

HB 50/18
HC 3084/16
X Ref HC 2746/17; HC 3246/17

ROBERT NCUBE

Versus

PETROS MOYO

And

MESSENGER OF COURT N.O.

IN THE HIGH COURT OF ZIMBABWE
MAKONESE J
BULAWAYO 15 DECEMBER 2017 & 1 MARCH 2018

Urgent Chamber Application

D. Moyo for the applicant

B. Ndove for the respondent

MAKONESE J: Litigants who do not disclose all the material averments that are pertinent to their applications only have themselves to blame, where their applications are dismissed by reason of material non-disclosure. Parties who approach the court seeking urgent relief have the duty not only to be truthful to the court but of being candid to the extent that they must state their case precisely and accurately to enable the court to understand the basis of the claims. In this urgent application the background facts are not apparent from the application itself. One has to scan through the opposing affidavit and the various documents annexed in the urgent application to obtain a full appreciation of the nature of the dispute. This is not desirable and may in certain instances be misleading.

On the 13th December 2017 the applicant filed an urgent application seeking the following relief;

“Interim relief sought

1. Pending the finalisation of this matter, the warrant of committal of applicant under case number HCA 101/15 and the writ of execution under case number MC 6187/12 be and is hereby stayed.
2. In the event of the applicant having been lodged to a prison or is under detention, e be and is hereby released with immediate effect pending the finalisation of this matter.

Terms of final order

1. Pending the finalisation of case numbers HC 3237/17 and HC 3084/16 the warrant of committal of applicant under case number HCA 101/15 and the writ of execution under case number MC 6187/12 be and are hereby suspended.”

On the 15th December 2017 after hearing oral arguments I dismissed the application with costs. These are my reasons for dismissing the application.

In terms of Practice Direction 3 of 2013, applicant was required to set down the matter under case number HC 3084/16 within 3 months from the 12th December 2016. This the applicant failed to do. The application under case number HC 3084/16 was then in terms of Practice Direction 3 of 2013 deemed abandoned on the 5th September 2017. The applicant was immediately advised by the Registrar of this court of such abandonment, but for a period of 3 months from the date of being advised about such abandonment of the matter, applicant still did not take action until the 13th December 2017 when this urgent application was filed. It was close to 12 months from the date the matter was postponed *sine die* to the date the applicant purported to take action by way of this urgent chamber application.

Brief factual background

The parties have since 2012 been locked in a land dispute involving boundaries. Applicant is a land beneficiary under the A2 scheme at Helenvale M, plot number 13, Umguz District. The piece of land is depicted in the offer letter as being 40 hectares in extent, however investigations by the Lands Resettlement Officer revealed that applicant was in fact occupying 50 hectares, 10 hectares more than he was allocated. The 1st respondent was also offered plot 12 of Helenvale M, Umguz District under the A2 model. 1st respondent was allocated to hectares, but investigations revealed that he was occupying 142 hectares, 102 hectares more than what he

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was offered in his offer letter. It was recommended by the Lands Resettlement Officer that pending the resolution of the dispute the two should proceed as follows:

“We recommend that since both plot holders have a lot more than what they were officially allocated, they should maintain the original boundaries pegged by DDF so that Mr Ncube’s homestead is wholly in plot 13 ...” (emphasis added)

A lot has happened in this matter and various claims have been filed by the parties against the other. The record indicates that the following actions have been filed to date: MC 6187/12, HCA 101/15; HC 3084/16; HC 3246/17, HC 3237/17. A Writ of Personal Attachment and Committal to Prison was issued under case number HB 237/16 when this court adjudged that the applicant was guilty of contempt of court by reason of having refused to comply with the Magistrates’ Court order under case number MC 6187/12 directing him to vacate a portion of the 1st respondent’s plot namely, plot number 12 of Helenvale, Umguza. The applicant was further fined US\$500 for contempt, which was wholly suspended on condition the application vacated the 1st respondent’s aforesaid plot by the 30th October 2016. The recommendation by the Ministry of Lands was that the parties should revert to their original boundaries in such a manner that applicant’s homestead was wholly in plot 13. This is the source of the problem. The applicant though stating that he has moved onto the original boundaries still has his plot encroaching into the 1st respondent’s plot. In spite of the clear order of this court, the applicant has been dragging his feet and filing baseless applications meant to prevent the enforcement of lawfully obtained orders.

I have had occasion to peruse the judgment in the matter involving these same parties *Petros Moyo v Robert Ncube* HB-237-16 wherein MATHONSI J expressed these remarks at page 6 of the cyclostyled judgment.

“A person who disobeys a court order is in contempt of court. Where a court order is carried into execution by the eviction of the respondent and the respondent returns to the property from where he was evicted there can be no ambiguity. He is simply in contempt and no amount of argument over imagined boundary disputes can change his disdain of a court order.”

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See also *Mathuthu v Chegutu Municipality & Ors* HH-502-14.

The applicant has deliberately refused, failed or neglected to pay the fine imposed by this court in the appeal judgment under HB-237/16. It is not clear why the applicant has not done so. Even when the messenger of court attached the applicant's cattle, the applicant has disposed or spirited away such cattle. Applicant has evaded the messenger of court to avoid service of the warrant of committal. The urgent application, it would seem, was one of such desperate attempts to frustrate the execution of court orders. This court cannot assist the applicant in his bid to subvert the enforcement of court orders.

For these reasons, I dismissed the urgent application with costs.

Messrs Samp Mlaudzi & Partners, applicant's legal practitioners
Ndove & Associates, 1st respondent's legal practitioners