

LALAPHANSI SAFARIS (PVT) LTD

Versus

S M DODO

IN THE HIGH COURT OF ZIMBABWE
NDOU J
BULAWAYO 15 MAY 2008

T Khumalo for the applicant
M Nzarayapenga for the respondent

Urgent Chamber Application

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

“Terms of the final order sought

Whereupon after reading documents filed of record:

It is ordered:

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

Final order

That the respondent be and is hereby interdicted from selling or disposing in any way a motor vehicle, being Mitsubishi registration number AAJ 4949 pending the final determination of the summons commencing action issued out by the applicant against the respondent under case number HC 2915/06.

Interim relief granted

Pending the confirmation or discharge of this provisional order the applicant is granted the following relief:

1. That the respondent be and is hereby interdicted from transferring registrations of the Mitsubishi AAJ 4949 to anyone including the respondent himself.

That the respondent upon sharing [sic], served with this court [sic], be and is hereby ordered to immediately inform the Deputy Sheriff where he keeps or hold the vehicle, being Mitsubishi registration AAJ 4949.

That, the Deputy Sheriff of Bulawayo is ordered and authorised to take and remove from the respondent and hold same in a secure and safe place of his choosing pending the final determination of the case under HC 2915/06.”

The brief facts of the matter are the following. The applicant has a number of

vehicles which it uses for its business operations, which business involves safari and travel. The vehicles cover the whole country. The respondent is a mechanic who repaired, *inter alia*, the applicant's fleet. It is in the course of such repairs that the respondent ended up possessing the above-mentioned vehicle which is subject matter of these proceedings. The applicant's case is that the vehicle was given to the respondent for gratuitous use for as long as applicant enjoined the respondent to effect the repairs of its fleet. The vehicle is not registered in the name of the applicant. The respondent's case is that he carried out repairs on this vehicle and expended money in the tune of \$10 089 811,00. The respondent's case is that he is withholding the vehicle on account of improvement lien for the above-mentioned repairs. Mr *Nzarayapenga* raised points *in limine* which I propose to consider in turn. First, he stated that this matter is not urgent. The basis of this application is that the respondent has had possession and use of this vehicle for about two years and the question of "wearing down" and "the risk faced by an uninsured vehicle being driven in our roads" was there throughout this period. Further, the fact that the respondent "is bitter" does not make the matter urgent. Looking at the certificate of urgency and the founding affidavit there is nothing that makes this application urgent. I agree with the above submissions. This is a case of self-created urgency.

Admittedly, part of the two years the applicant had not demanded the vehicle. But from November 2006, applicant started demanding the vehicle. This application was only filed in January 2007. There is no explanation for the non-action between November 2006 to 12 January 2007. The certificate of urgency is inadequate and on this fact alone, the application should fail – *Kuvarega v Registrar General & Anor*

1998(1) ZLR 188(H); *Mushonga & Ors v Min of Local Govt & Ors* HH-129-04 and *Moyo v Constituency Elections Officer, Tsholotsho & Ors* HB-72-05.

If I am wrong in this finding, still the application has to fail on the second point of the respondent i.e. of *locus standi*. As alluded to the vehicle is registered in the name of Clifford Manungo, who is resident in Botswana. Clifford Manungo was not cited as a party. There is no supporting affidavit from Clifford Manungo empowering the applicant to institute these proceedings in respect of vehicle registered in his name. On this fact alone the application should fail.

From the foregoing the application was still born. Accordingly, the application is dismissed with costs.

James, Moyo-Majwabu & Nyoni, applicant's legal practitioners
Dube & Partners, respondent's legal practitioners