

EDWARD MUKARAKATE
and
IRENE MUKARAKATE
versus
ELIAS TONY RIZK
and
CHIEDZA MANDIZVIDZA

HIGH COURT OF ZIMBABWE
MOYO J
BULAWAYO 24 JUNE AND 9 JULY 2015

Urgent Chamber Application

Mr *R. Ndlovu* for the applicants
Mr *P. Mukono* for the respondents

MOYO J: This is an urgent application wherein the applicant seeks the following interim relief:

“Pending the finalization of this matter, the applicant shall be granted the following relief:

- 1) The respondents be and are hereby interdicted from interfering with the running and conduct of business of Sungano Motel, in Shurugwi until the finalization of the arbitration process.
- 2) The respondents be and are hereby interdicted from collecting company documents belonging to Sungano Motel, Shurugwi pending the finalization of the arbitration process.
- 3) The respondents be and are hereby interdicted from accessing and disrupting the running of business at Sungano Motel, Shurugwi pending finalization of the arbitration process.”

The facts of the matter are that applicants are business partners with one Samir Ghattas who is currently outside the country. The parties have a partnership wherein they run this

Sungano Motel in Shurugwi. The partnership fell into problems culminating in applicants obtaining a provisional order against Samir Ghattas in HC 374/12 on 6 February 2012. The interim relief granted by virtue of that provisional order is as follows:

“Pending the finalization of the matter the applicant be granted the following relief:

- 1) That the respondent be and is hereby interdicted from disturbing or interfering with the applicant’s administrative and financial duties in running Sungano Motel.
- 2) The respondent is further interdicted from proceeding with the construction or renovations at the Sungano Motel pending the arbitration process in terms of the partnership agreement or an order of this court.

Applicants aver that Samir Ghattas apparently gave respondents a power of attorney to act on his behalf. They allege that as a result, respondents have come to the motel to interfere with their employees and demanding certain documents.

Respondents deny ever doing such and allege that the only time first respondent went there, was in the presence of the police to pursue certain criminal issues. Second respondent, it is averred has never set foot at the Sungano Motel premises. Part of the mandate given to the respondents by Samir Ghattas in the power of attorney is to follow up on the arbitration process.

In following up on the arbitration process, the respondents are bound to abide by the terms of the provisional order issued by this Honourable Court on 6 February 2012 for they can not exercise powers that their principal has been specifically stripped of in terms of the provisional order.

If their principal is barred through a court order from interfering with the administration and running of Sungano Motel pending arbitration, then they can not whilst waving the power of attorney seek to do so.

First respondent states in paragraph 12 of the opposing affidavit that he has not caused any havoc at the motel but that he only went with the police to investigate the issue of fraud involving \$80000-00. Be that as it may, the power of attorney that first respondent has is to follow up on arbitration and following up on arbitration certainly means being in contract with the arbitrator, his lawyer and applicants’ lawyer in a bid to finalise the arbitration process.

Respondents have challenged second applicant's affidavit which is uncommissioned as irregular. It is irregular yes, and will consequently, be expunged from the record, meaning there is no affidavit by the second applicant.

Again respondents have raised the issue of urgency, that failure by applicant to mention the precise date when the interference occurred, means that the matter is not urgent as the court can not calculate for itself if the matter was brought within the normal bounds of urgency. In my view, failure to mention the specific date of interference would not on its own vitiate urgency, unless if the respondents had alleged that the interference in fact occurred a long time ago. Respondents also allege that the applicant became aware of the power of attorney through an email in September 2014 but they did nothing until now.

Applicants' counsel, correctly submitted that, the mere existence of the power of attorney did not give rise to urgency, but that rather, what propelled applicant into action was the interference.

I am convinced that respondents or one of them did interfere with the applicants' running of Sungano Motel in breach of the provisional order operating against their principal. The power of attorney authorizes them to follow up on the arbitration process and certainly that does not entail going to the motel on any mission as that would now fly in the face of the provisional order.

I am satisfied that the applicant has made a good case for the relief sought and I accordingly grant the provisional order.

Messrs R. Ndlovu and Company, applicants' legal practitioners
Danziger and partners, respondents' legal practitioners