

TMS HOLDINGS PRIVATE LIMITED
and
PATRICK MUZONDO

HIGH COURT OF ZIMBABWE
MUCHAWA J
HARARE, 19 January, 2022, 26 January, 2022 and 2 February, 2022

Urgent Chamber Application

Z Dumbura, for the applicant
K Maeresere, for the respondent

MUCHAWA J: This is an urgent chamber application for an interdict in which the following order is sought (as amended);

“TERMS OF FINAL ORDER SOUGHT”

That you show cause to this Honourable Court if any, why a final order should not be made in the following terms:

1. The urgent application for an interdict pending the hearing of case number HC 4433/21 be and is hereby granted.
2. Respondent pays costs of suit on higher scale

INTERIM RELIEF

IT IS HEREBY ORDERED THAT:

1. The respondent be and is hereby interdicted from carrying out any farming activities at plot 4 Godavery Estates Harare pending finalisation of case HC 4433/21 and SC 477/21.
2. The respondent to remove all the impediments, crops and any obstruction hindering applicant’s business at plot 4 Godavery Estates Harare
3. The Sheriff is hereby authorized to enforce the terms of this order.”

The brief facts of this matter as alleged by the applicant, are that the applicant and the respondent had a farming partnership agreement to be carried out at plot 4 Godavery Estates

Harare, which the respondent allegedly breached leading to summons being issued under case HC 4433/21. What is prayed for under that matter is an order confirming the cancellation of the partnership agreement and eviction of the respondent and all those claiming occupation through him. That matter is pending. This current matter has been filed on the basis that despite the import of case HC 4433/21, the respondent has on 8 January 2022, continued to plant sugar beans, sweet potatoes, maize and vegetables on the land in issue outside the partnership agreement causing despondency and acrimony at the farm.

In opposition to the relief sought and at the hearing, the respondent has raised points *in limine* as follows;

1. That the matter is not urgent
2. That the matter is *lis pendens*.

I heard the parties on these issues and reserved my ruling. This is it.

Whether the matter is urgent

Mr *Maeresere* submitted that the matter cannot be said to be urgent as case HC 4433/21 was filed on 3 September 2021 and any need to act arose soon after that. This was explained to be because the applicant in its draft order seeks to interdict the respondent pending the resolution of case HC 4433/21. Further reference was made to an urgent chamber application which was filed by the respondent herein and he sought a spoliation order under case HC 584/21 whilst alleging that the applicant herein had put movement restrictions on the farm as a calculated move to push him out of the property. He prayed for the removal of such hindrances from the land on which the partnership was operating as he averred that they were interfering with his farming operations. In a judgement handed down on 29 November 2021, MANGOTA J found in favour of the now respondent. Mr *Maeresere* argued that the respondent's intention to continue with farming activities was made clear on 25 October 2021 when he filed his urgent chamber application and the need for the applicant to act arose then. The court was referred to the case of *Kuvarega v Registrar General & Anor* 1998 (1) ZLR 188 @193 in support of the above contentions.

Mr *Dumbura* submitted that the matter is indeed urgent even though there was a matter filed in September and another in October 2021. It was averred that there was however nothing happening on the ground in terms of farming activities even when the applicant filed

an appeal against the judgment of MANGOTA J under case SC 477/21. It is alleged that the applicant was prompted to act on observing that the respondent had started ploughing on 8 January 2022.

It was pointed out that nowhere in the order of case HC 584/21 was the respondent allowed to farm Mr *Dumbura* stated that all there is, is access to the farm. It was further clarified that there would be no problem if the farming was happening for the benefit of the partnership but the respondent was farming for his exclusive benefit only.

It was averred that the applicant had acted swiftly in bringing this application, therefore the matter was urgent.

In the case of *Kuvarega v Registrar General & Anor* 1998 (1) ZLR 188 (HC), it was 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 arises; 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.”

In *Documents Support Centre (Pvt) Ltd v Mapuvire* 2006 (2) ZLR (H), MAKARAU JP, as she then was put it thus;

“I understand CHATIKOBO J in the above remarks to be saying that a matter is urgent if when the cause of action arises giving rise to the need to act, the harm suffered or threatened must be redressed or arrested there and then for in waiting for the wheels of justice to grind at their ordinary pace, the aggrieved party would have irretrievably lost the right or legal interest that it seeks to protect and approaches to the court thereafter on that cause of action will be academic and of no direct benefit to the applicant.”

A rundown of the events leading to the contestations between the parties is pertinent at this stage in order to resolve the question of urgency. The parties came together in a verbal agreement, in or about 2016 or 2017 precisely for a farming partnership on the land in question. In August 2021, the applicant elected to cancel the agreement on allegations that the respondent was denying him access to the farm, was not remitting 50% proceeds of the farming activities, was denying applicant’s employees to work with him particularly during harvesting times and also deterring the plaintiff’s employees access to carry out brick moulding activities on the farm. This cancellation was then followed by summons filed on 3 September 2021 in which the applicant sought cancellation of the partnership agreement and the eviction of the respondent from the farm.

In mid October 2021, the applicant put into place what they termed security measures on the farm. These are said to have extended to the 10 hectare piece of land on which the partnership operates. These included putting a gate at the entrance and hiring security guards on the pretext of securing the assets. The respondent, believing that such restrictions were purely meant to interfere with his farming activities on the farm and to push him off the farm, lodged an urgent application for a spoliation order. He also complained of the erection of a cattle pen in his area of operation. He prayed for removal of all such hindrances to the farming operations. MANGOTA J granted the spoliation order and ordered the removal of the cattle pen from where it had been erected and ordered its relocation. He also ordered the removal of the gate from where it had been placed. I will quote the provisions in para(s) 2 (c) and (d) below;

- “c. Allow the applicant’s workers unfettered entrance onto and out of the portion of the property wherein the partnership operates.
- d. Allow the applicant and members of his family unfettered entrance onto and out of the portion of the property whereon the partnership is in operation.”

It is clear from case HC 584/21 and its judgment HH 669/21 that the respondent by seeking the spoliation order wanted to continue unhindered in the farming activities. This is what the court granted him particularly in paragraph 2 (c). His employees were employed to carry out the farming activities and they were granted unhindered access. This information was not lost to the applicant when it filed its appeal to the Supreme Court. As far back as 25 October when the respondent filed his application for a spoliation order, it was clear he intended to continue with his farming activities. This was made crystal clear by the judgment of MANGOTA J. This is a case where the applicant has waited until the day of reckoning. The harm allegedly threatened in January 2022 was always there for him to see in October 2021 through to 29 November 2021.

In any event, as the applicant seeks to interdict the respondent pending finalisation of case HC 4433/21 which was filed on 3 September 2021, the need to act arose immediately thereafter and not in January 2022. Equally as the applicant seeks to bar the respondent pending finalisation of the appeal filed under case number SC 477/21, it should have acted immediately thereafter given respondent’s clear intention to continue with farming activities. I find no urgency in this matter and accordingly strike it off the roll of urgent matters with costs. In this case it is no longer necessary to consider the other point in *limine* raised.

Zimudzi & Associates, Applicant's Legal Practitioners
Chizengeya Maeresera & Chikumba, Respondent's Legal Practitioners