

SASFUEL AND CHEM (ZIMBABWE) PRIVATE
LIMITED
and
MARYNA ESTELLE SYMES N.O.
and
ENVA MOHAMAD MOTALA NO
and
THLABO IGNATIUS MAENETYA N O
and
THE MASTER OF THE HIGH COURT OF ZIMBABWE

HIGH COURT OF ZIMBABWE
MAKONI J
HARARE, 29 November 2010

T M Kanengoni with Mr Silika, for the applicant
J Samungae with C Venturas, for 1st, 2nd and 3rd respondents

MAKONI J: The applicant claims the return of the movable property itemized in para a of the interim relief. The applicant has failed to establish ownership of the five trucks and six as itemized.

There was a concession that the applicant cannot establish ownership AAZ 977; Regarding AAZ 9773 and AAZ 9718, the applicant produced what it termed a confirmatory note from VID. The applicant submitted that the note is confirmation that VID is holding on to the trucks and registration books for the motor vehicles.

Firstly there is nothing on the confirmatory note to confirm that the applicant is the owner. As was rightly pointed out by Mr *Samkange*, anyone could have obtained that note.

Secondly if the motor vehicle/trailers are at VID how can the court order the respondents to return such motor vehicle to the applicant.

Regarding 517-766 N and 771-2439, the applicant produced registration books which indicate that the motor vehicles belong to the third parties. Attempts were made to suggest that the applicant purchased the trucks from the third parties. The submissions were not persisted with when it was noted that the documents produced in evidence did not relate to the motor vehicles in issue.

The applicant therefore has no *locus standi* to bring the present proceedings.

AUTHORITY TO DEPOSE TO THE FOUNDING AFFIDAVIT

Mr Silika swore that he is the applicant's director and has been authorized by the applicant to depose to this affidavit. This was challenged by the respondents through a supporting affidavit by Michael John Burns.

It is settled in our law that once authority of a representative of a company is challenged, the other party must prove that he has the requisite authority. This is normally in the form of a board resolution authorizing the deponent to institute proceedings and to swear to the affidavit. See *United Associates (Pvt) Ltd v Estate Late Leonard Dabulamanzi Ncube & Ors* HB 29/03. The applicant has failed to furnish this court with proof that he had authority to institute proceedings on behalf of the applicant. The fact that the issue is before another court does not detract from the fact that before this court the deponent has no authority. There is therefore no application before me. The applicant's case also falls on that issue.

I would agree with Mr *Samkange* that the applicant is abusing court process. The respondents were unnecessarily dragged to court when the applicant's papers were far from being in order. I will award costs on the Law Society tariff.

In my view once the applicant's case failed to pass the hurdle of *locus standi*, it will not be necessary for me to determine as the other issues.

In the result I make the following order:

“The application is dismissed with costs on the Law Society tariff”.

Chikumbirike & Associates, applicant's legal practitioners
Venturas & Samkange, 1st, 2nd and 3rd respondents' legal practitioners