

FALCON JUNIOR SCHOOL
versus
HATFIELD PRESBYTERIAN CHURCH

HIGH COURT OF ZIMBABWE
MWAYERA J
HARARE, 21 January & 24 January 2014

Urgent chamber application

R.M. Mupita, for the applicant
G. Madzima, for the respondent

MWAYERA J: The application was placed before me through the urgent chamber book. The matter was set down for hearing. During the hearing on 21 January 2014 the respondent filed opposition papers. Both applicant and respondent counsels addressed the court on urgency and merits.

The applicant sought to have the *status quo* maintained arguing that the respondent had despoiled them by unlawfully taking the law into their own hands. The applicant argued that the respondent had locked gates to the premises from which applicant operates a school. This was to the detriment of more than 100 students and parents who paid fees for their children's education. The respondent on the other hand raised two points *in limine*.

(1) That the applicant has not complied with order 32 as they have not stated the application is urgent.

(2) That the applicant has no *locus standi* to bring the matter since the applicants is run by the respondent.

I will deal with the first point. It is clear from the certificate of urgency that the applicant is decrying that they have been disturbed of their lawful possession and as such cannot carry on with their activities at the school. This was further buttress in the founding affidavit and in the oral submissions the respondent counsel did not repute having locked out the applicant. From papers one is satisfied that the matter is urgent and ought it be heard on urgent basis.

The second point *in limine* that the applicant has no *locus standi* equally crumples when viewed with the fact that the respondent is being run by the deponent to the founding

affidavit Wilbert Runyayaro Sayimani. This is moreso when viewed in conjunction with respondent's submissions that he was running the school on behalf of applicant. It is a fact that the school gates or premises were locked up at the expense of the school operations and the responsible school runner has approached the courts for redress. Having ruled out that the points *in limine* raised do not hold water the next point is on whether or not the application is urgent.

The legal position on what constitutes urgency is settled in *plethora* cases suffices to mention *Kuvarega v Registrar General and Anor* 1998 (1) ZLR 188. A matter is viewed as urgent if its such that it cannot wait for the normal roll or queue of set down process. This is in circumstances where the delay would render the relief hallow in that delay would occasion irreparable harm. A perusal of the applicant's papers filed of record in particular the certificate of urgency and founding affidavit by Wilbert Runyayaro clearly shows a dire situation which requires immediate intervention so as to restore the status *a quo*. The respondent has unlawfully locked the premises taking the matter into their own hands to the detriment of school children and their parents. Spoliation by nature is urgent and this application falls within those parameters. The argument by the respondent that the lease agreement was not properly obtained and that the deponent to the founding affidavit had some misunderstanding with the respondent does not change the complexion of the matter at all since it does not show that the unlawful locking of premises or gates was self created or occurred way back and the applicant did not act. The matter is clearly urgent.

From submission filed it is clear that before the locking up of gates the applicant was in undisturbed possession of the premises in question and that the applicant was a school for children registered with it. The applicant might not be following Ministry of Education and Harare City health by laws but that does not give the respondent a right to unlawfully disposes the applicant under the guise of desire to comply with Ministry of Education and City Health regulations in what appears on the face of it to be rental and personality wrangle. The peaceful undisturbed possession has to be restored and accordingly the interim relief as prayed for is granted.

Muringi Kamdefwere, applicant's legal practitioners
Nyawo Ruzive Legal Practice, respondent's legal practitioners