

AMON CRAIG MATAMBO
versus
ZIMBABWE BROADCASTING HOLDINGS (PVT) LTD

HIGH COURT OF ZIMBABWE
BHUNU J
HARARE, 9 August 2006

Urgent Application

Mr *Kwaramba*, for the applicant
Ms *Chizodza*, for the respondent

BHUNU J: The applicant was employed by the respondent as its Head of Broadcasting Technology.

The parties had a written contract of employment. Clause 2 (d) of the contract entitled the applicant to the allocation of a company motor vehicle. It provides as follows:-

“(d) Motor Vehicle

As discussed, you will be entitled to a Peugeot 306 or the equivalent, whose procurement will be processed upon joining. This will be a fully serviced and maintained corporation vehicle.”

The applicant was then issued with a Peugeot 306 registration number 771 564F in terms of his contract of employment.

On the 4th October 2001 the respondent’s chairman wrote to the applicant terminating his contract of employment and directing the applicant to surrender the motor vehicle to the respondent. The letter reads in part:-

“You are required to hand over the corporation vehicle, keys and accessories you were using during this period to the Administration Department.”

Apparently the applicant resisted and contested the termination of his contract of employment. The respondent backtracked, withdrew the termination and negotiated a retrenchment package.

The negotiations culminated in the parties signing a retrenchment package on the 30th September 2002.

The retrenchment package entitled the applicant to a total cash payment of \$4 643 250.00 but was silent on the fate of the motor vehicle in issue. As a result the applicant did not surrender the motor vehicle to the respondent.

On the 20th November 2002 the respondent's Chief Executive Officer wrote to the applicant requesting him to return the motor vehicle. The letter reads:-

"Re: RETURN OF ZBC VEHICLE

At the meeting held on the 18th November 202 the Human Resources Committee of the Board of Governors passed a resolution that the motor vehicle that is in your possession should be returned to the corporation.

As you appreciate this is an operation vehicle that is registered in ZBC's name and should therefore be used for ZBC operations.

Any claim against ZBC should be resolved amicably or through the courts and there is no need to resort to impounding a corporation vehicle.

Could you kindly return the vehicle to ZBC by Thursday 21 November 2002 failure which we will be left with no choice but to impound it. (my emphasis)

On the 27th November 2002 the applicant's lawyers *Messrs Mbidzo, Muchadehama and Makoni* responded on behalf of the applicant. Paragraph 1 of the response is relevant and it reads:-

"1. RETURN OF ZBC VEHICLE : CRAIG MATOMBO

Our client informs us that his employment had been illegally terminated. He was employed as the Head of Broadcasting Technology. This position is a director's position and our client reported directly to the Chief Executive Officer.

We are further instructed that ZBC finally realized that they had illegally terminated our client's employment. It asked the Board Chairman Dr Gideon Gono to negotiate a retrenchment package with our client. The negotiations were protracted but eventually concluded on the 30th September 2002.

It means therefore that our client was not dismissed but retrenched.

It is ZBC's policy that Directors and Controllers retain the vehicles they were using during their term of office. We can do no better than make reference to Mr T. Mandigora, Mr E Muchimbiri, Mr O Gumbo, Mr A. Mandere and other directors who left. Assistant Controllers who reported to the like of our client, directors, also went with their motor vehicles.

During the protracted negotiations between our client and the Chairman of ZBC Board of Directors, it was the understanding between the parties that the motor vehicle was not in issue given that as per the corporations policy, Directors and Assistant Directors retain the vehicles they were using over and above the retrenchment or exit packages." (my emphasis)

Quite clearly a civil dispute had arisen prompting the respondents to issue summons in the High Court on the 2nd of September 2003 claiming return of the motor vehicle under case number 7749/2003.

The summons was never served on the applicant the excuse being that he was evading service a fact which is denied by the applicant. It is not necessary to resolve that dispute because had the respondents intended to pursue the matter they could have applied for substituted service.

The applicant has a child at Highlands Primary School which is close to respondent's Pockets Hill Offices. He frequents the school dropping and picking up his child from school.

On the 27th July 2006 while dropping his child at the school the applicant was arrested and ordered to drive to Southerton Police Station on allegation of theft of the motor vehicle alternatively unlawful use of the motor without the owner's consent.

As they drove to the police station the respondent's legal advisor and Chief Security officer were trailing behind. At the police station no charges were pressed against the applicant. The police then advised the parties to go and talk over the issue at respondent's offices.

At respondent's offices the applicant spoke to the Executive Chairman.

The applicant says there was a misunderstanding and he was forcibly relieved of the motor vehicle. He could not resist because the place was guarded by armed soldiers. The respondent says that the applicant

voluntarily handed over the motor vehicle to avoid arrest for theft of the motor vehicle alternatively unlawful use of a motor vehicle without the owner's consent.

It is clear that the applicant had committed no criminal offence. He did not steal the motor vehicle, it was given to him by the respondent in terms of his contract. Once it is accepted that the motor vehicle was lawfully given to him then the question of unlawful use without the owner's consent does not arise.

This explains why the police did not press any charges against the applicant and advised the parties to resolve the dispute amicably. The police acted properly. Upon a report being made they could not ignore the report. They took action and when their investigations showed that this was merely a civil dispute they promptly released the applicant and did not impound the motor vehicle. It is therefore understandable why the applicant has no complaints against the police.

Undoubtedly the respondent impounded the motor vehicle in line with its threats to impound the motor vehicle in its letter dated 20th November 2002. That letter smacked of high handedness and the report to the police was an abuse of State machinery and personnel as no crime had been committed by the applicant.

It is trite that the courts generally frown upon the exercise of self help in resolving civil disputes.

Where a person has been dispossessed of property without recourse to law as happened in this case the court will order a return to the *status quo ante* without first determining the parties competing rights and interests in the disputed property. If any authority is needed it is to be found in the case of *Davis v Davis* 1990(1) ZLR 136 at 141.

In that case ADAM J quoted with approval the remarks of LEON J in the case of *Oglodzinski v Oglodzinski* 1996 (4) SA 273 (D) at 274 when he said:-

“In a spoliation application the court does not decide what apart from possession the rights of the parties in the spoliated property were

before the act of spoliation but merely orders that the status quo be restored.”

The requirements for a spoliation order were succinctly laid down in the case of *Kramer v Trustees Christian Coloured Vigilance Council Grassy Park* 1948 (1) SA 748 (C) at 753 where HERBESTEIN J is quoted in the *Davis Case (supra)* as having said:-

“...two allegations must be made and proved namely (a) that applicant was in peaceful and undisturbed possession of the property and (b) that the respondent deprived him of the possession forcibly or wrongfully against his consent....”

In this case the respondent relieved the applicant after firstly having subjected him to undue harassment by the police, and secondly at its business premises in front of armed guards. The issue of voluntary surrender of the disputed motor vehicle is therefore out of question.

In the result I come to the conclusion that the applicant has proved on a balance of probabilities that he was in peaceful and undisturbed possession of the motor vehicle for about 5 years and that he was wrongfully and forcibly dispossessed of the same. The respondent used irresistible coercive force to beat the applicant into submission.

That being the case the applicant is entitled to the relief sought. It is accordingly ordered that a provisional order be and is hereby granted in the following terms:-

TERMS OF THE FINAL ORDER SOUGHT

That the respondent shows cause if any why a final order should not be made in the following terms:-

1. That the dispossession of a motor vehicle, Peugeot 306, Registration number 771-564F from the applicant on the 27th of July 2006 should not be declared unlawful.
2. That the respondent pays the costs of suit of this application.

INTERIM RELIEF GRANTED

Pending the confirmation or discharge of the Provisional Order:-

1. The respondent be and is hereby ordered to restore possession of the said motor vehicle a Peugeot 306 Registration number 771-564F to the applicant forthwith, failing which the Deputy Sheriff of Harare with the assistance of the Zimbabwe Republic Police where necessary is hereby authorised and directed to restore possession of the said motor vehicle on the applicant.

SERVICE OF THE PROVISIONAL ORDER

This Provisional Order shall be served by the applicant's legal practitioners or deputy sheriff.

Mbidzo, Muchadehama & Makoni, applicant's legal practitioners
M V Chizodza, respondent's legal practitioners