

DAVISON MASINA

Versus

KHALIL GAIBIE

And

SHABEIRA GAIBIE

And

DEPUTY SHERIFF (N.O.)

IN THE HIGH COURT OF ZIMBABWE
NDOU J
BULAWAYO 2 & 29 SEPTEMBER 2011

Ms C. Mudenda for the applicant
N. Dube for the respondents

Judgment

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

“Final order granted

- (i) Execution of the interim relief in HC 2187/11 and other related matters thereto be stayed permanently.
- (ii) No order as to costs.

Interim relief granted

Pending the determination of this application, the applicant is hereby granted the following relief:

- (i) That the interim relief granted to respondent under HC 2187/11 and the writ of execution thereof be and is hereby stayed.
- (ii) The Deputy Sheriff or Messenger of Court are hereby interdicted and prohibited from executing the writ of execution.”

The salient facts of this matter are the following. On 4 August 2011 1st and 2nd respondents obtained a provisional order for the vacation within 48 hours by the applicant of

the premises known as Elons Court, 3rd Avenue and Main Street, Bulawayo. The applicant did not vacate and the Deputy Sheriff attempted to evict the applicant on 30 August 2011 but was apparently met with strong resistance up to a point that the Deputy Sheriff had to enlist the assistance of members of the Zimbabwe Republic Police, namely Superintendent Ndlovu. The latter invited the parties to meet in Bulawayo Central Police Station. At Central Police Station all parties' lawyers were present and one Chief Inspector Mandere directed the parties to the Deputy Registrar of this court. The latter advised the applicant's legal practitioner that applicant was in contempt of court and should vacate the premises. The applicant evidently did not accept such counsel and instead filed this application under a certificate of urgency. The respondents have raised two points *in limine* i.e. the applicant is approaching the court with dirty hands and further that this matter is not urgent.

I propose to consider these issues in turn.

"Dirty hands issue"

As alluded to above, the order required the applicant to vacate the premises within 48 hours. The order was served on the applicant by the Assistant Deputy Sheriff on 19 August 2011. This application was only filed on 31 August 2011. Despite having known as at 19 August 2011 of the order granted under HC 2187/11 demanding that he vacates his premises within 48 hours, the applicant defiantly did not vacate. The applicant's hands are dirty and he cannot be heard. The issue was clearly stated by CHIDYAUSIKU CJ in *Assd Newspapers of Zim (Pvt) Ltd v Min of State for Information & Publicity & Ors* 2004 (1) ZLR 538 (S). At page 548B-E the Chief Justice stated:

"This court is a court of law, and as such, cannot connive at or condone the applicant's open defiance of the law. Citizens are obliged to obey the law of the land and argue afterwards. ...

For the avoidance of doubt the applicant is not being barred from approaching this court. All that the applicant is required to do is to submit itself to the law and approach this court with clean hands on the same papers. ...

The applicant is operating outside the law and this court will only hear the applicant on the merits once the applicant has submitted itself to the law."

This rule applies to the facts of this case – see also *S v Neil* 1982 (1) ZLR 142 (H) and *S v Nkosi* 1963 (4) SA 87 (T). The court will not grant relief to a litigant with dirty hands in the

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absence of good cause, being shown or until such defiance or contempt has been purged – *Hoffman La Roche v Secretary of State for Trade & Industry* [1975] AC 295; [1974] 2 ALLER 1128 (HL). *In casu*, the applicant has neither shown good cause nor purged the defiance or contempt. In the result the point taken *in limine* succeeds. The applicant is in defiance of the order of this court and this court will only hear applicant on the merits and the other issue raised once the applicant has submitted himself to the law. The applicant will bear costs of this application.

Mudenda Attorneys, applicant's legal practitioners
Cheda & Partners, respondents' legal practitioners