

MWANGA LODGE (PRIVATE) LIMITED  
versus  
VICTOR RUNGANI  
and  
THE SHERIFF FOR ZIMBABWE

HIGH COURT OF ZIMBABWE  
MUSHORE J  
HARARE, 23 May & 30 October 2018

### **Urgent Chamber Application- Spoliation**

*O Daka*, for the applicant  
*T Dzvetero*, for the 1<sup>st</sup> respondent

MUSHORE J: I heard and determined this matter in my Chambers on the 28<sup>th</sup> June 2018 and at the end of the hearing, I gave an *ex tempore* judgment. The first respondent has noted an appeal in the matter and this is my determination in writing.

The applicant is a Private Limited company which operates a game and bird sanctuary just outside Harare, known as Bally Vaughn Game Park. Applicant is registered with the Zimbabwe Tourism Authority under licence number LDG013, and has been operating as wildlife tourism business for over three decades. The first respondent is a retired army Brigadier who resides at Bally Vaughn in Shamva.

It is pertinent to state that although the land upon which applicant plies its trade was once targeted for compulsory acquisition by the government, on the 20<sup>th</sup> December 2002, Justice Chitakunye, who was then the President of the Administrative Court, dismissed the application by the government to acquire the land because on the basis that the applicant plays a role in bringing in revenue for the country.

On the 11<sup>th</sup> March 2018, the first respondent placed a padlock on the entrance gate to the applicant's business premises using his own locks thus barring the applicant's workers access to the game park. The first respondent apparently also evicted the applicant's tourism staff from the premises using "*mobs acting on his command*", and forbade the staff from entering the premises. The first respondent's wife had also been allegedly holding meetings at

the applicant's premises and threatening the applicant's staff. The applicant's Gordon Puterill and his wife Debbie engaged the Commissioner of Police to intervene and conciliate on the matter. However when it became obvious that that process had stalled, applicant approached this court in the present matter for spoliation and brought the court's attention to the fact that the first respondent's actions were threatening the lives of the animals and birds in the game park who were not being properly cared for due to the first respondent's interference.

The first respondent did not file opposing papers but he did make an appearance at the hearing and made submissions. The first respondent admitted that he had placed locks on the applicant's entrance gate, but denied that he used mob violence.

The law on spoliation was succinctly explained by REYNOLDS J in the case of *Chitseto v Minister of Local Government and Town Planning* 1984 (4) ZLR 248 as follows:-

"...it is a well-recognized principle that in spoliation proceedings it need only be proved that the applicant was in quiet and undisturbed possession of something and that there was a forcible or wrongful interference with his possession of that thing *spoliatus ante omnia restituendus est*. Lawfulness of possession does not enter into it. The purpose of *mandament van spolie* is to preserve law and order and to discourage people from taking the law into their own hands"

Also: *Beukes v Crous and Anor* 1975 (4) SA 215 (NC)

From the facts of this matter, this is one such case where an applicant's peaceful and undisturbed possession has been unlawfully interfered with bearing in mind that the 1<sup>st</sup> respondent never obtained a court order for eviction as one would have expected him to have done. The remedy of spoliation is the only remedy which will restore the *status quo ante*. I am inclined to grant the order prayed for.

Accordingly I ordered as follows:-

*"1<sup>st</sup> respondent and all persons acting for and exercising possession through him, be and are hereby ordered to forthwith restore possession of Bally Vaughn Game Elephant Sanctuary as more fully shown as the shaved and fenced off section seen in Annexure 'A' to the applicant's founding affidavit, failing which the Sheriff of Zimbabwe be and is hereby ordered and authorised to take possession of the said fenced Bally Vaughn Game sanctuary property, and restore its possession to the applicant"*

*Antonio & Associates*, appellant's legal practitioners  
*Matizanadzo & Warhurst*, 1<sup>st</sup> respondent's legal practitioners