

JEAN PAMELA VANT
versus
GEORGE JECHE

HIGH COURT OF ZIMBABWE
MATHONSI J
HARARE, 6 MAY 2015

Urgent Application

D. Ochieng, for the applicant
P. Kashiri, for the respondent

MATHONSI J: This is a court application in which the applicant seeks an order holding the respondent to be in contempt of an order of this court, per Dube J, issued on 18 February 2015 in HC 11189/14 in terms of which the applicant was restored to free undisturbed occupation, use and access to Lot 55A Umsungwe Block in Gweru also known as Thorngrove Farm. The full text of the order reads;

“IT IS ORDERED THAT:

1. Applicant, her agents, managers, employees and invitees forthwith be restored to free undisturbed occupation, use and access to Lot 55A Umsungwe Block in Gweru otherwise known as Thorngrove farm.
2. The respondent, and all those holding occupation under him, are interdicted from in any manner interfering with the right of applicant and her staff to free, peaceful, undisturbed and unimpeded use and access to Thorngrove Farm and shall forthwith vacate the said farm.
3. The Sheriff shall forthwith cause this order to be implemented.
4. The respondent shall pay costs”.

That court order was served by the Sheriff on the respondent personally on 23 March 2015. It remains extant and has not been contested at all by the respondent. In HC 3497/15 the

applicant approached this court seeking an order that this matter be set down on an urgent basis and in a judgment (HH 403/15) delivered on 22 April 2015, I issued the following order:

“In the result, it is ordered that;

1. The court application filed by the applicant in HC 3440/15 is urgent in nature and should be heard on an urgent basis.
2. The applicant is directed to serve another copy of that application on the respondent today.
3. The respondent shall file his notice of opposition and opposing affidavit to it, if any, within 2 days of the second service of the court application upon him.
4. The applicant may file an answering affidavit, if any, within 2 days following receipt of the opposition of the respondent.
5. The respondent shall file his heads of argument within 2 days of receipt of the applicant’s heads of argument.
6. Thereafter the registrar of this court shall cause the application to be set down for urgent hearing within 5 days from the date of filing of the respondent’s heads of argument, if any.
7. The costs of this application shall be in the course.”

For completeness, let me add that the respondent was in attendance on 22 April 2015 and was served with a further copy of the court application by applicant’s counsel in my chambers. He had initially been served by the Sheriff on 21 April 2015 but grumbled that he had not seen the application before finding his way to court.

The respondent did not file opposition to the application for contempt of court and is therefore barred in terms of r 233(3) of the High Court of Zimbabwe Rules, 1971. He was however, served with a notice for today’s hearing by the Sheriff on 5 May 2015.

The command contained in the court order issued by Dube J on 18 February 2015 is very clear and admits of no ambiguity whatsoever. I have to repeat what I said in *Mathuthu v Chegutu Municipality & Ors* HH 502/14 at p1 that:

“The authority, dignity and respect of courts of law should never be demeaned, prejudiced or undermined. It behoves the subject to bow to the decision of the court and, where there exists a remedy, to then pursue that remedy elsewhere. This is extremely important for the proper administration of justice”.

It is not for the subject to make an election whether to obey a court order or not for whatever fanciful reasons he may have. If such reasons have merit they should be raised in the pursuit of a remedy but after compliance with the court order.

The applicant has stated that after he received the court order, the respondent disdainfully and contemptuously went to the farm on 11 April 2015 in the company of 16 men. He instructed his contingent to close the main gate which they locked. They locked the gate to the dairy facilities and to the principal homestead. They locked all the staff homes.

On 12 April 2015 the respondent, who was still camped at the farm, prevented the employees from milking the dairy cows demanding that they be moved thereby risking damage to their udders and possible death.

The respondent has not denied the allegations. It is a rule of law that what is not denied in the affidavit is taken to be admitted: *Chihwayi Enterprises (Pvt) Ltd v Atish Investments (Pvt) Ltd* 2007 (2) ZLR 89 (S) 93F; *Liquidator of M&C Holdings (Pvt) Ltd v Guard Alert (Pvt) Ltd* 1993 (2) ZLR 299 (H) 313.

I have no reason therefore to disbelieve the applicant whose evidence is accepted. To that extent I can only defer to the reasoning of Gorowa J (as she then was) in *Zelco Cellular (Pvt) Ltd and Ors* 2012 (1) ZLR 164 (H) 170 A-C that:

“It is trite that an applicant for an order for committal must establish the following:

1. that an order was granted against the respondent;
2. that the respondent was either served with the order or informed of the grant thereof against him and can have no reasonable ground for disbelieving that information ; and
3. that the respondent has either disobeyed the order or neglected to comply therewith see *Uncedo Taxi Service Association v Mtewa and Ors* 1999 (2) SA 495 (E); *Consolidated Fish Distributors (Pty) Ltd v Zive and Others* 1968 (2) 517 (C).

Contempt of court in the context of these proceedings would entail a deliberate disobedience of a lawful order issued by a court of competent jurisdiction.”

In light of the foregoing I am satisfied that the respondent is in contempt of court, he having deliberately interfered with the applicant’s occupation, operations and use of Thorngrove Farm he was interdicted from doing. It matters not that he had mobilised a squadron of 16 men to assist his enterprise, it was in violation of a court order. It was his plain and unqualified obligation to obey the court order issued against him until such time that it had been discharged: *Hadkinson v Hadkinson* (1952) 2 ALLER 567 (CA) at 569 C; *Mpofu v Mlilo* 2002 (1) ZLR 160 (H) 163 B-C.

Having noted the contempt, I have to respond to it. The applicant is moving for the committal of the respondent for 180 days. Mr *O'chieng* has not advanced any argument as to why this is the only solution. In my view, the primary objective of the contempt of court procedure is to compel compliance with the court's order. Any punishment should therefore be suspended to afford the intransigent party a strong inducement to comply: *Harare West Rural Council v Sabawu* 1985 (1) ZLR 179 (H) 183 D; *Mapfumo v Director of Housing and Community Services and Ors* HH 274/14; *Mathuthu v Chegutu Municipality and Others* (*supra*).

The term of imprisonment should therefore be suspended and left hanging over the respondent's head as a constant reminder and incentive for fulfillment of his obligations in terms of the court order.

Happily, Ms *Kashiri* of Messrs Thondhlanga and Associates who appeared on behalf of the respondent and successfully applied for the upliftment of the bar operating against the respondent for purposes of making submissions relating to the punishment to be meted only, conceded that the respondent was in contempt of the court order and consented to the order that I now proceed to make.

In the result, it is ordered that:

1. The respondent is hereby found to be in contempt of paragraphs 1 and 2 of the order of this Honourable Court dated 18 February 2015 in HC 11189/14
2. The respondent is hereby sentenced to 180 days imprisonment which is wholly suspended for 2 years on condition he does not, during that period commit another act of contempt of a court order.
3. In the event that the respondent commits another act of contempt of the order of this court dated 18 February 2015, then the applicant shall be entitled to lodge a complaint on oath to the registrar of this court who shall, upon receipt of such complaint issue a warrant of committal against the respondent for him to serve the suspended sentence.
4. The respondent shall pay the costs of this application and the application in HC 3497/15 on the scale of legal practitioner and client.

Messrs Kevin J Arnolt, applicant's legal practitioners
Messrs Thondhlanga & Associates, respondent's legal practitioners