

JEAN PAMELA VANT
versus
GEORGE JECHE

IN THE HIGH COURT OF ZIMBABWE
MATHONSIJ
HARARE, 22 April 2015

Urgent Chamber Application

D. O'chieng, for the applicant
The respondent in person

MATHONSI J: This application has been brought on a certificate of urgency and the applicant seeks an order directing the registrar of this court to set down a court application which she has filed in HC 3440/15 on an urgent basis. In that application the applicant would like the respondent to be held in contempt of a court order issued by this court, per Dube J, on 18 February 2015 and ancillary relief.

The application in HC 3440/15 was issued on 16 April 2015 about the same time that this application was filed. In that application, the respondent was given 10 days within which to respond to the application. We do not know whether the respondent will file opposition to that application. If he elects to do so, that will trigger the application of r 223(3) and (4) of the High Court of Zimbabwe Rules, 1971.

Subrules (3) and (4) provide:

- “(3) Subject to rule 223A, without the consent of the respondent, no application in which a notice of opposition and an opposing affidavit have been filed, shall be set down for hearing less than eight business days after the notice of opposition and opposing affidavit were filed.
- (4) No contested matter shall be set down for hearing during vacation unless a legal practitioner certifies in writing that it is urgent, giving reasons for its urgency, and the prior approval of a judge to the hearing of the matter has been obtained”.

Mark Richard David Stonier, a legal practitioner of this court has certified the matter as

urgent because:

- “A) A perusal of the founding affidavit, annexures herein and the court order in HC 11189/14 reveals conduct on the part of respondent that is not only plainly contemptuous of the said order but unless applicant is accorded urgent relief the delay inherent in proceeding by ordinary court application will undoubtedly cause grave and irreparable further loss to applicant,
- B) It is only this weekend that respondent has commenced his unlawful agenda of disrupting applicant’s dairy operations in contempt of the order granted in HC 11189/14 by *inter alia* entering upon applicant’s farm, commandeering the farm entrance, locking the staff out of their houses and forcing the removal of applicant’s cattle therefrom.
- C) In my respectful submission an urgent determination of the application in HC 3440/15 to hold respondent in contempt is the only practical and effective remedy available to the applicant in the circumstances.”

It would seem that the respondent has been wreaking havoc at a dairy farm run by the applicant in Gweru known as Throngrove Farm. Although he has his own Lyndene Farm which is 6 kilometers away from the applicant’s farm, the applicant complains that the respondent has been interfering with her dairy farming. He has repeatedly blocked the gate entrance preventing her employees from accessing the farm and their houses. He has brought workforce and material onto the farm and commenced construction of houses and has cleared the land for cultivation unlawfully.

It was such conduct which prompted the applicant to approach this court in HC 11189/14 for redress. She obtained an order on 18 February 2015 in the following:

“IT IS ORDERED THAT:

1. Applicant, her agents, managers, employees and invitees forthwith be restored to free undisturbed occupation, use and access to Lot 55A Umsungwe Block in Gweru otherwise known as Throngrove Farm.
2. The respondent, and all those holding occupation under him, are interdicted from in any manner interfering with the right of applicant and her staff to free, peaceful, undisturbed and unimpeded use and access to Thorngrove Farm and shall forthwith vacate the said farm.
3. The Sheriff shall forth-with cause this order to be implemented.
4. The respondent shall pay costs”.

According to the applicant that court order did not deter the respondent from continuing with his antics which are not only unlawful and contemptuous but are also creating a dangerous

situation at the farm and disrupting operations. She would therefore want the contempt of court proceedings to be heard urgently.

The respondent was served with the notice of set down for today's hearing and appeared in person although he chose not to present his side of the story on the allegations, content to only state that he is acting on behalf of someone else. I have no reason to doubt the facts set out by the applicant and they point to anarchy of unacceptable proportions. There is therefore a pressing need for the rules of court relating to set down of applications to be side stepped in order to arrest the situation. After all the rules are there to assist the court achieve justice between litigants.

I am of the view that this is not a matter in which temporary relief in the form of a provisional order can be granted. Although the applicant has submitted a draft provisional order, only final relief is appropriate in the circumstances. Thankfully the respondent was able to attend.

He stated that he has not yet received the main application although the Sheriff's returns show that he was served with that application yesterday. He stated that he would require more time than the two days proposed by Mr *O'chieng* for the applicant, to file opposing paper. My view is that this is an urgent matter which cannot wait any longer than is necessary.

In the result, it is ordered that;

1. The court application filed by the applicant in HC 3440/15 is urgent in nature and should be heard on an urgent basis.
2. The applicant is directed to serve another copy of that application on the respondent today.
3. The respondent shall file his notice of opposition and opposing affidavit to it, if any, within 2 days of the second service of the court application upon him.
4. The applicant may file an answering affidavit, if any, within 2 days following receipt of the opposition of the respondent.
5. The respondent shall file his heads of argument within 2 days of receipt of the applicant's heads of argument.
6. Thereafter the registrar of this court shall cause the application to be set down for urgent hearing within 5 days from the date of filing of the respondent's heads of argument, if any.
7. The costs of this application shall be in the cause.

Kevin J Arnott, applicant's legal practitioners