

**JONATHAN DUBE**

**And**

**PATRICK DUBE**

**And**

**MAYISA JOHN MOYO**

**And**

**AARON DUBE**

**Versus**

**SIYAPHAMBILI COLLECTIVE FARMING  
CO-OPERATIVE SOCIETY**

**And**

**CANAAN SIBANDA**

**And**

**MISHECK NDLOVU**

**And**

**PHUMULELA KHUMALO**

**And**

**BOY KHUMALO**

**And**

**EZRA KHUMALO**

**And**

**MUZONDIWAYO MOYO**

**IN THE HIGH COURT OF ZIMBABWE**

**NDOU J**

**BULAWAYO 6 SEPTEMBER 2002 AND 5 FEBRUARY 2004**

*T Ndlovu* for applicants  
*J Tshuma* for respondents

**NDOU J:** The first respondent, Siyaphambili Collective Farming Co-operative Society is a co-operative registered in terms of the laws of Zimbabwe capable of suing and being sued and carrying business at Siyaphumelela Collective Farming Co-operative Farm, Lot 1 of Copthal, Block 2 situate in the District of Gwanda. The other respondents are all members of the first respondent. This is beyond dispute. In their founding papers the applicants have not alleged that they are members of the first respondent save for the first applicant. In his answering affidavit the first applicant dealt with this issue as follows:

“5. I am still a member of the co-operative and it is my sincere belief that I and my co-applicants whom respondents admit are still members of the co-operative, (save for Patrick Dube whom they, with no grain of truth that he is not a member of the co-operative are entitled to the full protection of the law ...”

It seems beyond dispute that the cattle belonging to the applicants were on the first respondent's farm. At some stage then were no longer there. The applicants, on the one hand aver that the second to seventh respondents drove the said cattle out of the first respondent co-operative farm. The respondents on the other hand, aver that the cattle moved out of the farm entirely because the fence had been cut by some illegal settlers (they seem to include the second, third and fourth applicants in this group). The said cattle are back in first respondent. The applicant seek an interdict against the respondents in the following terms:

“(I) That respondents be and are hereby interdicted from removing cattle identified as belonging to the applicants from Siyaphumelela Collective Farming Co-operative Society Farm ... or interfering with applicants' ranching activities at the farm pending the finalisation of case number HC-1555-01”

The respondents, through the chairperson of the first respondent, responded as follows to the relief sought:

“12. **Ad paragraph 17**

It is correct that most of the cattle have come back to the farm, and we have not driven them out of the farm. We are waiting for the outcome of the court application which as said above is set down for ...”  
(emphasis added)

This point was emphasised in the respondents’ heads of argument.

Notwithstanding this categorical position by the respondents, the applicants persisted with the application. The legal requirement for interdict are set out in *Knox D’Archy Ltd and Ors v Jamieson and Ors* 1995 (2) SA 579 (W); *Harnischfeger Corporation v Appleton & Ano* 1993 (4) SA 479 (W); *Mabhodho Irrigation Group v Maron Kadye and Ors* HB-8-03; *Bull v Minister of State (Security) & Ors* 1987 (1) SA 422 (ZH); *Setlogelo v Setlogelo* 1914 AD 221; *Gideon v Ngumo* 1973 (2) RLR 197; *Flame Lily Investments Co (Pvt) Ltd v ZM Salvage* 1980 ZLR 378 and *Bulawayo Dialogue Institute v Chief Superintendent – P Matyatya, Officer Commanding Police, Bulawayo Central District and Ors* HB-87-03. From these cases it is evident that legal requirements for an interdict *pendente lite* are no different from those for only other interlocutory interdicts. First, the applicant must establish existence of a clear right, therefore, he must show-

- (a) an infringement of the said right by the respondent or at least a well grounded apprehension of such an infringement; and
- (b) the absence of any other satisfactory remedy; and

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- (c) that the balance of convenience favours the granting of an interlocutory interdict (though where he can establish a clear right together with (a) and (b) he would normally claim a final interdict).

**Did the applicants establish a clear right**

The first applicant's right clearly emanates from his challenged membership of the first respondent. Although the respondents allege that he was expelled from the first respondent they are prepared to leave his cattle on the first respondent *pendente litis*. The second, third and fourth applicants did not alleged in their founding papers that they enjoy membership of the first respondents. The respondents have averred that they are not members of the first respondent. Without such membership of the first respondent it is beyond dispute that the second, third and fourth applicants have no right to have their cattle on first respondent. These three have not made averments in their founding papers to establish a clear right. On account of this factor alone the application by second, third and fourth applicants should fail.

**Did the first applicant establish an infringement of the said right by the respondents or show at least a well-grounded apprehension of such an infringement**

I have indicated above that the respondents' attitudes to the interdict is that it is unnecessary as they undertake not to drive the cattle out of the first applicant until the out come of the litigation between the parties. They disputed ever driving the cattle off the first respondent in the first place. The first applicant failed to establish an infringement of his right or at least a well-grounded apprehension of such infringement. In light of this finding the first applicant's application also falls away.

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In the circumstances I, accordingly, dismiss the application with costs.

*Cheda & Partners* applicants' legal practitioners  
*Webb, Low & Barry* respondents' legal practitioners