

HB 164-16  
HC 1437-15  
XREF HC 2850-14  
XREF HCA 61-14  
XREF HC 4414-10

ROSE MAPHOSA  
**versus**  
TEMBA MASEKO

HIGH COURT OF ZIMBABWE  
MOYO J  
BULAWAYO 21 MARCH AND 23 JUNE 2016

### **Opposed Matter**

*Chamunorwa* for the applicant  
*Muzvuzvu* for the respondent

**MOYO J:** The applicant in this matter was granted an interdict couched in the following manner:

- “1) The Sheriff, with the assistance of the ZRP Magwegwe Police Station, eject respondent and all those who claim through him from 3528 Magwegwe North in Bulawayo forthwith.
- 2) That if respondent defies the ejectment process or reinstates himself, the ZRP are ordered to arrest him so that he is prosecuted in a court law.”

The terms of the final order sought were as follows:

1. The respondent be and is hereby declared to be in contempt of the magistrates’ court order issued on 24 February 2014 under case number 4414/10 arising out of his actions on 27 April 2015 wherein he unlawfully reinstated himself into the property known as 3528 Magwegwe North Bulawayo.
2. The respondent is ordered to pay the sum of \$5000-00 as a fine in default of which the respondent is to be convicted to gaol for a period of 90 days at Bulawayo prison.
3. The respondent shall not be heard until when he has purged his contempt for this court.
4. The eviction of the respondent from the property known as 3528 Magwegwe North be and is hereby confirmed.
5. The actions of the respondent be and are hereby declared to be an act of spoliation.
6. The respondent pays the costs of suit at an attorney and client scale.

HB 164-16  
HC 1437-15  
XREF HC 2850-14  
XREF HCA 61-14  
XREF HC 4414-10

I confirmed the provisional order with an amendment on the fine in the sum of \$5000-00 altered to \$500-00 and advised the parties that my detailed reasons for the confirmation were to follow:

Here are they:

The facts of the matter are that respondent was ordered to be ejected by the magistrates court from 3528 Magwegwe. He was duly evicted after a writ had been issued. Upon his eviction applicant took control of the property.

Respondent then forcefully reinstated himself into the property. The respondent was ejected on 5 May 2014, but immediately reinstated himself, he then filed an appeal against the eviction on 15 May 2014 and served it on the applicant on 20 June 2014. At the time applicant appealed, he had already been ejected from the property and in fact he had already defied the court order as he occupied the property soon after ejection. On 28 October 2014, respondent's appeal was dismissed by the High Court, and despite that fact, respondent remained in occupation of the property. Respondent became aware that his appeal was dismissed as on 4 December 2014 he filed a chamber application seeking condonation for reinstatement of the appeal.

Upon the dismissal of the appeal, the messenger of court was instructed to re-evict the respondent. The respondent resisted eviction and was violent. This was captured by the messenger of court in his return of service filed in the court record.

The respondent filed opposing papers. In paragraph 6 of the opposing affidavit. Respondent confirmed that he reinstated himself into the house after sleeping in the open for a few days as he was left at the mercy of the weather elements. As against the allegations that he resisted eviction by the messenger of court on 27 April 2015, he responded by stating in paragraph 8 of his affidavit that that was admitted in part and went on to say that the balance of equities would therefore lean in favour of the parties' son, Talent Maseko as well as the respondent (himself) being housed pending the determination of the motion.

The respondent was clearly in contempt of the magistrates court order, not only before his appeal was thrown out on 4 December 2014, but also as at 27 April 2015, when he resisted

HB 164-16  
HC 1437-15  
XREF HC 2850-14  
XREF HCA 61-14  
XREF HC 4414-10

eviction by the messenger of court who even captured in his return of service that respondent was even violent. Respondent's conduct is contemptuous, and deplorable and he clearly showed a blatant disregard for court processes right until the end. It is for these reasons that I confirmed the provisional order. I also admonished respondent's legal practitioner for advancing lame arguments on behalf of the respondent as well as not being fully prepared for the hearing which was given at least three weeks' notice. *Mr Muzvuzvu*, who had advised the court that he was renouncing agency had turned up in court at the last minute seeking to represent the respondent. He was however ill prepared and misrepresented facts in his submissions, so much so that *Mr Chamunorwa* (counsel for the applicant) had to object to some of the factual submissions as presented by *Mr Muzvuzvu*.

I thus warned *Mr Muzvuzvu* that his conduct was not befitting of a legal practitioner who is an officer of the court. Legal practitioners have a duty to diligently, honestly and truthfully represent their clients. They owe that duty not only to the client but to the court as well as their fellow legal practitioners. It is deplorable for a legal practitioner to seek to misrepresent facts so as to defeat the ends of justice. Legal ethics demands that the core values of the profession, that is diligence (being fully prepared to argue a case), honesty (making submissions in accordance with the true facts of the matter), be observed by all in the practice of law, for if that is not the case, the ends of justice will not be achieved. An ill prepared or dishonest legal practitioner, deceives the court and this will result in justice being robbed.

Applicant thus from the facts as stated herein did make a case for the relief sought, with respondent's opposing affidavit also proving the facts as alleged by applicant.

I accordingly confirmed the provisional order as amended.

*Calderwood, Bryce Hendrie and Partners*, applicant's legal practitioners  
*Muzvuzvu Law Chambers*, respondent's legal practitioners