

WILLSGROVE FARM ENTERPRISES (PVT) LTD

Versus

EDWARD MANGENA

IN THE HIGH COURT OF ZIMBABWE
MOYO J
BULAWAYO 5 MARCH 2024

Opposed Application

J. Tshuma for the applicant
T. Ndlovu for the respondent

MOYO J: These are contempt of court proceedings wherein applicant seeks an order against the respondent that they be held to be in contempt of the court orders of this court being HC 2424/10 dated 18 November 2010 and HC 2354/11 dated 22 January 2012 respectively.

That they be sentenced to 180 days imprisonment wholly suspended for 2 years on condition they do not return to Lot 32 Essevale also known as Willsgrove Farm. That the suspended sentence be effected once the respondents are found to be in contempt of court at a future date.

The background to the application as alleged by applicant is that 1st and 2nd respondents were served with a final order under case number HC 2424/10 and a notice of ejectment on 7 May 2011.

They did not vacate applicant's land prompting a writ of personal attachment and committal to prison to be issued. They were later evicted by the Sheriff. Despite being ejected the writ for personal attachment and committal being executed, the respondents returned to applicant's farm in disobedience of the court order. The respondents do not dispute the facts as alleged by the applicant, making the facts common cause. Although a point *in limine* had been raised in the opposing papers, that of a missing letter L in the names of the applicant, where the spelling of Wilsgrove has a single L in the other case but in this case has a double L (LL). At the hearing of the matter this point *in limine* was not pursued and the court therefore dealt with the merits.

Respondents contended that the applicant does not own Lot 32 Essexvale because the land was acquired long back by the Ministry of Lands. That prior to this application, their cases were failing because they had no offer letters and that they now have offer letters issued in 2014. They confirm the history of the case and aver that it is unfortunate that they were incarcerated and labelled as lawless people. At the hearing of the matter, I issued an order and the parties have requested for detailed reasons, here are the reasons.

The simple matter to determine therefore is whether, the fact that the respondents who previously did not have offer letters but who have since obtained offer letters are not therefore in contempt of the court orders issued previously by this court. In essence the question is whether the offer letters superseded the court orders so quoted. It being common cause that there are orders of this court barring the respondents from being in occupation of the land supposedly owned by applicant and the orders being extant, I am persuaded by applicant's contention that as long as the court orders remain extant they must be respected by all.

I hold the view that whether the court order, is practical, impractical, correct, or incorrect, overtaken by events or not, divorced or aligned to the situation on the ground or not, it remains in force until undone by a court of law. That whatever the predicament faced by a litigant *vis-à-vis* a court order they view either to be wrong or out of line or overtaken by events, it is not for them to choose to disobey the order. Moreso where they have already been found to be in contempt of court. The litigants finding themselves in such a scenario only have one option, that is, to approach the court and rescind, vary or correct any court order in terms of the rules.

For to hold otherwise will be against the very essence of the rule of law and due process. It is my considered view that this is to avoid chaos and disrespect for the courts. The mischief behind a blind compliance with extant court orders derives from the very essence of judicial authority in my view. You do not want to have a situation where litigants, laugh off, ignore, or walk over court orders in the name of that a different situation is obtaining as opposed to the picture the court order depicts or was informed by. Allowing litigants to decide for themselves which court order to honour, which one is relevant, or which one is still applicable to them will open a can of worms where the courts are no longer respected and judicial authority will be in tatters.

I agree with the applicant that it is trite that all court orders must be respected as long as they are extant, they are still in force until the court itself is approached and then it sets them aside. I cannot put it any better than the words of the English court in the case of *Hadlincsam vs Hadlincinson* 1952 ALL ER 567 (CA) quoted in the decision of *Mpofu v Mlilo* HB-11-02;

“It is the plain and unqualified obligation of every person against or in respect of, whom an order is made by a competent jurisdiction to obey it, unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void.”

It is my considered view that judicial authority is vested and anchored in the respect for it, it cannot be accepted that citizens are allowed to analyse, rationalize, pick and choose which court orders to comply with and which orders are in their view to be overlooked, to allow that, would be to strip the courts of their very essence and core of their existence, which is to prevent chaos and to ensure that law and order are maintained by the citizenry. It is my view that judicial authority must be guarded jealously and no citizen should be allowed to review, analyse, or assess a court order with a view of disregarding it. They can only analyse an order with a view to seek redress in the appropriate forum.

I accordingly granted the order as sought.

Webb Low & Barry applicant’s legal practitioners
Sansole & Senda respondents’ legal practitioners