

LUTULI SAFARIS [PVT] LTD

Versus

EMMANUEL BANDA

AND

GEDION NDLOVU

AND

**OFFICER-IN-CHARGE JOTSHOLO
POLICE STATION N.O**

IN THE HIGH COURT OF ZIMBABWE
CHEDA J
BULAWAYO 26 JULY 2006 AND 19 OCTOBER 2006

Mr Mazibisa for applicant
Mr J. Mudenda for respondent

Urgent Chamber Application (Spoliation)

CHEDA J: This is an application for a spoliation order. On the 19th of July 2006, applicant filed an application for a spoliation order which was couched in the following terms: -

TERMS OF THE FINAL ORDER SOUGHT

That the provisional order granted by this Honourable Court be confirmed in the following manner: -

1. That the 1st and 2nd Respondents be and are hereby declared to have no right to keep or withhold the applicant's property fully set out in Annexure "F" to this application and the order for the release of the property listed in Annexure "F" be and is hereby made final.
2. The 1st and 2nd Respondents be and are hereby ordered to pay costs of suit on an attorney-client-scale.

INTERIM RELIEF GRANTED

Pending the finalisation of the matter, the Applicant be granted the following relief:

1. That the 1st and 2nd Respondents be and are hereby ordered to release all the Applicant's property in their possession particularly the property listed in Annexure "F" to the application immediately upon service of this order failing which the Applicant be and is hereby given leave to get the assistance of the 3rd Respondent or those working under him to secure the release of the property in issue.

SERVICE OF THIS APPLICATION AND PROVISIONAL ORDER

That the service of the Urgent Chamber Application and Provisional Order shall be served upon the Respondents by a Messenger in the employ of Messrs. Cheda and Partners failing which the Deputy Sheriff, Hwange shall serve the papers".

On perusal of the applicant's founding affidavit I was of the view that the contents of the said affidavit were not possibly a true reflection of what had taken place. I, therefore, ordered service of the application on the respondents.

This was done and the matter was argued on the 26th of July 2006. After hearing the submissions, I made the following order: -

1. That the application be dismissed with costs.
2. That the Police immediately investigate the conduct of both applicant and first and second respondents in this matter

Although I had advised the parties that my full reasons for that order would be made upon request by either party, have since decided that it is in the best interest of justice that I give full reasons regardless.

The brief background of this case is that both parties are beneficiaries of the Land Reform Programme put in place by the Government of Zimbabwe. Its object is both noble and just based on the historical land distribution imbalances which prevailed in this country prior to Independence.

Applicant and respondents are beneficiaries of this programme and are engaged in Matabeleland North Province the Safari Industry at a farm known as Zinkowa also known as Elephant Eye Safaris, and their environs. During their operations they entered into an agreement wherein applicant were allowed to carry out certain hunts at the above premises which belonged to first and second respondents.

Pursuant to the parties' agreement, applicant carried out certain hunts on first and second respondent's property. A dispute with regards to payment arose which resulted in second respondent confiscating property belonging to applicant which has led to this application.

During the hearing both counsel raised various issues amongst which was the need for a deponent acting for and on behalf of their companies to file company resolution. I hold the view that there is a need for a party to do so in order to bind its principal. However, this is not, a highly contentious issue as there is another overriding issue which needs attention.

During the arguments it transpired that the parties were engaged in activities which border on illegalities. There is evidence from both parties that:-

- (1) The requirements of the Parks and Wild Life Act [Chapter 20:14] with regards to the hunting and recording of Trophies was not being followed, and,
- (2) That provisions of the Exchange Control Act [Chapter 22:05], were not being adhered to.

A glaring example is the keeping of the prohibited amounts of foreign currency in houses instead of being banked as is required by law.

This, in my view, has resulted in potential prejudice to the Government of Zimbabwe.

These courts are constrained to ensure compliance with the law and have a duty to bring to the relevant authorities any unlawful activities which are brought to their attention.

The above are therefore my reasons.

Cheda and Partners, applicant's legal practitioners

Hara and Partners, respondents' legal practitioners