

ASHMAN (PRIVATE) LIMITED
versus
HARARE CAR BREAKERS, SALES AND REPAIRS (PVT) LTD
and
BOBBY MAPARANYANGA

HIGH COURT OF ZIMBABWE
BHUNU J
HARARE 29 January 2004

Opposed Application

Mr *Madya*, for the applicant
Mr *Chiparuti*, for the respondent

BHUNU J: It is conceded that supplementary affidavits were unprocedurally filed. I shall therefore not take them into account in determining this application.

The second respondent Bobby Maparanyanga is the managing director of the first respondent Harare Car Breakers, Sales and Repairs (private) Limited.

The first respondent used to be the owner of a certain property known as Lot 1 of Willowvale, Gleneagles Road, Willowvale. That property was sold in execution at the instance of Zimbabwe Banking Corporation sometime in December 1994.

The applicant bought the property at a sheriff's sale and transfer was duly effected into its name on the 17th February 1995. Shortly thereafter the first respondent embarked on a series of unsuccessful applications in the High Court calculated to reverse the sale in execution and to restore ownership to it in cases number HC 3353/91, 1239/95, 10851/96, 5187/01, 3247/02 and 3251/03.

In case number HC 3012/95 the applicant successfully sued the respondents and they consented to eviction from the disputed property. Having consented to eviction they nevertheless persisted with their frivolous applications to reverse the sale in execution. The respondents were ordered to pay costs in all these applications which they lost to the applicant. An attempt to execute drew a *nulla bona* return.

It is clear to me that the respondents are determined to harass the applicant with frivolous and vexatious litigation in the comfort of the knowledge that the applicant will not be able to recover any costs from them. To date the applicant has been put to considerable expense which it is unable to recover.

The respondents' conduct in this respect amounts to an abuse of process. In the circumstances the applicant has sought a decree of perpetual silence barring the applicant from instituting further legal proceedings on the same cause against it and its subsidiaries or alternatively such proceedings be instituted with the leave of court. The applicant seeks costs on the higher scale. Having already made the observation that the respondents' conduct through out the various proceedings amounts to an abuse of process, costs at the higher scale are justified.

The respondents have objected to being muzzled claiming that it is their constitutional right to institute legal proceedings and to have their day in court.

That much is granted but in exercising their constitutional rights they must not infringe on the rights of others through an abuse of process.

Because the right claimed by the respondents is a fundamental right enshrined in the Constitution I would hesitate to muzzle the respondents at this stage. If however the respondents are prepared to carry on with their frivolous litigation then, they must do so without putting the applicant to unnecessary expense.

In the premises it is ordered:

1. That the respondents are free to institute any legal proceedings against the applicant and its subsidiaries after meeting all legal costs as ordered by this court in all previous legal proceedings.

2. That before instituting fresh legal proceedings against the applicant and its subsidiaries in respect of the property known as Lot 1 Willowvale, Gleneagles Road, Willowvale, Harare the respondents shall furnish security for costs to the satisfaction of the Registrar.
3. That the respondents are ordered to pay costs for these proceedings on an attorney client scale jointly and severally one paying and the other to be absolved.

Wintertons, the applicant's legal practitioners.

Legal Aid Directorate, respondents' legal practitioners.