not arise on 8 June 2022 when respondents began their job action. Rather, he argued that the need to act only arose after the industrial action was declared to be unlawful by the Minister on or about 22 June 2022. After the Minister's declaration, Adv *Magwaliba*, highlighted that the 1st to 199th respondents refused to terminate their unlawful job action which had prompted the applicant to file the present application on 21 July 2022, four weeks after the industrial action had been declared to be unlawful. He further contended that the applicant also applied for the disposal order hoping that the 1st to 199th respondents would cease their strike. The applicant's counsel implored the court to dismiss the point *in limine* concerned.

The respondents also raised a further point *in limine* to the effect that the relief sought by the applicant is improper. The respondents, through their counsel, submitted that the applicant prayed for the final order instead of an interim order returnable to this court for confirmation on a particular day. Mr *Shava* referred the court to the case of *Madzingira* v *Messenger of Court*[3]. In response to this Adv *Magwaliba* submitted that there is no law which prevents the seeking of a final order on an urgent basis if the applicant has established a clear right. He referred the court to the cases of *Universal Merchant* v *Zimbabwe Independent* [4] and *Artuz* v *Zanu PF*[5]. The counsel for the applicant further maintained that the spoliation order can be obtained by way of a final order. He relied on the case of *Blue Rangers Estates (Pvt) Ltd* v *Muduviri & Anor*[6]. He further submitted that the present application has satisfied the requirements of the application for spoliation order and thus he pleaded with the court to dismiss the point *in limine* concerned.

In addition, the respondents, through their counsel, presented another point *in limine* where it submitted that the present application has no cause of action. Mr *Shava* further argued that the applicant seeks to advance the argument that the employment contracts had been repudiated through the unlawful job action while there is no sufficient evidence placed before the court satisfying that such contracts had been properly terminated. He further maintained that the 1st to 199th respondents are still employed by the applicant. The contracts for the 1st to 199th respondents' contracts still subsist, according to the counsel for the respondents. He further maintained that no order of a competent court has made a determination that such contracts have been terminated. He also asserted that it is unfounded that the 1st to 199th

[3] HMA12/17.
[4] 2000 (1) ZLR 239.
[5] HMA36/18.
[6] 2009 (1) ZLR 368.

respondents forcibly dispossessed the applicant of its trucks when the applicant gave the vehicles to the respondents some years ago as their tools of trade. The counsel for the respondents referred the court to the case of *Masamba & Anor* v *Director ZIMSEC*[7] in an endeavor to motivate the court that the present application has no cause of action.

In response, the applicant argued that the tools of trade given to the 1st to 199th respondents are for working and not for downing. Adv *Magwaliba* further contended that the respondents must return the tools of trade to the owner since they are no longer working. He further argued that by 22 June 2022, their right to strike ceased to exist as a result of a declaration that the industrial action is unlawful made by the Minister.

The 200th respondent, through its counsel, raised a further point *in limine* and argued that it had been improperly joined to the present application as it lacks interest in the matter. The counsel for the respondents submitted that it only came into the picture after the industrial action had begun. Mr *Shava* submitted that the 200th respondent interests in the matter is that it represents the 1st to 199th respondents. He further contended that it is impossible for the 200th respondent to influence the 1st to 199th respondents when it was not yet in the picture. Mr *Shava* motivated the court to remove the 200th respondent as a party to the proceedings. The applicant opposed this point *in limine*. Adv *Magwaliba* submitted that the 200th respondent influenced the 1st to 199th respondents to embark on an industrial action through various methods of communication. He further maintained that in the premises the 200th respondent must be interdicted from interfering with the return of the vehicles to the applicant's premises.

Lastly, the respondents also raised another point *in limine* where they highlighted that the present application is pregnant with material disputes which cannot be resolved by way of affidavits. It is the case of the respondents that about 103 vehicles have been forcibly taken from some of the respondents by the applicant with the use of Police. Mr *Shava*, on behalf of the respondents submitted that this is why the applicant is avoiding clearly identifying the vehicles which are in the possession of the 1st to 199th respondents. The counsel further maintained that it is common cause that all trucks do have tracking system which can make it easy to locate all the trucks in dispute. The counsel for the respondents also highlighted that it is difficult to verify the exact truck possessed by a particular respondent in light of the present application. He further submitted that the mere fact that the vehicles have not been identified makes the application fatally defective. According to the counsel for the respondents, the

[7] HH969/15.

present application is an empty order as it is incapable of enforcement. The nature of the disputes cannot be resolved by way of motion procedure according to the counsel of the respondents.

This point *in limine* for material disputes of fact was vehemently opposed by the counsel for the applicant. He urged the court to adopt a robust approach. Adv *Magwaliba* submitted that many factors are common cause and hence there are no serious disputes. He further maintained that it is not in dispute that the applicant is the owner of the trucks. He also argued that the 1st to 199th respondents have been illegally holding onto the trucks since 22 June 2022. He further contended that it is not in dispute that the applicant requires the trucks for it to execute its business. Adv *Magwaliba* further argued that there is no evidence suggesting that the respondents returned 103 vehicles to the applicant. He also claimed that in any event if it is proved that some of the vehicles have been returned, the writ for the delivery will be issued in respect of the outstanding vehicles.

In determining the points *in limine,* I will firstly deal with the applicant's point *in limine* due to its potential effect upon the Opposing Affidavit which is before the court. I will thereafter address the points *in limine* for the respondents.

The *locus standi* of the Workers Committee was settled by the Supreme Court in the case of *Gweru Water Workers Committee* v *City of Gweru* (*supra*) where the court held that:-

> "A workers committee set up in terms of s 23 of the Act cannot set up a written constitution in order to imbue itself with the capacity to sue which it does not have under the statute in terms of which it is formed. In *CT Bolts* v *Workers Committee* SC-16-12 GARWE JA said:-
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> > 'Under the common law, an unincorporated association, not being a legal persona, cannot as a general rule, sue or be sued in its name apart from the individual members, whose names have to be cited in the summons. A *universitas* on the other hand has the capacity, apart from the rights of the individuals forming it, to acquire rights and incur obligations. The position is also established that a body that has no constitution is not a *universitas* for it is the constitution that determines whether an association is or is not a *universitas*. On a proper interpretation of s 24 of the Act, it is clear that a workers committee exists to safeguard and champion the interests and welfare of the workers at the work place. It has no other function. There is no provision in the Act requiring a workers committee to adopt a constitution. There is also no requirement for a workers committee to acquire rights apart from the rights of the individuals forming it and the employees they represent. There is also no provision for a workers committee to acquire assets in its own name.'"

The Supreme Court in the case of Gweru Water Workers Committee further remarked as follows:

> "A workers committee cannot sue for any rights in a court of law because if it did, it would be acting without any authority. Any organisation performing the functions listed in s 24 of the Act cannot act outside the scope of those functions and contrary to what the regulations made

by the Minister under s 26 have prescribed. Workers committees have no right to represent employees in litigation. *Cold Storage Co National Workers Committee* v *Cold Storage Co Ltd* 2002(1) ZLR 141(H)."

Workers Committee has been defined in Section 2 of the Labour Act as:

"a workers committee appointed or elected in terms of Part VI".

Key provisions of Part VI of the Labour Act are s 23 which provides for the formation of the Workers Committee and s 24 which sets up the functions of the Workers Committee. The sections provide as follows:

"23 Formation of workers committees

(1) Subject to this Act and any regulations, employees employed by any one employer may appoint or elect a workers committee to represent their interests:
Provided that no managerial employee shall be appointed or elected to a workers committee, nor shall a workers committee represent the interests of managerial employees, unless such workers committee is composed solely of managerial employees appointed or elected to represent their interests.

(1a) Subject to subsection (1b), the composition and procedure of a workers committee shall be as determined by the employees at the workplace concerned.

(1b) Notwithstanding subsection (1a), if a trade union is registered to represent the interests of not less than fifty per centum of the employees at the workplace where a workers committee is to be established, every member of the workers committee shall be a member of the trade union concerned.

(2) For the purposes of appointing or electing a workers committee, employees shall be entitled to—

(a) be assisted by a labour officer or a representative of the appropriate trade union; and

(b) reasonable facilities to communicate with each other and meet together during working hours at their place of work; and

(c) be provided by their employer with the names and relevant particulars of all employees employed by him; so however, that the ordinary conduct of the employer's business is not unduly interfered with.

(3) In the event of any dispute arising in relation to the exercise of any right referred to in subsection (2) either party to the dispute may refer it to the labour officer mentioned in paragraph (a) of that subsection, or, in the absence of such labour officer, any other labour officer, and the determination of the labour officer on the dispute shall be final unless the parties agree to refer it to voluntary arbitration.

24 Functions of workers committees

(1) A workers committee shall—

(a) subject to this Act, represent the employees concerned in any matter affecting their rights and interests; and

(b) subject to subsection (3), be entitled to negotiate with the employer concerned a collective bargaining agreement relating to the terms and conditions of employment of the employees concerned; and

(c) subject to Part XIII, be entitled to recommend collective job action to the employees concerned; and

(d) where a works council is or is to be constituted at any workplace, elect some of its members to represent employees on the works council.

(2) Subject to subsection (3), where a workers committee has been appointed or elected to represent employees, no person other than such workers committee and the appropriate trade union, if any, may—

(a) act or purport to act for the employees in negotiating any collective bargaining agreement; or
(b) direct or recommend collective job action to the employees.
(3) Where an appropriate trade union exists for any employees, a workers committee of those employees may negotiate a collective bargaining agreement with an employer—
(a) in the case where the trade union has no collective bargaining agreement with the employer concerned, only to the extent that such negotiation is authorized in writing by the trade union concerned; or
(b) in the case where there is a collective bargaining agreement, only to the extent permitted by such collective bargaining agreement; or
(c) where the Minister certifies in writing that—
(i) the issue in question was omitted from or included in the principal collective bargaining agreement when it should not have been so omitted or included; and
(ii) the parties to the principal collective bargaining agreement have failed or are not in a position to reach an agreement on such an issue."

Consequently, in my view, the Workers Committee chaired by Mr Mandizha has no authority to represent the 1st to 199th respondents in the present application. Adv *Magwaliba* had motivated the court to regard the matter as unopposed. I do not agree with his submissions. In urgent chamber applications, parties are allowed to make oral submissions due to the urgency of the matter. Accordingly, the point *in limine* is upheld in part. In the circumstances, I will only concentrate on the oral submissions made by the counsel for the respondents and disregard the Opposing Affidavit as the deponent was authorized, through a resolution, by the Workers Committee which does not have *locus standi*.

With respect to urgency, it is apparent that our law has resolved the issue of urgency. In the landmark case of *Kuvarega* v *Registrar General and Anor*[8], the court held that:

> "What constitutes urgency is not only the imminent arrival of the day of reckoning. A matter is urgent if at the time the need to act arise, the matter cannot wait. Urgency which stems from a deliberate or careless abstention from action until the deadline draws near is not the type of urgency contemplated by the rules. It necessarily follows that the certificate of urgency or the supporting affidavit must always contain an explanation of the non-timeous action if there has been any delay."

The court should also examine the nature of relief and cause of action which may prove to be very key in determining whether or not the matter is urgent as enunciated in the case of *Document Support Centre (Pvt) Ltd* v *Mapuvire*[9] where MAKARAU J (as she then was), held that:

> "Without attempting to classify the causes of action that are incapable of redress by way of urgent application, it appears to me that nature of the cause of action and the relief sought are important considerations in granting or denying urgent applications."

[8] 1998 (1) ZLR 188 (H).
[9] 2006 (2) ZLR 240

The applicant's counsel implored the court to consider commercial urgency in the present application as the applicant is likely to make serious commercial loss if the court does not urgently intervene. In the case of *Silver's Trucks (Pvt) Ltd* (*supra),* the court held that*:*

> "The court has the power to hear an application as a matter of urgency not only where there is serious threat to life or liberty but also where the urgency arises out of the need to protect commercial interests".

In casu, the present application involves commercial issues. I do agree with Adv *Magwaliba* that this matter is urgent. The applicant will be insolvent and liquidated if this matter is not heard on an urgent basis. The 1st to 199th respondents will equally be affected if the applicant becomes insolvent as they will not be able to continue with their employment with the applicant. There are serious consequences associated with the liquidation of a company which must be avoided at the earliest available opportunity. Accordingly, the point *in limine* concerned is dismissed for want of merits.

I will now turn to the point *in limine* for the cause of action raised by the respondents. In the case of *Abrahams & Sons* v *SA Railways & Harbours*[10], the court defined the cause of action in the following way:

> "The proper meaning of the expression 'cause of action' is the entire set of facts which gives rise to an enforceable claim and includes every act which is material to be proved to entitle a plaintiff to succeed in his claim. It includes all that a plaintiff must set out in his declaration in order to disclose a cause of action."

In casu, the applicant approached the court seeking the relief for the return of trucks and trailers based on the principles of spoliation order or vindicatory action. In the case of *Savanhu* v *Hwange Colliery Company*[11], the Supreme Court, in discussing the requirements for the vindicatory action, held that:

> "The *actio rei vindicatio* is an action brought by an owner of property to recover it from any person who retains possession of it without his consent. It derives from the principle that an owner cannot be deprived of his property without his consent. As it was put in *Chetty* v *Naidoo*1:
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> > 'It is inherent in the nature of ownership that possession of the res should normally be with the owner, and it follows that no other person may withhold it from the owner unless he is vested with some right enforceable against the owner (e.g., a right of retention or a contractual right).
> > The owner, in instituting a *rei vindicatio,* need, therefore, do no more than allege and prove that he is the owner and that the defendant is holding the *res -the onus*

[10] 1933 CPD 626.
[11] SC18/15.

> being on the defendant to allege and establish any right to continue to hold against the owner… (cf. *Jeena* v *Minister of Lands*, 1955 (2) SA 380 (AD) at pp 382E, 383)…'"

In discussing the requirements of the application for spoliation order, the Supreme Court, in the case of *Blue Rangers Estates (Pvt) Ltd* (*supra)* made the following important observations:

> "*Nienaber* v *Stuckey* 1946 AD 1049 is authority for the principle that the right to the restoration of possession of the property must be established as a clear right and not a *prima facie* right before a spoliation order can be made. The right must not be open to doubt. At p 1053-4 GREENBERG JA, said:
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> > 'The learned Judge in the court below followed what was said by BRISTOWE J in *Burnham* v *Neumeyer* (1917 T.P.D. 630 at p 633) *viz*: where the applicant asks for a spoliation order he must make out not only a *prima facie* case, but he must prove the acts necessary to justify a final order – that is, that the things alleged to have been spoliated were in his possession and that they were removed from his possession forcibly or wrongfully or against his consent.'
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> I agree with what was there said as to the cogency of the proof required. Although a spoliation order does not decide what, apart from possession, the rights of the parties to the property spoliated were before the act of spoliation and merely orders that the status quo be restored, it is to that extent a final order and the same amount of proof is required as for the granting of a final interdict and not a temporary interdict."

In casu, the applicant is claiming to have been forcibly dispossessed by the 1st to 199th respondents. On the other hand, the 1st to 199th respondents, with the exception of two of them who claimed that they had no vehicles at the material time, maintained that they did not wrongfully dispossess the applicant. They insisted that they were lawfully given vehicles as their tools of trade for the employment contracts. In the application of this nature, the applicant must aver the date of dispossession as an integral component for the cause of action. No date of dispossession has been affirmed by the applicant in its Founding Affidavit. It only stated the date of the Minister's declaration as the date of dispossession despite the fact that it is common cause that the vehicles had been in possession of the 1st to 199th respondents for years. In light of this, possession of the applicant is open to some doubt contrary to observations made in the case of *Blue Rangers Estates (Pvt) Ltd* (*supra).* The applicant did not establish a clear right to the restoration of possession of the property, in my view. The present facts do not justify the granting of a final order in the form of spoliation order, in my view. It was admitted by the counsel for the applicant that all the vehicles do have tracking systems which make it

easy to identify the location of the vehicles. Despite the availability of such facility, the applicant chose to approach the court with insufficient information about the location of the vehicles. The information for the location of the vehicles would enable the dispute resolution of whether or not an act of dispossession was still in existence at the time when this matter was argued.

With respect to the requirements for vindicatory action, the applicant, in my view, partially satisfied the prerequisites of such order. After hearing this application, I invited the parties to make additional submissions with respect to the requirements of the vindicatory action having realized that the parties had not satisfactorily addressed the court on this aspect. The parties complied with the direction.

The applicant asserted that it is the owner of the vehicles. It also affirmed that the 1st to 199th respondents are refusing to return the trucks and trailers to the applicant's premises. However, the applicant failed to establish that the contractual relationships it had with the 1st to 199th respondents had been properly terminated. The applicant baldly averred that the 1st to 199th respondents are no longer its employees by virtue of the fact that they continued with the industrial action after the strike was declared to be unlawful by the Minister. In the absence of evidence of the lawful termination of employment contracts, the court is of the view that the applicant has not satisfied the conditions of the vindicatory action as postulated in the case of *Savanhu* (*supra*). Thus, the applicant, in my view, should not be entitled to the relief sought on an urgent basis since the contractual issues are still outstanding. It would be appropriate to have this matter struck from the urgent roll to allow the finalization of the contractual relationships pursuant to the Order of the Labour Court.

Further, it is a critical requirement that the applicant who seeks to rely on the vindicatory action as his or her cause of action must ensure that the property in dispute is distinctly identified. This was emphasized by the court in the case of *Jolly* v *Shannon & Anor*[12]. *In casu*, in my view, the applicant fails to clearly and unambiguously identify the vehicles which must be returned. Motor vehicles are identified through registration numbers. No such particulars have been furnished by the applicant in its Draft Order. Orders that lack precision in identifying goods that are in dispute are difficult, if not impossible to enforce. Adv *Magwaliba* argued that the vehicles will be identified at the material time in the Writ for Delivery when the Sheriff is instructed. I disagree with his submissions. Granting the relief of

[12] 1998 (1) ZLR 78 (H)

this nature would be tantamount to giving a blank cheque which is subject to abuse of court process by the holder of such order which fails to sufficiently and precisely ascertain the goods to be delivered.

Accordingly, I uphold the point *in limine* for the lack of cause of action for the reasons highlighted above. In my view, the issues leading to the insufficient cause of action are curable. In the premises, it is appropriate that this matter be struck from the urgent roll to allow the applicant to make necessary amendments to the Draft Order for the identification of the vehicles in dispute, this would also allow pending labour matters to be properly finalized in accordance with the dictates of the Order of the Labour Court.

I will now turn to the point *in* limine for the relief. I do agree with Adv *Magwaliba* that spoliation order may be granted as a final order as enunciated in the case of *Blue Rangers Estates (Pvt) Ltd* (*supra*). However, due to lack of particularity of the vehicles claimed by the applicant highlighted before, the relief sought fails to meet the basic requirements of competent relief for the return of the property. Accordingly, the point *in limine* concerned is upheld. The defect, being a remediable one, should not lead to the dismissal of the present application as this may be fixed by way of amendment if this matter is referred to the ordinary roll.

I will now shift my attention to the point *in limine* of misjoinder raised by the 200th respondent. The 200th respondent is a registered trade union having registered as such in terms of Part VII of the Labour Act. Among its functions to be specified in its Constitution, the trade union is required to represent its members in terms of s 35(a) (v) of the Labour Act. In the absence of compelling reasons, I find no merit in joining the 200th respondent to the present proceedings. Allowing this to happen would promote the prevention of trade unions from lawfully executing their duties in representing their members. This act also intimidates the trade unions, in my view as rightly submitted by the counsel for the respondents.

In the case of *Marais & Anor* v *Pongola Sugar Milling Co & Ors*[13], the court emphasized that for a party to be joined to the proceedings such party must have a direct and substantial interest in the issues raised in the proceedings. In my view, no case has been advanced justifying that the 200th respondent has direct and substantial interest in this matter.

Trade unions allow employees to enjoy the labour rights as established in terms of s 65 of the Constitution of Zimbabwe. Any act of intimidating the trade union flies against the provisions of the Constitution. The reasons advanced by the applicant are not satisfactory.

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[13] 1961 (2) SA 698 (N).

There is nothing that prevents the 1st to 199th respondents from returning the vehicles if the court makes such order. If, for example, they refuse to comply with such order, sufficient measures are enshrined in the Rules to compel compliance with the order like application for contempt of court order. Consequently, I uphold the point *in limine* of misjoinder. Accordingly, it is appropriate that the 200th respondent be removed from the present proceedings.

I will not deal with the point in limine of material disputes of fact at this moment. This will be dealt with at the appropriate time by the court on the ordinary roll.

With respect to costs, it is just and equitable that costs be in the cause. **In the result, the following order is made:**

(a) That this matter be struck from the urgent roll.
(b) That the 200th respondent be removed from the present proceedings.
(c) That costs shall be in the cause.

Magwaliba and Kwirira, applicant's legal practitioners
Shava Law Chambers, 1st to 200th respondents' legal practitioners