

GREAT ZIMBABWE UNIVERSITY

vs

NESBERT MAREVERWA

HIGH COURT OF ZIMBABWE

WAMAMBO J.

MASVINGO, 8 and 18TH November, 2019

Urgent Chamber Application

R.S. Makausi with him *J. Mpoperi* for applicant

G. Nyandoro for respondent

WAMAMBO J: Applicant seeks a *rei vindicatio* order. It seeks to recover its property retained by respondent.

The applicant is a body corporate duly constituted in terms of the Great Zimbabwe University Act [*Chapter 25:24*]. The respondent was an employee of the applicant holding the position of Chief Security Officer. The respondent holds property belonging to the applicant which property respondent was holding by virtue of his being an employee of the applicant. The property consists of guns, a security motor vehicle and office and gun cabinet keys. The respondent's contract of employment with applicant has been terminated.

As is usual in such applications respondent raised a number of points *in limine*. Respondent contends that there is no proper certificate of urgency filed, that the matter is not urgent that the draft order is defective and unlawful. I will briefly deal with these points *in limine*.

Apparently the certificate of urgency copies and pastes the founding affidavit. It does not reflect an independent view regarding urgency, so it is argued. The certificate of urgency was deposed to by *Mr Mpoperi*. While it goes in some detail on the background facts it is not quite a regurgitation of the founding affidavit. The deponent attempts to justify the

application and gives reasons and grounds thereof. Paragraphs 6, 7, 8, 9, 10, 11 and 12 articulate the basis upon which the application is predicated. Whilst appreciating that the certificate of urgency could be broader or clearer, it does formulate clear and justified reasons on which the application is made. I therefore dismiss this point *in limine*.

On urgency respondent avers that the founding affidavit does not reflect urgency. It is deposed to by the Vice Chancellor Professor Rungano Jonas Zvobgo. A number of complaints are raised by respondent. I find the complaints unmeritorious. The founding affidavit gives the background of the matter in detail. It spans almost 3 pages. The detailed background is essential for one to appreciate what steps applicant took in the matter, what options were open to it and whether or not there are alternative remedies.

For an appreciation of what the founding affidavit establishes I will delve into some detail on the founding affidavit. This might illuminate issues particularly on the raised issue of lack of urgency.

The facts as per the founding affidavit are as follows:-

The respondent's employment with applicant was terminated with the effective date of termination being 31 October, 2019. Respondent retained the keys to the office housing the gun cabinet and the keys to the gun cabinet. Respondent also retained a motor vehicle used in the security department. As matters would have it as will become clearer in due course the three guns are lodged in the gun cabinet. Effectively applicant cannot access its office and its three guns.

The applicant took steps to recover the property at the centre of the dispute to no avail. Applicant sought the help of the police. To achieve this applicant wrote a letter dated 23 October, 2019 directed to the police seeking recovery of *inter alia* the property in contention in this case. The letter further emphasises the urgency of the matter citing that the State President would preside over a graduation ceremony at applicant's premises on 1 November, 2019.

The police responded to the request through a letter dated 29 October, 2019 and indicated that the matter is more civil than criminal. In paragraph 4 of the said letter the Officer Commanding, Police Masvingo Central District who penned the response indicated that his office is open "for further assistance should you legally require it".

The invitation to assist culminated in the Police taking custody of the guns and ammunition in question on 31 October, 2019. On 4 November, 2019 the police returned the guns and ammunition to the gun cabinet. *Mr Makausi* argued that there were efforts to calm

the situation and the return of the guns and ammunition marked the point when the applicant acted by filing this application a day later.

I am satisfied in the circumstances that the applicant did act when the need to act arose and that he did so expeditiously. To that end I dismiss this point *in limine*.

The last point *in limine* deals with the allegation that the interim relief being sought is definitive and thus final in nature. In effect that the interim and final orders are the same. There was a strenuous argument by *Mr Nyandoro* for the respondent that the relief sought is final disguised as interim relief. He also argued that the request sought is meant for the ordinary roll and not the urgent chamber application route.

To this end I was referred to the matter of *Williams v Katsande* 2010 (1) ZLR 266. *Mr Makausi* for the applicant was content to rely on the matter of *Chitungwiza Municipality vs Maxwell Karenyi* HH 93-18.

Without splitting hairs it would appear that it may have been more prudent to couch the final order to reflect that the respondent should show cause why he is of the view that he is entitled to the property at the heart of the application. I am however not convinced that the final order as couched is fatal to the application before me. I also dismiss this point *in limine*.

On the merits the application is for *rei vindicatio*. In *Chitungwiza Municipality vs Maxwell Karenyi* (supra) TAGU J. formulated the requirements of *rei vindicatio* applicant must satisfy as follows at page 5:-

- “1. That he is the owner of the property – *Jolly Shannon and Anor.* 1998 (1) ZLR 78.
2. That at the commencement of the action the thing to be vindicated was still in existence and the respondent was in possession of the property *Masuli v Jera* HH 67-07 and
3. That the respondent’s possession is without his consent – *Stanbic Finance Zimbabwe v Chivhunga* 1999 (1) ZLR 262”.

The respondent avers that he is challenging the termination of his employment. That is clearly not material. When dealing with the same contention MWAYERA J. in *The Minister of Higher and Tertiary Education, Science and Technology Development vs Rudolf Pimai Matsanga* HH 104-19 says as follows at page 3:-

“Whether or not the respondent is challenging the termination of employment is immaterial. The basis of occupation which is employment no longer exists and the owner of property is entitled to vindicate”.

In the case of *Montclair Hotel and Casino vs Farai Mukutwa* HH 200-15 MATHONSI J made pertinent remarks emphasizing that once the basis of occupation has been terminated then the owner is entitled to vindicate. The Honourable Judge MATHONSI remarked:-

“Just from where do former employees think they can derive the authority to hold on to property belonging to a former employer given to them for use during the subsistence of the contract of employment in the discharge of their duties as employees after they have lost employment? This matter is one of several of its nature which are now finding their way to the court with alarming frequency of late where a dismissed employee would simply not surrender the employer’s property but would cling to it as if life depends on it.”

The above sentiments apply with equal force to the instant matter.

Apparently as a red herring the applicant contends that he guns in question are registered in his name and he fears that if they get in the wrong hands mayhem may ensue and he will be held accountable. It is common cause that the guns are owned by the applicant and respondent’s name appears on the firearm certificate as a representative of the applicant. Apparently efforts are underway by applicant to appoint persons to be responsible for the firearms. See the letter dated 4 November, 2019 addressed to the Officer Commanding, Masvingo Province, ZRP by the applicant through its Registrar’s office.

Whilst an attempt has been made to justify possession of the keys to the office and cabinet wherein the guns are lodged the issue of the security vehicle is not addressed in depth by respondent. The applicant contends that the vehicle in question is a security vehicle and its absence impacts on the security of the applicant’s premises.

It is common cause that the guns, the office and cabinet where they are lodged belong to the applicant. The keys to both the office and gun cabinet belong to the applicant. The same applies to the security vehicle.

It is common cause that the above property existed at the time of action and that respondent was in possession of the said property. The efforts by applicant to have the property retained has not succeeded. The action by the police is one such result of the applicant’s attempt to retain its property. It also reflects that the respondent possesses the property without applicant’s consent.

A somewhat novel argument was raised by *Mr Nyandoro* for the respondent. It is to the effect that there has not been a demand for the return of the property in question.

A number of letters addressed to applicant reflect that a request was made for the return of applicant's property in the possession of respondent. A letter dated 30 September, 2019 addressed to applicant reads in part as follows:-

“Pursuant to our letter dated 25 September, 2019 informing you of the abolishment of the post of Chief Security Officer, kindly handover property of the University in your possession to Mr Richard Tivakudze, the Senior Security Officer. For security sensitive items such as guns and ammunition kindly do the handover in the presence of the Acting Vice Chancellor Dr E. Chikodza, Acting Registrar Mr I. Chinyemba and Acting Bursar Mr I. Jamela”.

Following the above letter are other letters addressed to respondent requesting the handing over of the property in question; See letters dated 10, 21, 23 and 29 October, 2019.

In the circumstances I find that the applicant has proven that he is entitled to the interim relief he seeks. For clarity I will grant the interim order as prayed for as amended. Applicant appears to have repeated the contents of paragraph 1. To that end paragraph 2 of the draft order is deleted.

IT IS HEREBY ORDERED AS FOLLOWS

Pending confirmation of discharge of this provisional order, applicant is granted the following relief;

1. The respondent be and is hereby ordered to surrender and return –
 - (a) 3 guns and rounds of ammunition (the details of the guns are listed below)
 - (a)(i) Revolver Taurus, Serial Number 1290665
 - (a)(ii) Shotgun B.S.A. Serial Number 111-3754
 - (a)(iii) Pistol Norinco Serial Number 49109461
 - (b) Keys to the gun cabinet
 - (c) Applicant's vehicle MAZDA BT50 Registration Number 9417
 - (d) Applicant's office and keys

upon service of this order, failing which the Sheriff of Zimbabwe or his lawful deputy be and is hereby authorised to take all the necessary steps to recover the said property from the respondent or any person whomsoever is in possession thereof and wherever the property may be situate and return the same to applicant where it shall be kept by the applicant.

2. The applicant and or his legal practitioners be and are hereby authorised to serve this Provisional Order on the respondent.

Saratoga Mkausi Law Chambers, applicant's legal practitioners

Hamunakwadi and Nyandoro Law Chambers, respondent's legal practitioners