

SERVEMOX INVESTMENTS (PVT) LTD
and
RUTH MUGWENI
and
CAMPION MUGWENI
versus
ALBATROSS (PVT) LTD
and
TIMB
and
OFFICER IN CHARGE CID COMMERCIAL CRIMES UNIT

HIGH COURT OF ZIMBABWE
ZHOU J
HARARE, 30 & 31 October 2019

Opposed Application

K. Musimwa, for the applicants
C. Mavhondo, for the 1st respondent
Ms N.M Mabasa, for the 4th respondent

ZHOU J: This judgment is in respect of the objections in limine taken by the respondents in the instant urgent chamber application. The application is for interim relief which is couched in the following terms:

“Interim relief granted

Pending the discharge or confirmation of this provisional order or determination of the dispute between first and second respondent, applicants are granted the following relief:

1. The notice of seizure issued by fourth respondent be declared null and void.
2. The first and second respondents be interdicted from laying any claim to the 15 truckloads of tobacco owned by applicant and that the tobacco be released to the applicants forthwith.
3. The officer commanding the Zimbabwe Republic Police CID Commercial Crime Unit be and is hereby directed to assist in the enforcement of the order in the event that such

need arises and to release all seized 15 truckloads of tobacco to the applicants for sale forthwith weighing 270 239 kilogramms.

4. The respondent shall pay costs of suit on a legal practitioner client scale.

The respondents have objected in limine to the determination of the matter on the merits on the grounds(a) that the matter is not urgent, (b) that the application is fatally defective for non-compliance with the requirements of r 241 which enjoins that it be in Form 29, (c) that the applicant seeks final relief on the basis of *prima facie* proof, (d) that there is material non-disclosure, and (e)that the prayer for costs in the interim relief is incompetent. This last ground pertaining to costs does not really dispose of the entire matter even if it was to be upheld. However, the objection is valid in that the question of costs is one that is left for determination on the return date. It cannot be dealt with at this stage where only interim relief is being sought.

There is need to deal with the question of urgency first as it determines whether, and if so, at what stage the court relates to the other matters raised.

A matter is urgent if it cannot wait to be dealt with as a court application. This court has held in many judgments that a party who approaches the court on an urgent basis is seeking special or preferential treatment in that he is asking the court to deal with his case ahead of the other matters which are already pending. A party who seeks urgent relief must show that he treated the matter urgently by acting expeditiously having regard to when the need to act arose. Urgency which stems from deliberate inaction until the day of reckoning draws near or self-inflicted urgency is not the urgency which is contemplated by the rules. Further, the applicant must show that if the relief sought is not granted on an urgent basis and the matter proceeds as an ordinary court application the relief sought would be hollow, or the applicant would be irreparably prejudiced.

In the present case the relief being sought under the guise of interim relief is one which by its nature cannot be granted on an urgent basis and is not interim relief. On account of the nature of the relief sought he alone, the matter is not one that can be dealt with in this matter. A declaration of nullity of a notice of seizure is not interim relief. It is final. The order that the respondents be interdicted from laying any claim to the tobacco which is the subject of the application is also a final order. In short this matter is not urgent on the basis that the relief being sought cannot be granted on an urgent basis and in the form of interim relief. There is not a single paragraph under

the “interim relief granted” which qualifies to be described as interim relief. The nature of the relief sought as stated in the draft order cannot be granted through a provisional order.

But there are other aspects of the application which have a bearing on the question of urgency. The applicants were always aware according to the founding affidavit, for two years that the tobacco in question was warehoused where it presently is. Applicants state that they were not aware that the tobacco was under seizure by the police. They further state that the urgency of the matter arises from the letter of 3 October 2019 in which they were given 5 days to remove the tobacco from where it is housed. But, that letter refers to a meeting in August 2019 at which the applications were informed that the tobacco could not continue to be kept in the warehouse because the lease had expired and rentals had not been paid. The applicants would therefore have acted in August 2019 after the meeting referred to in that letter was held. Applicants do not challenge the contents of that letter but, in fact, seek to rely on it as the basis of urgency. Equally, at that stage the applicants, if they are genuine that they were not aware of the existence of the notice of seizure, would have become aware of that fact if they had sought to remove the tobacco from the warehouse in August. If their statement that they were not aware of the existence of the notice of seizure was to be accepted, this would be a clear case of diligence in ignorance. They chose not to be aware of that fact. After being told in August 2019 that the tobacco could not be accommodated anymore they waited until they were given written notice that the tobacco would be removed from the warehouse in 5 days. This is typically waiting for the arrival of the day of reckoning.

On account of the conclusion that this matter is not urgent, it is unnecessary for me to relate to the other grounds of objection.

On the question of costs, I do not believe that here are special circumstances warranting attorney-client costs.

In the result, it is ordered that

1. The matter be and is hereby struck off the roll of urgent matters.
2. The applicants shall pay the respondents’ costs jointly and severally the one paying the others to be absolved.

Civil Division of the Attorney-Generals Office, 4th respondents legal practitioners