

VICTOR MUZENDA

Versus

SHELTER MPOFU

And

ALBERT NKOMO

And

TOM MBEDZI

And

CASPER NCUBE

IN THE HIGH COURT OF ZIMBABWE
NDOU J
BULAWAYO 12, 16 & 29 SEPTEMBER 2011

Judgment

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

“Terms of Final Order sought

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

1. All the respondents be and I [sic] hereby interdicted from in any manner dealing with the matter of ZEXCOM Foundation Investments Funs Limited except through their legal practitioners.
2. All the respondent [sic] be and are hereby interdicted from threatening or causing any harm to applicant through their action or through third parties.
3. All the respondent or any of their agents be and are hereby interdicted from going to applicant's office or home without this honourable court's permission.
4. The respondents are ordered to pay the costs on a higher scale.

Interim Relief granted

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

1. The respondents be and are hereby prohibited from communicating with applicant in any manner whatsoever except through their legal practitioners.
2. The respondents be and are hereby ordered to immediately vacate 120 Jason Moyo Street, Bulawayo.
3. The respondents be and are hereby ordered to keep peace against applicant at all times.”

The background facts are the following. The applicant is a duly appointed provisional liquidator of ZEXCOM Foundation Investment Fund Ltd (“ZEXCOM”). The respondents are shareholders of ZEXCOM. The applicant was appointed provisional liquidator on 4 December 2009. The applicant avers that since his appointment he had had difficulties in dealing with the respondents. He avers that in March 2010 the respondents in the company of eighteen (18) other persons came to his offices and threatened him with death if he did not leave ZEXCOM alone. They ordered him to resign with immediate effect but he ignored these threats. On 21 July 2010 he was ordered to leave ZEXCOM offices by 2nd respondent and another person. On 2 November 2010, 1st, 2nd and 3rd respondents came to his offices in the company of two other persons. They were very abusive. They were camped in his office for more than thirty minutes. They took down his car registration number and one Thodlana said he was going to find where he stayed and come there and assault or kill him. He further avers that on 4 November 2010 all respondents came to his office and they threatened him again. He said further in April 2011 the respondents caused his arrest. He further states that in June 2011 the respondents and other persons threatened him outside the High Court complex. He said he was rescued by the police. He states that on 2 September 2011 the respondents came to his office in the company of more than thirty persons. The 4th respondent almost overturned his desk. The police riot squad came and ordered the respondents to leave and they departed. They, however, threatened to return after the next court hearing in this court scheduled for 13 September 2011. This time around he decided to file this application under a certificate of urgency. The urgency is articulated as follows in the certificate.

- “1. Applicant has been threatened by respondents over a long period and he fears that they may carry out their threats now that the cause of these threats is going to be realized are credible.

Judgment No. HB 137/11
Case No. HC 2505/11
X REF HC 1717/09; 253/10; 906/10; 69/11

2. Applicant is under a reasonable apprehension that respondents may physically harm him or kill him.
3. The matter that is causing his problem is going to be heard on September 13, 2011 and there is no other way this matter can be dealt with before that date except through an urgent chamber application.” (Emphasis mine)

The respondents have raised a point *in limine* that the matter is not urgent. From the facts outlined above most of the threats took place in 2010. The time to act, i.e. the application for the protection interdict was in 2010. In any event since March 2010 these threats were not carried out. The applicant managed to ignore the threats. All these threats were allegedly made to induce fear so that he would relinquish his position as provisional liquidator of ZEXCOM. He has executed his duties notwithstanding these threats. He had done so without a protection order. Not much has changed since then to make the situation urgent. The applicant has not bothered to explain why he did not seek this remedy timeously in 2010 or in 2011. He is using old threats to obtain relief under a certificate of urgency.

Accordingly, I hold the view that the application is not urgent. I dismiss it on that point alone with costs.

Messrs Moyo & Nyoni, applicant's legal practitioners
Mudenda Attorneys, respondents' legal practitioners