

TAWADZERA BATIRAI SHE ZISHIRI

and

SHIRELLA PETERS

and

ANDRA NYANDEBVU

and

VIOLET CHATINDO

and

TEMPTATION GURURE

and

TOBIAS MUSHAWATU

and

ORIPA MAKATI

and

MEMORY MASINGA

and

EDITH CHUMA

and

RACHAEL CHAPOTERERA

and

COSMAS CHIVENDE

and

SHINGAI BISHI

and

BATSIRAI MAHONYA

and

VIMBAI NEHANDA

and

FORTUNATE ZVINONGOZA

and

JUSTINE KOFI

and

STEWART VENGAYI

and

SIPIWE MUKOKI

and

TAPIWA MUTEBUKA

and

KUDZANAI MUPONDI

and

KANISAI SIPANDA

and

REASON JAMARI

and

ELIAS MAGEDHE

and

DINA MAHRAN

and

SIMBAI PAWANDIWA

and
NYARAI MBISWA
And
FORTUNATE DUBE
and
AGNES CHIRIPASHI
and
WATSON KATEMADARO
and
AARON CHINGWARU
and
JABULANI NHENDE
and
NAOMI TSINGO
and
LUCY CHIWAYA
and
SEKAI SIPANDA
and
ANNASTASIA MUYENGWA
and
LANGTON ZINHANGA
and
LOVEMORE MAVENEKE
and
ELVIS KATONGOMARA
and
GRAY MUPARADZI
and
LOICE MASHOKO
and
CLEOPHAS MATINHARE
and
LOVEMORE CHINYANGA
and
BELINDA NYAMIMBA
and
ESTHER MASATIENGANJE
and
FORTUNATE ZISHIRI
and
FAITH MUNYUKI
and
NOMHLE NDLOVU
and
LLOYD BONDE
and
GRACE MAJENGWA
and

ABIGAL MASHIRI
and
TAURAI MAKANISO
and
MAXWELLBESENI
and
TAHEERA JOGEE
and
RACHELLE JOHN
and
CHARLEY JOHN
and
SHIRLEY FERNOUGHTY
and
NYASHA MUGOMBA
and
WALTER LANGERVELDT
and
JOHN CHIHOBVU
and
HAPPYSON CHINGARU
and
OWEN CHIGONDO
and
KUMBIRAI MAJAPI
and
SUSAN KAYISA
and
NYASHAMUPONDI
and
PETER CHIMUSIMBE
and
TINASHE MADHENDE
and
KUDZAI VERE
and
WILLIAM MIZIRA
and
SINATRA CHIYANGWA
and
REBEKAH KADIWA
and
LIFE JAKOPO
and
PROSPER KOFI
and
NGONI GWASIRA
and
PRIVILEGE CEMENT

and
TENDAI CHITAUNHIKE
versus
STREAMSLEIGH INVESTMENTS (PVT) LTD

HIGH COURT OF ZIMBABWE
MATHONSI J
HARARE, 14 October 2014

Urgent Chamber Application

E. Gijima, for the applicant
T.W. Nyamakura, for the respondent

MATHONSI J: The 76 applicants are employees, or is it former employees, of Trauma Centre & Hospital, which, as that name suggests, is not a juristic person. The exhibits they have sampled in the form of 2 payslips for Watson Katemadaro (the 29th applicant) and his employment contract suggest that they were employed by an entity known as African Medical Investments PLC which traded as Trauma Centre. That entity is not a party to this application, in fact it cannot possibly be because it is not the one which won the Supreme Court judgment which has been taken into execution. The first respondent did.

The first respondent is in fact the lawful owner of the premises located at Number 15 Lanark Road, Belgravia Harare. Following a protracted dispute over that property between the first respondent and an entity known as Autoband Investments (Pvt) Ltd, we are informed that the latter had unlawfully and forcibly removed the first respondent from the premises in 2011 and commenced operating a medical centre there, the Supreme Court resolved that dispute by judgment delivered on 17 June 2014 (SC 43/14) the operative part of which reads:-

- “1. The appeal is upheld with costs
2. The judgment of the court *a quo* is set aside and substituted with the following:-
 - (a) The eviction order granted by the Magistrates Court Harare, in the matter between *Autoband Investments (Private) Ltd t/a Trauma Centre v African Medical Investments Plc* under Case No. MC 16435/11 be and is hereby declared to be of no force, effect and application as against the applicant.

- (b) It is ordered that the applicant be and is hereby restored to possession and occupation of premises known as Stand 2924 Salisbury Township of Salisbury Township Lands situated at Number 15 Lanark Road Belgravia Harare.
- (c) It is ordered that the respondent pays the costs of this application on a legal practitioner client scale”.

In pursuance of the order of the Supreme Court, the first respondent issued a writ and moved for the eviction of Autoband Investments (Pvt) Ltd t/a Trauma Centre from the premises. Kicking and screaming, Autoband has been evicted obviously with all those claiming through it including its patients and indeed employees. Following that, the employees have approached this court on an urgent basis arguing that they were not party to the Supreme Court matter and for that reason they cannot be evicted on the basis of its order. They seek the following relief:-

“TERMS OF THE FINAL ORDER SOUGHT

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

- (A) The order by the Supreme Court in Case No. SC 43/14 does not give the first respondent a right to dismiss the applicants from their employ, evict or interfere with their respective staff operations at Trauma Centre and Hospital situate at Stand No. 2924 Salisbury Township of Salisbury Township Lands situate at No. 15 Lanark Road Belgravia, Harare.
- (B) The 1st respondent to pay costs at an attorney and client scale.

INTERIM RELIEF (*sic*)

It is hereby ordered that pending the confirmation of this matter (*sic*) the applicant is granted the following relief:-

- (A) The 1st and 2nd respondents be and are hereby ordered to stay eviction of all staff at premises known as stand 2924 Salisbury Township of Salisbury Township Lands situate at No. 15 Lanark Road, Belgravia, Harare pending the determination of the final order.
- (B) That the 1st and 2nd respondents shall not interfere with the respective staff operations at Trauma Centre and Hospital situate at Stand No. 2914 Salisbury Township Land situate at No 15 Lanark Road, Belgravia, Harare”.

The applicants state in their affidavits that they seek a stay of eviction/dismissal from

employment because they were “at all material times employees employed at Trauma Centre and Hospital with respective contracts of employment thereto”. They go on to say that in pursuance of the Supreme Court judgment the first respondent has ordered their “dismissal and eviction” from there. The first respondent has, after the dismissal and eviction, barred them from the premises and from performing their duties. To them the first respondent’s conduct “amounts to unlawful summary dismissal” from employment in violation of s 16 of the Labour Act [*Cap 28:01*] which prohibits the alienation or transfer their employment. They therefore seek a reversal of what they perceive to be an illegality.

The applicants’ affidavits founding this application are remarkable, not by what they say, but by what they do not say. They do not say who their employer is. They do not state the basis upon which they are or were in occupation of the premises and the basis upon which they are entitled to remain in occupation. In fact, quite frankly this is an exceedingly novel application which does not appear to be founded upon any recognisable legal principle. The application is simply an exercise in futility.

On the other hand, the first respondent’s case as presented in the opposing affidavit of Peter John Annesley, its Chief Operating Officer, is a straight forward one. It is that although it is the owner of the premises, which it occupied with its employees, it was evicted unlawfully by Autoband Investments (Pvt) Ltd an alter ego of one Vivek Solanki. That company went on to unlawfully run a hospital facility at the premises and employed the applicants while doing so. The applicants have never been employees of the first respondent.

The first respondent finally obtained an order of the Supreme Court reinstating its occupation of the premises, on the strength of which it has evicted Autoband Investments (Pvt) Ltd and all those claiming through it, including the applicants, from the premises. An eviction cannot be a transfer of undertaking as a going concern as to bring it under the provisions of s 16 of the Labour Act [*Cap 28:01*] and there is no agreement between those parties to inherit the employees.

I have already stated that the applicants have not alluded to any legal basis upon which they lay a claim to occupation of the premises or to employment by the first respondent. What they have placed before me is a Spanish Omlete which, to say the least, is an excursion in purposeless activity. They appear to suggest that because they were employed by an employee who ran a hospital facility at the premises, they should remain there till kingdom come and anyone taking over the premises for whatever reason should inherit them, even when there is no contractual relationship with them.

They appear to suggest that for them to be evicted, they should have been cited as party to the proceedings which terminated the tenancy of their employer. What is beyond doubt is that they were at that property on the basis of their employment by Autoband Investments (Pvt) Ltd and were therefore claiming occupation through that entity. It having lost the right of occupation, the applicants cannot then acquire miraculously a non-existent right of extended occupation. They should be evicted along with their employer.

While surprises never cease really in the practice of law, it is difficult to comprehend how the applicants can seek to continue executing duties at the premises. They were not employed by the walls of the building. One wonders what it is they would like to remain doing there after the departure of their employer. They would like to force the first respondent to employ them against its will. The applicants are employed by Autoband Investments (Pvt) Ltd which should continue to employ them even after its eviction or should terminate them according to law.

I agree with Mr *Nyamakura* for the first respondent that to the extent that the applicants are seeking to enforce an employment contract, that dimension of the matter takes the form of a labour dispute which should be resolved by the Labour Court in terms of the ouster provisions of s 89(6) of the Act. This court will not be drawn to exercise jurisdiction over a purely labour dispute.

The first respondent has asked that costs be awarded against the applicant's legal practitioner *de bonis propriis* on a punitive scale. While I agree that the application itself is speculatively without merit I am not persuaded that the costs should be for the account of the legal practitioner. The applicants have made their bed and should blissfully lie on it.

In the result, the application is dismissed with costs on the scale of legal practitioner and client.

Mapaya & Partners, applicants' legal practitioners
Mtewa & Nyambirai, respondent's legal practitioners