

PARTSON ZVANDASARA

versus

DR M. MAKONESE N.O.

(in her capacity as chairperson of the Board of Directors of the 2<sup>nd</sup> respondent)

and

BELVEDERE NURSING HOME (PVT) LTD

HIGH COURT OF ZIMBABWE

MUTEMA J

Harare, 4 October, 2011

### **Urgent Chamber Application**

*T.T.G. Musarurwa*, for the applicant

*S.J. Chihambakwe*, for the respondents

MUTEMA J: The dispute between the parties is steeped in the realm of employment law. The bare bones are that applicant who is the largest shareholder in second respondent with a 19.42% shareholding, used to be employed by second respondent as the managing director - (This in fact constitutes the main bone of contention between the parties – respondents aver that applicant verbally resigned the post in early 2010 as can be gleaned from minutes of a meeting held on 3 May, 2010 chaired by the applicant at which he introduced doctor Saungweme who took over from him as the new managing director, while applicant denies resigning averring that he only relinquished some managing director's duties to Saungweme while he was engaged in a fund raising mission aimed at expanding the hospital and Saungweme was merely chair warmer for him).

When applicant went away he vacated the office taking with him his personal belongings therefrom. Saungweme occupied the office in his new capacity as managing director. In about March, 2011 applicant returned to the institution claiming that he had come back to reclaim his managing director's post, forced himself into the office and locked it off from everyone except himself thereby despoiling the incumbent managing director and started issuing orders and instructions to staff and threatened to assault or injure anyone who tried to stop him or make him see reason. All attempts to make him see sense failed prompting first respondent to issue a memo on 20 September 2011 to all stakeholders restating the correct position regarding applicant's status *vis-a-vis* the managing director post of second respondent. This did not help matters and on 24 September 2011 respondents

installed new locks and put bars to the entrance of the managing director's office thereby denying applicant access to that office.

On 26 September, 2011 applicant issued summons against second respondent in case number HC 9444/11 claiming *inter alia* \$50 000.00 which he claimed was owed to him. On 29 September, 2011 applicant, filed a court application against both respondents in case number HC 9592/11 seeking *inter alia*, a declaratory order that he is the lawful managing director of second respondent. The two suites are being opposed.

On 30 September, 2011 applicant then lodged this application via the chamber book for a provisional order whose relief is couched in the following terms:

**“ PROVISIONAL ORDER**

- a) That the first respondent be and is hereby ordered to return possession of the applicant's office situated at the second respondent's premises.
- b) That pending the determination of the matter in case number HC 9592/11 the first respondent is ordered to ensure that the possession by the applicant of his office situated at second respondent's premises is not violated.
- c) The respondents are to pay the costs of this application at an attorney – client scale wholly (sic) and severally the one paying to absolve the other.

**INTERIM ORDER GRANTED**

Pending the determination of this matter the first applicant (sic) is granted the following relief:

- a) The second respondent is ordered to restore applicant's possession of office situated at first respondent's premises (sic).
- b) Should the respondent not restore such possession within twenty – four hours of this order, the Deputy Sheriff or any attested member of the Zimbabwe Republic Police is hereby authorised to do all is necessary to ensure that such possession is restored.”

At the hearing Mr *Chihambakwe* raised two main preliminary issues,  
They are these:

1. The dispute is a labour issue and as such it should have been directed to its proper forum which is the Labour Court. Section 89 of the Labour Act confers virtually as wide a jurisdiction as the High Court, so he submitted. It is one of the

requirements for an interdict that there be no other satisfactory remedy but *in casu* there is a remedy in the Labour Court.

2. The applicant makes a serious allegation in paragraph 21 of his Founding Affidavit that he was in peaceful and undisturbed possession of the office prior to the actions of the first respondent and her subordinates. There was no such peaceful and undisturbed possession enjoyed by the applicant. In fact it was the current managing director who enjoyed peaceful and undisturbed possession prior to the applicant's actions.

I do not deem it fit to delve into the first point *in limine* that was raised by Mr *Chihambakwe*, viz that the dispute should have been referred to the Labour Court because it is a labour issue suffice it to say that that point would only be relevant either at confirmation or discharge of the provisional order or at the hearing of the application in case number HC 9592/11. It is then that the issue would fall for determination whether the matter is a labour dispute falling exclusively within the purview of s 89 (1) of the Labour Act and if it does then subsection (6) would oust this Court's jurisdiction.

Regarding the second point *in limine*, I am constrained to uphold it. The reason therefore is simple and straightforward. Applicant alleges was despoiled of the office as well as his personal belongings lodged therein which he uses for his private life and business. Respondents have offered that applicant is at liberty at his earliest convenience, to come and collect his personal items. I have no reason to doubt the sincerity of that offer. However, as regards the office that is a different kettle of fish. While applicant alleges spoliation respondents' papers clearly show that it is him who is the spoliator. He had been away for some 8 months and Saungweme was in lawful /and undisturbed possession of that office. He was denied occupation of the office but he locked it to the exclusion of everyone except himself. This, despite the exitant dispute between the parties, amounts, on the applicant's part, to self-help.

I did not hear applicant to dispute respondents' version either on paper or in oral submissions, of how he ended up reoccupying the office. He therefore did not come to Court with clean hands. He is the spoliator. To allow him audience would be tantamount to sanctioning unlawfulness.

On the basis of the second preliminary point raised by the respondents, the application is hereby dismissed with costs.

4

HH 221-2011

HC 9630/11

*Mambosasa legal practitioners*, applicant's legal practitioners

*Chihambakwe, Mutizwa & Partners*, respondents' legal practitioners