

T. W SANSOLE

VERSUS

CHARLES GONDO

IN THE HIGH COURT OF ZIMBABWE

NDOU J

BULAWAYO 8 DECEMBER 2008 AND 11 DECEMBER 2008

G. Nyathi for the applicant

C.P. Moyo, for the respondent

Urgent Chamber Application.

NDOU J: The applicant seeks a provisional order in the following terms:

“TERMS OF FINAL ORDER SOUGHT

That pending the finalization of case number HC 1784/08 you show cause to this Honourable Court why a final order should not be made on the following terms:-

- (a) That Respondent be and is hereby ordered to reinstate the helper axle together with tyres and rims to the applicant’s horse Registration Number AAS-1054.
- (b) That Respondent be and is hereby ordered to replace and fit the two heavy duty motor vehicle batteries to the applicant’s horse Registration Number AAS-1054.
- (c) That Respondent be and is hereby ordered to deliver to applicant the registration book and operator’s licence for the horse registration number AAS-1054 together with the jack and wheel spanner.
- (d) That Respondent pays the costs of this application on an attorney client scale.

INTERIM RELIEF GRANTED.

That pending the determination of this application the applicant is granted the following interim relief:

- (a) That Respondent be and is hereby ordered to deliver the horse Registration Number AAS-1054 to 55A Nokels Security, George Silundika Street, between 4th and 5th Avenues, Bulawayo”.

The salient facts of the matter are the following. The Respondent is a mechanic.

In August 2004 the applicant left his aforesaid motor vehicle at the Respondent's premises for repairs. The applicant paid for the repairs [it is in dispute whether he paid in full]. The applicant has been demanding the return of his vehicle since 2004 in vain. He did not immediately institute legal proceedings to recover his vehicle. In August 2007, he wrote a letter of demand to the Respondent through his (applicant's) legal practitioners. The Respondent did not oblige. After August 2007 until September 2008 the applicant did not institute legal proceedings. Applicant finally instituted proceedings in this court under HC 1784/08 on 10 September 2008, claiming the return of his vehicle in good working condition and ancillary relief.

On 19 September 2008, the Respondent filed a Notice of Appearance to Defend. On 16th October 2008 he filed his plea.

Thereafter, on 11 November 2008, applicant's legal practitioners wrote to the Respondent's legal practitioner alleging that the Respondent was stripping the vehicle of parts. The latter denied the allegation in his letter dated 12 November 2008. Thereafter, the applicant instituted these proceedings on 3 December 2008 under a certificate of urgency. From the above facts, the applicant has not prosecuted his suit under HC 1784/08 with urgency. He only issued summons a year after of his letter of demand. From 2004 to 2008 he says he has been demanding his vehicle but only issued summons in September 2008.

The Respondent's plea was filed in October 2008. To date, there is no Replication from the applicant. He has dealt with this matter at tortoise's pace, so to speak, and suddenly he wants his vehicle as a matter of urgency. The applicant has simply called his matter urgent because it suits him. All along there was careless abstention from action by the applicant. This is not the type of urgency contemplated by the Rules- *Kuvarega v Registrar General and Another* 1998(1) ZLR 188(H); *Dilwin Investments (Pvt) Ltd t/a Farmscaff v Jopa Eng Co.* HH 116-98 and *Mshonga and others v Ministry of Local Government and Others* HH 129-04. An application is urgent when if at the time the cause of action arises, determination of the matter cannot wait. When the need to act arose, the applicant did not prosecute the application with diligence and vigilance. In the circumstances, the matter is not urgent and I accordingly dismiss the application on that basis with costs.

Judgment No. HB 125 /08
Case No. HC 2408/08
Xref Case No. HC 1784/08

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Sansole and Senda, applicant's legal practitioners
Messrs Moyo and Nyoni, respondent's legal practitioners