

PRACTICAL ACTION SOUTHERN AFRICA
versus
SYLVIA MAKOMVA
and
SHERIFF OF ZIMBABWE

HIGH COURT OF ZIMBABWE
MATHONSI J
HARARE, 1 April 2014

Urgent chamber application

Ms R. Makamure, for the applicant
T. Marume, for the 1st respondent
2nd respondent in default

MATHONSI J: The applicant has approached the court on an urgent basis seeking the following relief:

“TERMS OF FINAL ORDER SOUGHT

That you show cause, if any, to this Honourable Court, why a final order should not be made on the following terms:

1. That the possession of the Ford Ranger vehicle registration No ACO2985, Chassis Number 6FPPXXMJ2PCG40156 by the 1st respondent be and is hereby declared unlawful and the first respondent has no right to possess the vehicle.
2. That the 1st respondent shall pay the costs of this application on a legal practitioner and client scale.

INTERIM RELIEF GRANTED

Pending the determination of this matter, the applicant is granted the following relief:

1. That the 1st respondent be and is hereby ordered to return to the applicant the said motor vehicle in her possession, namely a Ford Ranger, vehicle registration No. ACO 2985 Chassis Number 6FPPXXMJ2PCG40156 within 24 hours of service of this order upon her.
2. That the 1st respondent, including any of her agents, be and is hereby interdicted, barred and stopped from interfering with the ownership and possession by the applicant of the motor vehicle, namely a Ford Ranger, vehicle registration No ACO 2985 Chassis Number 6FPPXXMJ2PCG40156.
3. In the event that the 1st respondent fails to restore possession in terms of clause 1 and 2 above, the 2nd respondent be and is hereby ordered and authorised and required to seize the aforementioned vehicle from the 1st respondent or from whomsoever is in possession of the vehicle and deliver the same to the applicant.
4. The 2nd respondent is authorised in the execution of his duties above to enlist the assistance of members of the Zimbabwe Republic Police as he may deem necessary.
5. The 1st respondent shall pay costs of this application on a legal practitioner and client scale.”

The first respondent was employed by the applicant up to 28 February 2014 when her fixed term contract expired. There is a dispute as to how the said contract was terminated which the first respondent has referred to a Labour Officer for conciliation. During the tenure of her employment contract the first respondent had access of a motor vehicle belonging to the applicant for use in the discharge of her duties. The applicant maintains that the vehicle was not given to the first respondent as a benefit and although not disputing that fact, the first respondent insists that “is neither here nor there” especially as her post has been abolished thereby entitling her to the vehicle as a retrenchment package.

In anticipation of the expiry of her employment contract the applicant notified the first respondent months earlier, that her contract would not be renewed, sparking a dispute which has been referred to a Labour Officer aforesaid. The first respondent has refused to surrender the vehicle even after the expiry of her employment contract insisting that she was unfairly dismissed and that until such time that the issue of her dismissal is determined she has a right to the vehicle which, in any event, is a negotiable package.

This has prompted the applicant to approach this court as already stated seeking an order for the return of the vehicle which it says is required for use in its business and in any event, is a subject of a rebate granted by the tax authorities upon its importation in 2012. For that reason, it should be in the possession and use of the applicant.

It appears common cause that the first respondent’s employment contract expired on 28 February 2014 at which point, she would have been expected to surrender the employer’s property including the motor vehicle. The first respondent has taken a point *in limine* that the matter is not urgent because the dispute concerning the vehicle arose on 30 October 2013 when the applicant notified her of the non – renewal of her contract. When she was sent on leave on 17 January 2014 and did not return the vehicle, the applicant should have acted then and not now.

In my view that argument misses the point completely. The right to act arose when the first respondent’s employment contract expired on 28 February 2014 and she remained in possession of the vehicle. I do not agree that there was an inordinate delay in acting when the need arose. I therefore do not agree that this is self created urgency and dismiss the point *in limine*.

On the merits of the matter, there can be no doubt that the vehicle in question belongs to the applicant and not the first respondent. It was given to the first respondent for use in the discharge of her duties as an employee of the applicant. At no time was the vehicle part of

her benefits in terms of her employment contract. In fact she admits that it was available for use by other employees of the applicant and that a log book on its movement was kept. At no time did the parties agree to transfer ownership to the first respondent.

The issue of a former employee's entitlement to an employer's vehicle after termination arose in *Zimtrade v Makaya* 2005 (1) ZLR 427 (H); *Medical Investments Ltd v Pedzisayi* 2010 (1) ZLR 111 (H) and *William Bain & Co Holdings (Pvt) Ltd v Nyamukunda* HH 309/13.

In my view *Zimtrade v Makaya* is distinguishable from the present case in that pending termination of the contract of employment, the employer sought to repossess its assets from the employee using the *rei vindicatio* and the court reasoned that where the validity of the suspension of the employee is still pending, the *rei vindicatio* cannot lie at the instance of the employer. *In casu* it is common cause that the employment contract terminated by effluxion of time on 28 February 2014. What the employee probably wants to argue is presumably that she had a legitimate expectation of a renewal. She can do that but the employer cannot be detained in relying on the *rei vindicatio*.

In *Medical Investments Ltd (supra)* MAKARAU JP (as she then was) stated at 116A that:

“I am unaware of any law that entitles a prospective purchaser to have possession of the merx against the wishes of the seller prior to delivery of the merx in terms of the sale agreement. I was not referred to any such law during the hearing of the matter. My limited research has not yielded any.”

By parity of reasoning, it cannot be said that an employee is entitled to retain the vehicle in anticipation that it may be given to her as a retrenchment package. A retrenchment which has not even begun, may never occur and is just a pipe dream in light of the expiry of the employment contract.

In *William Bain & Co Holdings (Pvt) Ltd v Nyamukunda (supra)* at p4 I made the point which I repeat here that:

“In my view, it is the height of turpitude for the respondent to hold on to both the vehicle and the house years after termination of the employment contract under circumstances where he has no rights whatsoever over the properties ----- . The fact that the respondent is owed terminal benefits is not a ground for refusing to surrender assets. In the end we are left with the tired and limping argument that because the respondent has referred the issue of whether the employment contract was terminated by dismissal or by registration to the Labour Court, then this court should not entertain this application even though the Labour Court dispute not only did not

have anything to do with the issues before this court but also determined that dispute by judgement delivered in May 2013.”

See also *PG Industries (Zimbabwe) Ltd v Machawira* 2012 (1) ZLR 552 (H).

To the extent that the applicant owns the vehicle and that it was not given to the first respondent as a benefit, and to the extent that the first respondent retains it without the authority of the owner for use as a bargaining tool, the applicant has made a case for the relief sought.

Accordingly, I grant the provisional order in terms of the draft order as amended.

Kantor & Immerman, applicant’s legal practitioners
Matsikidze & Muccheche, 1st respondent’s legal practitioners