G. A. PALMER (PVT) LTD
versus
MINISTER OF STATE FOR NATIONAL SECURITY
IN THE PRESIDENT'S OFFICE RESPONSIBLE
FOR LANDS, LAND REFORM & RESETTLEMENT
and
STANLEY KASUKUWERE

HIGH COURT OF ZIMBABWE
CHATUKUTA J
HARARE, 3 & 8 August 2007

Urgent Chamber Applications

Mr K. J. Arnott, for the applicant
Mr Terera, for the first respondent
Mr Ndudzo, for the second respondent

CHATUKUTA J: The applicant sought the following relief by way of urgent chamber application, that:

"1 The Second Respondent and all those holding occupation under him be and are hereby interdicted and prevented from in any manner whatsoever;

a) Interfering with the Applicants' (*sic)* normal farming operations on Mwonga Farm including the grading, baling and selling of tobacco;

b) Interfering with the Applicants' (*sic*) manager, workers and invitees rights of access to the farm and all improvements, facilities and residences thereon;

c) Interfering with the Applicants' (*sic*) intention and conduct in using, moving or dealing with its equipment as it deems fit that is listed in Annexure "A1" and "A2" to this application.

2. The Second Respondent shall pay the costs of this application."

The first respondent did not oppose the application and *Mr. Terera*, for the first respondent submitted that the first respondent would stand by the decision of the court. The second respondent filed a notice of opposition and opposing affidavit.

A Mr. G.A Palmer deposed to the founding affidavit as the applicant's director. It was contended that the applicant's farm is being compulsorily

acquired by the first respondent and that the second respondent purports to have been given by the first respondent an offer letter in respect of the applicant's farm. It was further contended that the second respondent had "physically commandeered" various farm equipment and material listed in two annexures to the application and that the second respondent had refused to allow the applicant to remove the said equipment and material from the farm. The applicant contended that the property was currently in use and therefore was not subject to compulsory acquisition under the Acquisition of Farm Equipment and Material Act [*Chapter 18:23*]. In this regard, the applicant referred me to the case of *Kwezaan Farming (Private) Limited v The Minister of State for National Security, Lands, land Reform and Resettlement & Anor* HC 2130/07. It was further contended that the second respondent had come to the farm with a "very large man purporting to be the chairman of the local War Veterans Association" who threatened that Mr. Palmer would be physically removed from farm if he did not do so willingly. As a result of the threat, Mr. Palmer moved off the farm and the second respondent "commandeered" the residence on the applicant's farm. On 21 July 2007 applicant was served with a notice of temporary extension to stay on the farm dated 2 May 2007.

The applicant's legal practitioner indicated in the certificate of urgency that the application was urgent because the second respondent had commandeered the applicant's farming equipment and material; and the farm house without legal justification. The applicant wished to use the equipment at another farm Blackfordby.

The second respondent contended that the applicant had not been candid with the court and on that basis the applicant should not be heard on an urgent basis. It was contended that the applicant did not disclose to the court that:

(a) the farm had been lawfully acquired by the first respondent;

(b) the second respondent had an offer letter from the first respondent and therefore had been properly allocated the farm;

(c) the applicant had offered to sale the equipment and material in issue to the second respondent; and lastly

(d) that the applicant was given a notice to have vacated the farm by 4 February 2007 and had been allowed to stay on the farm for a limited period by the notice dated 2 May 2007.

The second respondent contented that the applicant had deliberately concealed this information. It was submitted by *Mr. Ndudzo*, for the second responded that the consequences of being dishonesty and concealing information from the court was spelt out in *Graspeak Investment P/L v Delta Corporation P/L & Anor* 2001 ZLR 551 (H).

In *Graspeak Investment P/L v Delta Corporation P/L & Anor*, supra, at 555C-E NDOU J had this to say:

> "The courts should, in my view, discourage urgent applications, whether *ex parte* or not, which are characterized by material non-disclosures, *mala fides*, or dishonesty. Depending on the circumstances of the case, the court may make adverse or punitive orders as a seal of disapproval of *mala fides* or dishonesty on the part of litigants. In this case, the applicant attempted to mislead the court by not only withholding material information but by also making untruthful statements in the founding affidavit. The applicant's non-disclosure relates to the question of urgency. In the circumstances, I find that the application is not urgent and dismiss the application on that basis."

In the present case the applicant approached the court alleging that the second respondent had despoiled it and therefore it was entitled to urgent relief to reclaim possession of both the farm equipment and the farm itself. The legal practitioner's certificate of urgency placed emphasis on the dispossession of the farm equipment and material and therefore gave the impression that the application was brought on an urgent basis because of the equipment and material. The same impression was given in the paragraphs of the founding affidavit which address the question of urgency. In the certificate of urgency, the applicant's legal practitioner stated in paragraph 1 that-

> "2nd Respondent and his cohorts including those unlawfully acting under him on 20 July 2007 commandeered Applicants farm equipment

and material on Mwonga farm in the Centenary in circumstances where there is no legal basis justifying such conduct."

The second respondent produced the following document sent to the second respondent by the deponent dated 2 June 2007 as proof that in fact the applicant had freely and voluntarily offered the equipment and material for sale to the second respondent:

G A PALMER PVT LTD
PO BOX 23
CENTENARY
6TH JUNE 2007

INVOICE NUMBER RM 8292

STANLEY KASUKUWERE
16 ARGYLE ROAD
AVONDALE

SALE OF PLANT AND EQUIPMENT AS PER ATTACHED SCHEDULE FROM REDFERN MULLET DATED 21 MAY 2007

ALL MOVABLE ASSETS PER SCHEDULE ONLY, AS SEEN WITHOUT GIVEN OR IMPLIED WARRANT OR ERROR ON SCHEDULE

VALUE OF SCHEDULE Z$ 20 010 195 000

THIS INVOICE IS VALID UNTIL 20TH JUNE 2007 ONLY GOODS CAN BE USED OR REMOVED ON RECEIPT OF PAYMENT. AFTER THIS DATE WE RESERVE THE RIGHT TO SELL TO THIRD PARTIES.

PAYMENT TO

DATVEST ASSET MANAGEMENT
STNBIC BANK
PARK LANE BRANCH
ACCOUNT NUMBER 0140004818602

READ AND UNDERSTOOD THIS 6TH DAY OF JUNE 2007

SIGNED STANLEY KASUKAWERE (*sic*)

SIGNED G A PALMER

SIGNED WITNESS

The agreement was signed by the second respondent, Mr. Palmer and a witness. The second respondent further contends that the applicant is still in control of the equipment. It was contended that a Mr. Mlezo, the applicant's assistant manager, had possession of the keys to the storeroom where the equipment was kept.

Mr. Anortt could not confirm whether or not the equipment was indeed under the applicant's control. He, however, conceded that there was an agreement between the parties as indicated in the document, albeit it was a conditional agreement. He further maintained that the acquiring process in terms of the law had not been undertaken and as the acquiring authority, the first respondent had consented to the order, hence there was no basis to deny the applicant the relief it sought.

It is my view that the determination of this matter rests more on the agreement than on the other material misrepresentations raised by the respondent. I have therefore considered it not necessary to dwell on those other allegations.

It was quite apparent that *Mr. Anortt* was caught unawares by the production of the agreement. It was equally apparent from the agreement that as at 6 June 2007, the applicant had full control of his property. The applicant was offering the property for sale and imposing conditions that if the second respondent did not pay the purchase price by 20 June 2007, the applicant reserved the right to sell the equipment to a third party. What is, however, not apparent from the applicant's founding affidavit and the submissions by *Mr. Anortt* is how the applicant lost possession of the property. The word "commandeering" connotes the use of force of some sort. The impression sought to be created and was indeed created by the applicant in the application was that the second respondent dispossessed the applicant in a reprehensible manner, yet the applicant does not in any way explain how and in what way the second respondent commandeered the equipment and material. Further, *Mr. Anortt* did not refute the second

respondent's assertions that the applicant's equipment and material was under lock and key in a store room and the applicant's own assistant manager had the keys to that store room. The totality of the second respondent's assertions was that reference by the applicant to the agreement and that the property was still under its control would have diluted the applicant's case, and that would explain why it was withheld.

Accordingly, I hold that the matter is not urgent. This court should, as in *Graspeak Investment P/L v Delta Corporation P/L & Anor*, supra, express its displeasure at the way the applicant had conducted itself by withholding material information. The second respondent had prayed for costs on a higher scale in the opposing affidavit. However, no submissions were made to justify the prayer.

In the result, the application is dismissed with costs.

Coghlan, Welsh & Guest, applicant's legal practitioners
Civil Division, first respondent's legal practitioners
Mutamangira, Maja & Associates, second respondent's legal practitioners