MANLINE FREIGHT (PTY) LTD
versus
PETER KANENGONI
and
DONEMORE NYONI
and
TARIRAI MAZONDE
and
MTHOKOSIZI NCUBE
and
FARAI MANYUSA
and
ITAI MIZENGEZA
and
ALECK MUTANGURO
and
NORMA SHUMBA
and
TAPIWA MHLANGA
and
TICKY NYAMURANGA
and
KUDAKWASHE HOVE
and
CHARLES MUKUMBA
and
HENRY CHIMARI
and
ADMIRE NGAAFARE
and
DOUGSON BIKIRWA
and
LEYTON MHLEKWA
and
SIMUKAYI MUTOMERA
and
ADMIRE MAGODORA
and
GIVEN CHAMUNORWA
and
NOREST SHONHIWA
and

KENNETH MUNOZOHAMBA
and
MOSES MANZUNZA
and
TINOFIREI MABAMBE
and
ISRAEL MARUMA
and
FIELD MUTENGERA
and
ITAYI KANYIMO
and
REMEMBERANCE MAKWASHA
and
TINASHE CHIKOMO
and
VENGAI SINJANI
and
ALEXIO MACHOTE
and
LLOYD GORA
and
MUNYARADZI MUTASA
and
MUNASHI
and
ARTHUR SAKALA
and
COLLEN DANHA
and
JERICHO NYERE
and
KUDAKWASHE CHADZIVA
and
COURAGE NHIRE
and
SHEPARD
and
VICTOR NDLOVU
and
AGRIPPA NYAGWAYA
and

MICHAEL CHINONDO
and
BLESSING SVOSVE
and
TALENT DARANGWA
and
TRYMORE WASHAYABUNHA
and
IGNATIOUS MAROZVA
and
RODNEY CHIMBWANDA
and
BRIGHTON CHITUTE

HIGH COURT OF ZIMBABWE
MAFUSIRE J
HARARE, 31 January 2015 & 11 February 2015

Urgent Chamber Application

Z. Makori, with him, *W. Magaya*, for the applicant
T. Machiridza, for the respondents

MAFUSIRE J: On 31 January 2015, I granted an *ex tempore* order directing the forty three respondents to release immediately the forty three heavy duty haulage trucks, together with their cargo, trip documentation for those trucks, and all other property of the applicant which the respondents had unlawfully embargoed and parked at Beitbridge, Harare and Chirundu.

The respondents were part of a group of one hundred and forty five Zimbabwean nationals employed as transnational haulage truck drivers by the applicant, a South African company that carried on the business of freight forwarding. The drivers transported cargo of various types to customers in most Southern African countries that included Botswana, Malawi, Mozambique, Namibia, Zambia and Zimbabwe.

The respondents went on strike. Their major grievance was that the applicant should summarily dismiss the applicant's operations manager, whom they accused of all manner of

evil, including the making of unlawful deductions on their wages. They also complained of general abuse at his hands.

Apparently feeling that the applicant was not moving fast enough to address their grievances, the respondents coordinated their efforts. On 21 January 2015, when they had all entered Zimbabwe en route to their various destinations, the respondents aborted their trips. Each of them parked their vehicles, all laden with cargo destined for the different markets, at various premises at three ports in Zimbabwe, namely Beitbridge, Harare and Chirundu.

The cargo was said to be worth millions of Rand. Each day that passed was costing the applicant huge sums of money. Threats of legal action from the owners or consignees of that cargo started pouring on the applicant. Efforts to engage the respondents in dialogue proved fruitless. At one time an agreement negotiated with the assistance of the parties' Zimbabwean legal representatives collapsed. At the last minute the respondents refused to append their signatures on the written draft.

Apart from seeking a negotiated settlement the applicant also pursued the legal route. On 23 January 2015 it obtained from the Labour Court of South Africa at Durban, a rule *nisi* calling upon the respondents to show cause why their strike should not be declared unlawful. The rule *nisi* would operate as an interim interdict. However, the respondents ignored the order. They did not return to work.

The applicant switched the legal fight to Zimbabwe. They first sought a "show cause" order from the Zimbabwean Minister of the Public Service, Labour and Social Welfare ("***the Minister***") in terms of s 106 of the Zimbabwean Labour Act [*Chapter 28:01*] ("***the Act***"). The provision empowers the Minister, either on his own initiative, or on application by any person affected by a collective job action such as a strike, boycott, lock-out, sit-in or sit-out, to issue an order calling upon the organisers to show cause why he may not issue a disposal order. A disposal order is a directive that the Minister may issue, *inter alia*, terminating, postponing or suspending the collective job action. He can also direct that the dispute giving rise to the collective job action be dealt with by conciliation or arbitration in accordance with the provisions of the Act.

The applicant got no official response to its application to the Minister. However, it received information that the Minister had declined to deal with the matter, allegedly because she had no jurisdiction over the matter.

The applicant approached the Zimbabwe Republic Police. It had received information that the respondents had begun vandalising the trucks and or the cargo. Furthermore, they had turned violent. Relief drivers sent to retrieve the trucks had failed to gain access. However, the police said they would not get involved unless there was an order of court. The applicant then proceeded to file the urgent chamber application.

At the hearing, Mr *Machiridza*, for the respondents, raised four points *in limine*. But I dismissed them all for lack of merit. For the sake of completeness, they were these. The first was that the case was purely a labour dispute. To emphasise that point reference was made to the rule *nisi* from the South African Labour Court. It was then argued that the applicant, having decided to litigate in Zimbabwe, could only approach the Labour Court, allegedly being the only court with exclusive jurisdiction over the matter. It was argued that if the Minister had declined to issue the show cause order, then the proper remedy for the applicant was an appeal to the Labour Court, and not an application to this court. I was urged to refuse to hear the matter because the applicant had allegedly failed to exhaust its domestic remedies.

I was satisfied that the first point *in limine* was misconceived. The relief sought by the applicant was based on the *rei vindicatio*. The applicant was the owner of the property that was in the unlawful possession of the respondents. The owner of a thing who has been deprived of possession against his will is entitled to claim it wherever he finds it and from whomsoever has got it[1]. All that he has to prove is that he is the owner; that his thing is in the defendant's possession; and that it is still in existence and clearly identifiable[2]. That is a common law remedy. The Labour Court is a creature of statute. It has no power to do anything outside the four corners of its enabling statute. In s 89, the Act, being the enabling statute, prescribes the functions of that court. They do not include the power to deal with a vindicatory action. The urgent chamber application was not about resolving the labour dispute between the parties.

The respondents' second point *in limine* was that the applicant's deponent, one Paul Snyman ("***Snyman***"), had not produced his authority to institute and represent it in the proceedings. As such, it was argued, there was no proper affidavit, and therefore no proper application before the court. In his affidavit Snyman had testified that he was the applicant's human resources business partner. He said he was authorised by the applicant to depose to the

[1] *Chetty v Naidoo* 1974 (3) 13 (A), 20B
[2] SILBERBERG AND SCHOEMAN'S *The Law of Property*, 5th ed., pp 243 – 244, and the cases cited there.

affidavit and that the facts in the affidavit were true and correct to the best of his knowledge and belief.

From the affidavit, there was no question that Snyman was testifying about information that was within his personal knowledge and belief. In terms of Order 32 r 277(4) of the Rules of this Court, an affidavit in support of an application shall be made by the applicant (or respondent, as the case might be), or by any person who can swear to the facts or averments set out therein.

It is not a rule of thumb that every time a person wants to bring proceedings in this court on behalf of a juristic body he must always produce the written proof of his authority. Every case depends on its own set of facts. In the present case, the information presented by Snyman, which was unchallenged, was that when the problem with the respondents had arisen he was the person at the centre of trying to resolve it. Among other things, he had been one of two managers who had immediately flown from South Africa to Zimbabwe to engage the respondents in dialogue. He had been centrally involved in the efforts to free the trucks and their cargo. He had negotiated the agreement that had culminated in the draft which the respondents had subsequently refused to sign. Mr *Machiridza* conceded that Snyman's authority to represent the applicant had never been challenged before. So I was satisfied that Snyman had the requisite authority.

The respondents' third point *in limine* was that there was no urgency, the applicant allegedly having failed to act within a reasonable time when the need to act had arisen. It was argued that the applicant had wasted valuable time in pursuing futile remedies in the Labour Court of South Africa; in Zimbabwe before the Minister and the police, and that only when it had hit a brick wall did it finally approach this court. According to the respondents, that was an intolerable act of forum shopping.

However, the applicant had made out a very strong case for urgency. It could hardly be accused of having slept on its rights. The respondents took their action on 21 January 2015. Applicant reacted immediately. Among other things, by the following day, 22 January 2015, Snyman and one other manager were in Zimbabwe engaging the respondents. The following day, 23 February 2015, it had obtained the rule *nisi* in the South African Labour Court. By the time of the urgent applicant on 30 January 2015, the applicant had been to the Minister and the police, not to mention the agreement that it had reached with the respondents which, but for the respondents' about turn at the last minute, would have obviated any further

court action. In my view, the matter was in every way urgent. In *Kuvarega* v *Registrar-General & Anor*[3] CHATIKOBO J said[4]:

> "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."

This matter was classically a case of commercial urgency as defined in such cases as *Silver's Trucks (Pvt) Ltd & Anor* v *Director of Customs and Excise*[5] and *20th Century Fox Film Corporation & Another* v *Anthony Black Films (Pty) Ltd*[6]. The court has power to hear an application as a matter of urgency, not only when there is a serious threat to life or liberty but also where the urgency arises out of the need to protect commercial interests. The applicant had established a clear case of commercial urgency. Put bluntly, its business affected the economies of several countries in the Southern African region. The customers whose imports the applicant ferried were on edge because of the non-delivery. The applicant also pointed out that because of the on-going strike, its trucks had overstayed in Zimbabwe in breach of the transit permits. It faced heavy penalties from the central revenue collection agency. The respondents' freakish behaviour and its resultant cost were manifestly disproportionate to the grievances that they had against the applicant.

The respondents' last point *in limine* was that the applicant had approached the court with dirty hands allegedly in that it had forcibly retrieved the trucks and their cargo and had placed physical barriers, including vicious guard dogs, to block the respondents' access to the vehicles. They claimed that some of their own assets, including personal apparel, had been locked inside. It was argued that the order sought by the applicant was simply to legitimise the illegal action it had already taken.

The applicant denied that it had repossessed the trucks and the cargo. It said all it had done following the violence and the damage to the trucks by the respondents had been to arrange for security around the premises at which the trucks were parked in order to prevent any further criminal acts that could further damage the trucks and or their cargo. The applicant also pointed out that the respondents still had in their possession the vehicle keys

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[3] 1998 (1) ZLR 188 (H)
[4] At p 193F
[5] 1999 (1) ZLR 490 (H)
[6] 1982 (3) SA 582

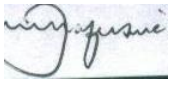
and the various inter-state permits for the trucks and the cargo, such that without them the harm it was suffering was continuing.

I dismissed the respondents' last point *in limine* both on the facts and on the self-evident point that if the applicant had already retrieved the vehicles and all its other assets, then the respondents could hardly have a reason to oppose the relief sought.

On the merits, the respondents had no case. Mr *Machiridza* tried to argue that the dispute had to be understood in the context of an employer –employee relationship; that the respondents had serious grievances against the applicant for, among other things, unpaid wages which allegedly were running into thousands of dollars for each of the respondents. He accused the applicant for the collapse of the draft agreement of settlement allegedly because it had refused to make part payment of the outstanding salaries, something that would have ameliorated the respondents' situation to enable them to call off the strike.

Mr *Machiridza* conceded that whatever grievances the respondents might have had against the applicant, it was no justification for them having resorted to self-help. It was said that the applicant had already secured a court order in South Africa for the unpaid wages. Therefore, in my view, all they had to do was to execute that order instead of taking the law into their own hands. What the respondents had done was intolerable lawlessness. No court could condone such brazen illegality. It was their free choice to continue with their strike. But they knew that it had been declared illegal by the South African Labour Court. They had no right to keep the applicant's trucks, cargo and all the attendant documentation. I therefore ordered their immediate release.

11 February 2015



Coghlan, Welsh & Guest, applicant's legal practitioners
Antonio & Dzvetero, respondents' legal practitioners