PETER TARUVINGA & 37 OTHERS
versus
CENTRAL ESTATES (PVT) LTD
and
THE OFFICER IN CHARGE MVUMA

HIGH COURT OF ZIMBABWE
MANGOTA J
HARARE, 18 July 2013

Urgent Chamber Application

K. Musoni, for the applicant
T. Nyawo, for the respondent

MANGOTA J: Sometime before 20 July, 2012 the applicants and the first respondent were embroiled in a Labour dispute. The dispute centred on non-payment of salaries, or wages, which were due to the applicants and unfair dismissal of employees by the first respondent.

When the matter could not be resolved amicably between the parties, the applicants, with the assistance of their trade union, took the matter to the arbitration tribunal which, in default of the first respondent, issued an award in favour of the applicants. The award was issued on 20 July 2012 and, when it was quantified, it came to a staggering figure of $228 945 which, according to the arbitrator, was subject to taxation.

The first respondent did not comply with the award. It, instead, filed an appeal with the Labour Court which heard the matter on 4 March 2013. At the hearing of the appeal, the first respondent requested that the parties go into an out of court settlement. However, the round table discussion did not yield any positive results for the applicants.

On 20 May, 2013 the applicants filed an urgent application with the Labour Court. The application aimed at interdicting the first respondent from disposing of its assets before the award of the applicants had been satisfied. The court directed the applicants to execute the award as there was no appeal before that court – the appeal which the first respondent filed with it having been withdrawn at the instance of the first respondent which had requested that the matter be settled by the parties out of court.

On 27 May, 2013 the applicants filed an application with the arbitrator requesting the latter to quantify the award which had been issued in their favour. The quantification of the award was concluded on 17 June 2013. On the same mentioned date, the applicants claimed, the first respondent went to Mvuma where its property is situated and removed from there 50 herd of cattle as well as other movable property which it drove, or took, to some destination which is not known to the applicants. On 20 June 2013, the applicants claimed again, the first respondent returned to Mvuma, removed from there 25 herd of cattle and drove them to some destination which is not known to the applicants. The first respondent, according to the applicants, promised to return any day to remove the assets from Mvuma to some place which is not known to them.

It is this act of removing property from Mvuma by the first respondent that prompted the applicants to file this urgent chamber application with the court. The applicants want the property of the first respondent to remain where it is until the labour dispute which exists between the parties has been resolved. They say they have an award issued in their favour against the first respondent. They want the first respondent to satisfy the award which they obtained against it. The award, as quantified, comes to a total figure of $228 945. They remain of the view that, in the event of the first respondent failing to satisfy the award which was issued in their favour, they would have the assets of the first respondent attached and sold in execution in satisfaction of what the first respondent owes to them. The property in question, in the main, comprises cattle and farm implements.

It goes without saying that the applicants are praying the court to grant them an interdict against the respondents. The law which relates to the granting of an interdict was clearly spelt out in the case of *Setlogelo* v *Setlogelo*, 1914 AD 221 wherein INNES JA had this to say on the matter which is at hand;

> "the requisites for the right to claim interdict are a well known clear right, injury actually committed or reasonably apprehended and the absence of similar protection by any other remedy".

All the elements of an interdict are satisfied in the present case. The applicants have a clear right to recover what is due to them from the first respondent. That right has its foundation on the arbitral award which was issued in their favour. The continued removal of assets from the farm by the first respondent working together with the second respondent constitutes the injury which has been committed or is reasonably apprehended by the applicants. Their contract of employment requires that the first respondent meets its own side

of the bargain. It must pay them for the services which they rendered to it. They, accordingly, suffer from a genuine apprehension that, if all the assets of the first respondent are removed from the farm where they are currently kept before their award has been satisfied, they will have nothing to hang on to. The award which was issued in their favour would be an exercise in futility. They will clearly have no other remedy which will be open to them when the first respondent's assets are all gone. Their aim and object are to enforce their right and they can only achieve that when their award which is pending registration with this court has been registered and is, therefore, executable.

During the hearing of this application the first respondent submitted that the affidavits of the applicants were commissioned by their legal practitioners. It argued that the commissioning of one's client's work by a legal practitioner exhibits a conflict of interest which is not in consonant with the ethics of the profession. It stated that the affidavits in question were improperly before the court and that they should, therefore, be discarded or disregarded.

The applicants did not dispute the assertion of the first respondent. They, in fact, confirmed, through their legal practitioner, that their affidavits were commissioned by a member of their legal practitioners' firm. Their legal practitioner informed the court that the commissioning of affidavits was a procedural error which was regrettable and he prayed the court to condone it.

The question which the court must determine is whether, or not, the applicants should be made to suffer for the sins of their legal representatives. The court remains of the view that the interests of justice will be best served if the condonation which was requested is granted. That is all the more so where, on a serious consideration of all the issues which relate to this matter, the applicants appear to have a *prima facie* case which is in their favour. The over-riding duty of the court is to do justice to all manner of people who come to it in search of justice. It must dispense real and substantial justice which allows all the issues which have been ventilated serious consideration. The applicants, for instance, may not be aware that the persons whom they chose to represent them have cut corners in the area of procedural law for reasons best known to the legal practitioners themselves. They should, therefore, have their case properly considered and be allowed to stand, or fall, on the merits and not on the basis of procedural technicalities which those who are schooled in the law- substantive or procedural – more often than not tend to employ as a quick way of disposing of their adversary's case.

The applicants do not know the law. They reposed all their trust in their legal practitioners who employed short-circuit procedures against their principals' interests.

It is on the basis of the foregoing matters, therefore, that the court invokes the provision of r 4C of the rules of this court and condone the commissioning of the affidavits which are allowed to remain part of the record of these proceedings.

The first respondent made a strenuous argument in an effort to convince the court that the first respondent, as cited in the papers filed of record, does not exist. It stated that Central Estates (Pvt) Limited is a non-existent party. It stated, further, that what is in existence is Central Estates Farm. The claim of the first respondent prompted the court to request the applicants' legal practitioners to visit the Deeds and Companies office from where they would verify the veracity, otherwise, of the matter which had been raised as well as to establish the true and correct position of the same. The return which the applicants' legal practitioners made after the visit showed that Central Estates Farm does not exist in the Deeds Registry office and that Central Estates (Pvt) Limited exists in the register of companies as a legal entity.

This position of the matter was communicated to the court, as was agreed between the court and the parties, through a letter-dated 12 July, 2013- which the applicants' legal practitioners addressed to the Registrar of this court. The legal practitioners served a copy of that letter on the respondents' legal practitioners.

On the basis of the abovementioned findings, therefore, it is evident that the first respondent was not being truthful when it stated, in its opposing affidavit, that:-

> "the applicants made a cardinal error of citing a non-existent party. There is no legal entity known as Central Estates (Pvt) Limited. There is Central Estates Farm and Central Estates (Pvt) Limited which is a trade name for Savanna Retail (Pvt) Ltd.
>
> It is not one and the same with Central Estates (Pvt) Limited which the applicants allege is a registered Limited Liability Company. Consequently there is no first respondent before the Honourable Court".

The court remains satisfied of the fact that the applicants cited the correct party when they filed their application. The party is definitely in existence and it has been existent even before the Labour dispute of the parties commenced. The applicants were not mistaken as to the identity of the party whom they were and are dealing with. They sued the correct party in the Labour dispute and, when an award was issued in their favour, that same party who is the first respondent in this matter cited itself as such when it appealed against the arbitral award.

The first respondent stated that Central Estates (Pvt) Limited is a trade name for Savanna Retail (Pvt) Limited which, according to it, used to operate a farming business at Central Estates Farm. It has already been established that Central Estates (Pvt) Limited is an existing legal entity. Whether, or not, it can be used as trade name for another legal entity remains a matter for conjecture. The court does not think that to be a possibility. That is so because each legal *persona* exists for its own purposes which are enunciated in its memorandum and articles of association. It may be accepted, for argument's sake, that Central Estates (Pvt) Limited was, or is, a trade name for another legal entity. However, even if that were the case, the net effect will be that Savanna Retail (Pvt) Limited trading as Central Estates (Pvt) Limited has a long standing labour dispute with the applicants.

It has already been established that Central Estates Farm does not exist. The first respondent was, once again, not being truthful when it stated, in its opposing affidavit, on the merits that:-

"> Savanna Retail (Pvt) Limited used to operate a farming business at Central Estates Farm.

- The farm has since been compulsorily acquired by the acquisition authority".

The acquisition authority could not, and cannot, acquire what is non-existent. No one can tell what prompted the first respondent to mislead the court in the manner that it did. Certainly the court cannot tell what its reasons for acting as it did were, or are. What the court can tell, however, is that the first respondent's conduct in this mentioned regard will be visited with the court's most serious displeasure.

The applicants, it has already been stated, are praying the court to order the first respondent, and all those who claim through it to refrain, or stop, forthwith the removal of cattle and farm implements which are at the first respondent's farm until the labour dispute between the parties has been resolved. The applicants are also asking the court to order the second respondent and all those who act through it not to clear and direct the removal of any cattle and/or farm implements from the first respondent's farm which is in Mvuma until the labour dispute has been finalised.

Amongst the cattle and farm implements which are the subject of this application, there are cattle and farm implements which allegedly belong to Farhigh Trading (Pvt) Limited. A representative of the company, which the court joined to this application with a view to getting to the bottom of this matter, informed the court that his company purchased 400 herd of cattle from the first respondent. The representative, one Shingai Chibhanguza,

stated during the hearing, that his company purchased cattle and farm implements from the first respondent in the past. The 400 herd of cattle which he made mention of was a recent purchase, according to him. That herd of cattle, he said, is still at the first respondent's farm. Mr Chibhanguza produced bank deposit slips which showed that his company was, as late as April this year, involved in some business transactions with the first respondent.

It is on the basis of Mr Chibhanguza's evidence that the court is called upon to make a rational and conscious decision of the matter which is before it. The applicants did not specify which items belong to the first respondent. They, in fact, are not asking the court to determine what property belongs to the first respondent and what, if any, belongs to Farhigh Trading (Pvt) Limited. They are saying the property which is currently at the first respondent's farm must remain where it is until the labour dispute which exists between the first respondent and themselves has been resolved. They, in other words, are praying the court to order that the *status quo* remains undisturbed until the award which was issued in their favour has been registered and enforced. The award has since been filed with this count for registration and it may be registered sooner rather than later.

The court remains of the view that the applicants will suffer irreparable harm if their application is not allowed to succeed. The court is cognisant of the fact that the applicants are dealing with an employer which made them to work for it and, on realising that they are enforcing their clear right against it in terms of the award, it proceeds to dispose of its property in such a speedy way as will defeat the ends of justice. Eventually, so it would appear, the applicants' right against it would remain unenforceable. Farhigh Trading (Pvt) Limited will, on the contrary, not be prejudiced in any substantial way when the applicants' application is sustained. That is so as the granting of the application is an interim relief the issues of which will resolve themselves as soon as the order which pertains to the award is enforced. The court's reasoning in this mentioned regard is fortified by the words of SANDURA JA (as he then was) who in *Charuma Blasting & Earth Moving Services (Pvt) Ltd* v *Njainjai & Ors* 2000 ZLR (1) 85 stated that:-

> "…..the temporary interdict was meant to prevent further complications by preserving the *status quo*. It was meant to protect the appellant's interests in the property".

In the present case, the interdict is meant to protect the applicants' interest in the property. The applicants who have a clear right against the first respondent should not be left in the cold, so to speak. They should be allowed to attach such of the first respondent's property as will satisfy what is due to them from it. Any reasoning which goes contrary to the

above thinking will be tantamount to a mockery of the very principles upon which our justice delivery system is hinged.

The court has considered all the circumstances of this case. It is satisfied that the applicants have, on a balance of probabilities, established their case against the respondents. The court's displeasure as regards the manner in which the first respondent conducted itself in this matter can hardly be over-emphasized. That displeasure will express itself in the area of costs for this application.

The court, accordingly, orders that:

(i) The applicants' application be, and is hererby, sustained.

(ii) The first respondent pays the costs of this application on a legal practitioner and client scale.

Nyawo-Ruzive Attorneys, applicant's legal practitioners
C. Mutsahinu Chikore & Partners, respondent's legal practitioners