

J JOUBERT AND SONS (PVT) LTD

Versus

THE COMMISSIONER OF POLICE

And

SENIOR ASSISTANT COMMISSIONER EDMORE VETERAYI

And

THE OFFICER COMMANDING ZRP, MATABELELAND NORTH PROVINCE

And

THE MINISTER OF HOME AFFAIRS

And

THE OFFICER IN CHARGE ZRP, INYATHI

IN THE HIGH COURT OF ZIMBABWE
NDOU J
BULAWAYO 10 AND 16 AUGUST 2007

*T Cherry, instructed by J Tshuma for the applicant
Ms M Cheda, with E Moyo and Superintendent Mirirai for the respondents*

Urgent Chamber Application

NDOU J: The applicant, under a certificate of urgency, seeks a
provisional order in the following terms:

“Final Order sought

That you show cause to this honourable court why a final order should not be
made in the following terms:

The respondents, or any persons acting through them, are hereby interdicted from in
any way interfering with the applicant’s farming and safari operations on the property
known as The Remaining Extent of Portwe Farm, situated in the Bubi District
(hereinafter in this order referred to as “the farm” and the respondents are further
interdicted from carrying out any business or functions of their own on the applicant’s
farm (save for any lawful and legitimate police action) until such time as the right of
occupation is finally determined by a court of competent jurisdiction.

That the respondents, jointly and severally, one paying the other to be absolved pay

the costs of this application.

Interim Relief granted

Pending determination of the matter the applicant is granted the following relief:

(1) The respondents are ordered to immediately return to the applicant and the employees of the applicant all the property listed in the annexure attached to this draft order and to restore applicant to possession of the two residences situated on the farm, the farm buildings including the farm office and storerooms, the quarters formally [sic] occupied by the applicant's manager and members of the applicant's staff, the second main residence and the lodge situated near the dam and to this end will immediately surrender to the applicant the keys to the aforementioned buildings.

(2) The respondents are hereby ordered to keep and protect from harm all moveable and immoveable property belonging to the applicant and the employees of the applicant presently situate on the farm and in the *de facto* custody of the respondents.

Annexure to draft order

- (i) Contents of freezer, (128kgs meat, nine chickens, several cuts of beef)
- (ii) The following vehicles:
 - (a) 2.8 Landcruiser hunting vehicle (49-070F)
 - (b) Toyota Hilux (637-386K)
 - (c) Mr Lovemore Muzeza's vehicle a 2.7 Nissan Hardbody, (753-646E)
 - (d) Two Jeeps (587-796H and other registration number unknown)
 - (e) VX Toyota Landcruiser station wagon (662-622Q)
 - (f) New Holland Tractor (believed to be unregistered)
- (iii) Twenty litres of fuel
- (iv) Approximately three to four tonnes of maize (the property of the applicant staff)
- (v) Television set and sound system and decoder
- (vi) Elephant tusks."

The salient facts of the matter are the following. The main current asset of the applicant is the farm known as the Remaining Extent of Portwe Farm situate in the Bubi District in the Matabeleland North Province. It falls under the jurisdiction of the

Inyathi Police Station. The applicant company carries out hunting and safari

activities and also conducts conventional farming operations such as vegetable production and other cropping. The applicant's property holdings were originally very much larger but the greater portion of the farm holdings have been re-settled under the Government land reform programme but the applicant was allowed to continue to carry out normal farming activities on the section known as Portwe. The main infrastructure is on Portwe Farm and comprises the usual farm buildings, office, workshop, storeroom, sheds, etc, the house occupied by applicant's director and shareholder one Margret Jean Joubert, a full size second homestead formally [sic] let to a tenant, cottage occupied by Mrs E M Dolphin [Margret Joubert's mother], a manager's house occupied by Mr Lovemoe Muzeza plus eleven brick staff quarters. Additionally, there is a complete lodge formally [sic] let out to clients situated on the edge of Portwe dam.

It seems common cause or at least beyond material dispute that the applicant was in control and undisturbed possession of the farm and movable property until 17 July 2007. But prior to that the Zimbabwe Republic Police had moved onto the farm occupying some of the property at various stages between April and July 2007. For the purpose of the interim relief sought and the concession made by the respondents it is not necessary for me to go into details. Suffice to say that some arrangement of co-existence of the applicant and the respondents was in place. It was the events of 17 July 2007 that resulted in this application. On this fateful day, 15 to 20 policemen arrived at the back security gate of the house occupied by Mrs M Joubert, *supra*. Several of them were armed with AK rifles and dressed in police riot uniforms. They demanded that Mrs Joubert open the gate. She declined to do so and instead ran into the house with her dogs and locked all the doors behind her. Inside the house was

her domestic workers and her mother. She tried to call her lawyer but failed to do so. The said policemen forced down the back security gate and entered the yard. They surrounded the entire house. Mrs Joubert spoke to the officer in charge of the group and asked for his name and rank but he refused to give her these details. He warned her that they had documentation to evict her and threatened to break the door to gain entry. She went to the office to try and call her lawyer once more and whilst she was in the office the policemen entered. The officer in charge told her to pack her things and told her that police transport would be provided to ferry the property to twenty (20) kilometres away from the farm. An Assistant Inspector Mwape asked her to accompany him to the garage and took the keys to VX Toyota Landcruiser station wagon registration number 662-622Q. He said that she was not allowed to take the vehicle off the farm. Under police guard she packed her clothes and took family photographs. The police took three elephant tusks from the strongroom. She was instructed to take her suitcases, blankets and other household effects. The police, at her request, delivered the items at her neighbour's farm. Eventually she and her mother were conveyed by the police to the said farm. She was also allowed to take along a television set, sound system and a decoder. They arrived at her neighbours farm around 1300 hours

Later, around 1700 hours, the officer in charge of the group came to her demanded back the television set, decoder and the sound system and said these needed to be properly documented. At the commencement of these proceedings, Mrs *Cheda*, for the respondents advised that the respondents were not opposed to the

interim relief save for the property that was already occupied by the police as at 17 July 2007. The respondents conceded that the applicant be given the premises that it was in occupation under the "co-existence arrangement" that I alluded to above between April and 17 July 2007. The police would occupy the structures they were already in possession and structures that they put up for their own farming operations. Mrs *Cheda* also indicated that the respondents were on Portwe Farm at the behest of the Minister of State for National Security, Lands, Land Reform and Resettlement in the President's Office. In this regard she exhibited an offer letter by the Minister signed and dated 23 May 2007. The respondents' concession is pending the return date or final determination on who has a better right over the farm. I think the concession was properly made in light of the decision of KUDYA J in *Karori (Pvt) Ltd and Another v Brigadier Mujaji* HH-23-07. The issue of the rest of the property occupied or taken by the respondents before the 17th July 2007 will be best dealt with on the return date. In the interim period the applicant may consider whether it is not desirable to cite and serve the Minister who offered the property to the respondents as evinced by his offer letter. This is the distinction from the *Karori* case where the respondent therein did not have offer letter.

Accordingly I grant the following order:

INTERIM RELIEF GRANTED

Pending determination of this matter on the return date, the applicant is granted the following relief:

- (1) The respondents are ordered to immediately restore or return to the applicant all the property of the applicant and applicant's employees on 17 July 2007, including but not limited to,
 - (i) contents of freezer
 - (ii) VX Toyota Landcruiser station wagon (662-622Q)
 - (iii) Television set, sound system and decoder
 - (iv) Three elephant tusks

- (2) The respondents are ordered to immediately restore to applicant's possession all the residences and farm buildings that were in the applicant's control and possession on 17th July 2007 and to this end the respondents shall immediately surrender to the applicant the keys to the aforementioned buildings.

- (3) The respondents are hereby ordered to keep and protect from loss and harm all movable and immovable property belonging to the applicant and the employees of the applicant presently situate on the farm and in the *de facto* custody of the respondents.

Webb, Low & Barry, applicant's legal practitioners
Attorney-General, Civil Division, respondents' legal practitioners