

JOSEPH CHIURUGWI  
vs  
SAM LEVY  
and  
DETECTIVE INSPECTOR TSETSE  
and  
THE COMMISSIONER OF POLICE

HIGH COURT OF ZIMBABWE  
BHUNU J  
HARARE 3 February and 3 March 2004

**Urgent Application**

Mr *Chinyama*, for the applicant  
Mr *Paul*, for the 1<sup>st</sup> respondent  
Mr *Zivhu*, for the 2<sup>nd</sup> and 3<sup>rd</sup> respondents

BHUNU J: The facts giving rise to this application are to a large extent common cause. The applicant is a Colour Sergeant in the Zimbabwe National Army Parachute Regiment Headquarters at Inkomo barracks. He is a new farmer who has been allocated Donnington Farm in Chakari under the Government resettlement scheme.

The first respondent is a shareholder and director of Lilifordia Estates (Pvt) Ltd which owns Lilifordia Farm and Beef Master Farm in Norton.

On the 19<sup>th</sup> December 2003 the applicant was arrested and detained by the police on suspicion that he had stolen cattle from Lilifordia Estates (Pvt) Ltd. The police impounded and removed the cattle to Beef Master Farm for safe keeping as exhibits pending the criminal trial.

The exact number of cattle which were impounded and taken to Beef Master Farm is in dispute. The applicant alleges that they were 49 whereas the respondents allege that they were only 45. It is however not necessary to resolve that dispute at this juncture. Suffice it to say that suspected stolen cattle in excess of 40 herd of cattle were removed from Donnington Farm and taken to Beef Master Farm for safekeeping as exhibits. I however note in passing that the applicant in his affidavit vacillates between saying there were 49 and 45 cattle.

The gravamen of this application is not the number of cattle involved but who should keep the cattle pending the criminal trial. The applicant for good reason feels that it is undesirable for the complainant to keep the exhibits because of the danger that they may be interfered with.

The respondents equally feel that it is undesirable for a suspected thief to keep the exhibits pending his trial.

None of the parties have been able to come up with a viable alternative neutral place where the cattle may be kept pending the criminal trial. The police are unable to keep the cattle for want of resources.

The applicant's request that the cattle be kept at Parachute Regiment Farm under police guard is untenable. Firstly because this is where he is based and is in charge of the farm. Secondly, there is no evidence that the authorities at that farm have agreed to keep the cattle on the farm. There is no indication as to who will feed and provide medication for the animals.

In lodging his application the applicant did not disclose that on the 8<sup>th</sup> January 2004 the police in the company of a Veterinary Surgeon and other personnel from the Ministry of Health had inspected the cattle in question in the presence of the applicant and his legal practitioner. The animals were video taped and identified.

On the basis of the above evidence which is common cause, I am satisfied that police took reasonable precaution to avoid interference or tampering with the disputed exhibits.

While it is undesirable for the complainant to keep exhibits of the disputed property, in this case because of the peculiarities of the circumstances at hand it has become necessary for the complainant to keep the exhibits.

In my view it is a lesser evil that the complainant be allowed to keep the exhibits rather than the accused. The probabilities are that the accused is more likely than the complainant to interfere with the exhibits. It is also contrary to public policy that a suspect is allowed to keep the property he is alleged to have stolen. No such stigma attaches to the complainant being allowed to keep the property he claims to be his.

That being the case this application cannot succeed. It is accordingly ordered that the application be and is hereby dismissed with costs.

*Chinyama & Partners*, the applicant's legal practitioners.

*Civil Division, Attorney-General's Office*, 1<sup>st</sup> and 2<sup>nd</sup> respondents' legal practitioners.

*Wintertons*, 3<sup>rd</sup> respondent's legal practitioners.