

GOLDCHIP INVESTMENTS (PRIVATE) LIMITED
versus
KENNEDY ALLEN MOYO
and
EUGENE EDWARD BELL
and
SIMWAWA SICHULA

HIGH COURT OF ZIMBABWE
TAGU J
HARARE, 29 June & 22 July 2020

Urgent chamber application

T.W. Nyamakura, for applicant
M. Musuka, for respondents

TAGU J: This is an urgent chamber application filed on the 22nd June 2020 for an interdict interdicting first respondent from falsely claiming to represent the applicant as a Director and making fabricated and malicious reports against applicant's appointed officers, and for the second and third respondents from giving the first respondent illegal power to act as if he is a Director of Applicant.

The facts

Sometime during the course of March 2019 the first respondent was given General Powers of Attorney to act on behalf of two minority shareholders of the applicant, that is, EUGENE EDWARD BELL holding 18% and SIMWAWA SICHULA holding 13% shares respectively in the applicant. The second respondent had resigned on the 27th of November 2015 and the 3rd respondent had resigned on 27th of November 2017. This fact was well known by all the respondents who sued the applicant together with its Directors at the time in the High Court of Zimbabwe in case number HC 4505/19. Despite knowing that he does not represent any of the applicant's directors, the first respondent made a complaint to the police purportedly on behalf of the applicant at CID Minerals (Chegutu). In that report the first respondent is alleged to have

falsely alleged theft of a tractor, fraud, money laundering and externalization. The first respondent is alleged to have misrepresented his authority to the police leading to the unwarranted seizure of applicant's company documents and interruption of its business operations. He is alleged to have misrepresented to the Ministry of Mines office in Kadoma once again making false and malicious allegations that are damaging to the applicant's operations. He again took to visiting applicant's mining operations making the same claims that he has the authority of the company's Directors and can do as he pleases. This created a tense working environment for the applicant's employees. The applicant is alleging that the second and third respondents as applicant's minority shareholders are entitled to invoke the provisions of Section 40 of the Companies and Other Business Entities Act [Chapter 24:31] for the redress of any grievances they may have against the applicant. The applicant therefore has approached this Honourable Court for the following Provisional Order.

“TERMS OF FINAL ORDER SOUGHT

That you show cause to the Honourable Court why a final order should not be made in the following terms-

1. 1st Respondent, Kennedy Allen Moyo be and is hereby prohibited from representing himself as an agent of any of the Director(s) of the Applicant.
2. 2nd Respondent, Eugene Edward Bell be and is hereby prohibited from representing himself as a Director of the Applicant.
3. 3rd Respondent, Simwawa Sichula be and is hereby prohibited from representing himself as a Director of the Applicant.
4. Any acts conducted by or under the authority of Kennedy Allen Moyo, Eugene Edward Bell and Simwawa Sichula acting as Directors of the Applicant be and are hereby declared null and void.
5. The Respondents shall pay the costs of suit on a legal practitioner client scale.

INTERIM RELIEF GRANTED

Pending the determination of this matter the Applicant is granted the following relief:

1. The 1st, 2nd and 3rd Respondents be and are hereby interdicted from holding themselves out to be, and/ or acting, and/or posing, and/or presenting themselves as Directors of the Applicant and/or giving any information and/or making representations for and on behalf of the Applicant.

SERVICE OF PROVISIONAL ORDER

This provisional order shall be served on the Respondents by the Applicant's legal practitioners.”

In their Notice of Opposition filed on the 29th of June 2020 the respondents attacked the urgency of this matter. They took the view that this matter is not urgent because the Applicant's

purported Managing Director is simply trying to thwart the respondents' move to make sure that the company's interests are protected. They said if there is no suspicion of criminal activity going on, the first respondent would not have been compelled to report a case of criminal complaint against applicant's purported Managing Director. Further, they said had this application been urgent would it have been served on the 1st, 2nd and 3rd respondents' legal practitioners of record in Harare rather than first respondent's residential address all the way in Gweru. They claimed that the reported criminal case against the applicant's purported Managing Director was made way back in February 2020. Reference was made to the case of *Kuvarega v Registrar General and Anor* 1998 (1) ZLR 188 and *Mathias Madzivanzira and Mildred Madzivanzira, and Lorraine Mpofo v Exprint Investments (Private) Limited and George Chikumbirike* HH 145/02.

However, this point was not sufficiently argued by counsels for both sides. Be that as it may it is clear that the case of *Kuvarega v Registrar General & Anor supra*, and many more deal with the issue of urgency particularly where CHATIKOBO J said-

“What constitutes urgency is not only the imminent arrival of the day of reckoning; a matter is urgent, if at the time the need to act arises, the matter cannot wait. Urgency which stems from a deliberate or careless abstention from action until the dead-line draws near is not the type of urgency contemplated by the rules. It necessarily follows that the certificate of urgency or the supporting affidavit must always contain an explanation of the non-timeous action if there has been any delay.”

In the present case the applicant explained urgency of the matter on the basis of the misrepresentations being made by the first respondent which are causing irreparable harm on the applicant. On the other hand the respondents instead of clearly stating when they think the need to act arose went on to justify the reporting of criminal activities taking place at the applicant's work place to the police and why the application was served where it was served.

What this court has to focus itself is whether a case has been established warranting the granting of a prohibitory interdict. The General Power of Attorney attached to the founding affidavit of Henry Leroy Jenkins at page 10 of the record was given to the first respondent by the second respondent to do whatever the applicant is complaining of and is dated 7 March 2019. The second General Power of Attorney at page 11 of the record was given by the third respondent to the first respondent also to do what the applicant is complaining of and is dated the 26 of March 2019. Yet the CR14 at page 13 of the record shows that Eugene Edward Bell

resigned from the applicant on the 27th November 2015 and Simwawa Sichula resigned from the applicant on the 27th of November 2017. The respondents do not deny what is being alleged by the applicant but they seek to justify their actions. In my view the applicant has managed to establish its claim on a balance of probabilities wanting the granting of the relief sought. Whether the CR14 is genuine or not it is not for this court to decide at this stage. All these issues will be argued on the return day. I will therefore grant the provisional order sought.

IT IS ORDERED THAT

TERMS OF FINAL ORDER SOUGHT

That you show cause to the Honourable Court why a final order should not be made in the following terms-

1. 1st Respondent, Kennedy Allen Moyo be and is hereby prohibited from representing himself as an agent of the Director(s) of the Applicant.
2. 2nd Respondent, Eugen Edward Bell be and is hereby prohibited from representing himself as a Director of the Applicant.
3. 3rd Respondent, Simwawa Sichula be and is hereby prohibited from representing himself as a Director of the Applicant.
4. Any acts conducted by or under the authority of Kennedy Allen Moyo, Eugene Edward Bell and Simwawa Sichula acting as Directors of the Applicant be and are hereby declared null and void.
5. The Respondents shall pay the costs of suit on a legal practitioner client scale.

INTERIM RELIEF GRANTED

Pending the determination of this matter the Applicant is granted the following relief:

1. The 1st, 2nd and 3rd Respondents be and are hereby interdicted from holding themselves out to be, and/or acting, and/or posing, and/or presenting themselves as Directors of the Applicant and/or giving any information and/or making representations for and on behalf of the Applicant.

SERVICE OF PROVISIONAL ORDER

This provisional order shall be served on the Respondents by the Applicant's legal practitioners.

Coglan, Welsh & Guest, applicant's legal practitioners
Karuwa and Associates, 1st, 2nd and 3rd respondents' legal practitioners