

ZIMBABWE ELECTRICITY TRANSMISSION  
AND DISTRIBUTION COMPANY (PVT) LTD

versus

CHAGOMOKA ISRAEL

and

DINGANI CLEMENCIA

and

HAKULANDABA RUMBIDZAI

and

KARIWO YEUKAI

and

KUSOTERA FADZAI

and

MADUVEKO ZIVANAI

and

MASARA ABIGAIL

and

MUJURU TAPFUMA

and

MUKORA PETROS

and

MURONZI RONICA

and

MUSUNDIRE ABSOLOM

and

SAIDI FERESI

and

SHAYANEWAKPO LUCY SARUDZAI

and

SOZINYE EMMANUEL

and

VEREMU AMOS

HIGH COURT OF ZIMBABWE

ZHOU J

HARARE 15 & 27 April 2016

### **Urgent Chamber Application**

Mrs *R. Mabwe* for the applicant

*B. Ndhlovu* for the respondents

ZHOU J: On 2 April 2016 the applicant instituted a chamber application on an urgent basis seeking the following relief set out in the draft provisional order:

“A. TERMS OF FINAL ORDER SOUGHT

1. That you show cause to this Honourable Court why a final order should not be made in the following terms: -

- 1.1 That the summary invasion of No. 1 Harare Drive, New Ardbennie, Harare by 1<sup>st</sup> to 16<sup>th</sup> respondents carried out on 1<sup>st</sup> April 2016 be and any other subsequent date was unlawful.
- 1.2 Respondents jointly and severally the one paying the others to be absolved pay costs.

B. INTERIM RELIEF GRANTED

1. Pending finalisation of this matter, the applicant is granted the following relief: -

- 1.1 That 1<sup>st</sup> to 16<sup>th</sup> respondents are ordered forthwith, to remove all chains, locks, obstructions or other kinds of impediments in respect of applicant's premises at No. 1 Harare Drive, New Ardbennie, Harare.
- 1.2 That 1<sup>st</sup> to 16<sup>th</sup> respondents are ordered not to interfere in any way with applicants' premises at No. 1 Harare Drive, New Ardbennie, Harare, and particularly, not to bar, stop or disturb VS Security Services from carrying out security duties at the said premises.
- 1.3 1<sup>st</sup> to 16<sup>th</sup> respondents be and are forthwith ordered not to come anywhere within 100 metres of No. 1 Harare Drive, New Ardbennie, Harare, and in the event of their violation of this clause, the Sheriff and/or his assistant be and is hereby authorised and empowered to remove the respondents.

C. SERVICE OF PROVISIONAL ORDER

The applicant's legal practitioners of record be and are hereby authorised to serve the order on the respondents directly.”

The application is opposed by all the respondents.

The facts upon which the application is founded are that all the respondents are former employees of the applicant. They were employed as Loss Control Officers. Their duties involved guarding the applicant's premises, security checks at exit and entry points to the premises, enforcing management control systems, patrolling perimeter security walls, conduct searches of vehicles, and carrying out investigations in respect of security related matters. The respondents were on three months employment contracts. The fixed duration contracts were renewed from time to time up to 31 March 2016 when the applicant decided not to extend the contracts. The applicant's contention is that it did not extend the respondents' contracts of employment after 31 March 2016, and has since engaged VS Security Services to render security services at its premises. The respondents, however, invaded the applicant's premises and replaced the locks thereat. The applicant alleges that its officials and security personnel from VS Security Services are being denied access to the premises by the respondents. The premises in question serve as the applicant's central stores where valuable goods and hardware, including electrical cables, transformers, batteries, etc. are kept. There are also government's irrigation pumps and electrical conductors which are

kept at those premises. The value of the equipment at the premises is estimated by the applicant to be fifty million United States dollars.

The respondents dispute the termination of their contracts of employment. They allege in their opposing affidavits that they are continuing to perform their duties of rendering security services at the applicant's premises and are being supervised by the applicant's employees whose names have been given as Messrs Magumise, Musengu and Khumalo. The respondents state that VS Security Services security guards are actually inside the premises at Number 1 Harare Drive. The respondents argue that they are "innocent and legal employees of the applicant which renewed their contracts by conduct." They argue that no communication was sent to them regarding the non-renewal of their contracts. They further allege that the applicant's Managing Director circulated a memorandum stating that their employment contracts would be renewed.

It is trite that a contract of fixed duration terminates by effluxion of time when the time fixed comes to an end unless there is a further offer of employment. See *Chikonye & Anor v Peterhouse* 1999 (2) ZLR 329(S), at 332C-H. A renewal of a contract of employment can occur expressly or tacitly. A tacit renewal would occur where the parties continue in an employer employee relationship beyond the contractual period. In the present case the application was filed on 2 April 2016 following the refusal of the respondents to vacate the applicant's premises. The employer-employee relationship cannot therefore be said to have continued to exist beyond the period of the contract. However, the respondents have raised certain material issues which create disputes of fact on the papers. These include the alleged promise made by the applicant's managing director as well as the allegation that the respondents are, in fact, being supervised by the applicant's employees. The question of whether by its conduct the applicant can be held to have extended the period of employment cannot, therefore be resolved on the papers. For the purposes of the instant application I will not attempt to resolve the material disputes of fact on the papers for two reasons. First, as already pointed out, the dispute is not capable of resolution on the papers filed. Secondly, this court can reach a conclusion on this application without necessarily resolving the dispute as regards whether or not the employment contracts have been renewed. The question of whether the respondents are employees of the applicant is, therefore, one that I would rather leave for a court or tribunal that will hear evidence from the parties and make a determination based on that evidence.

It is settled that an employer does not have, and is not obliged, to provide actual work to the employees. The employer's obligation under a contract of employment, other than in exceptional situations, is merely to pay the remuneration. See *Commercial Careers College (1980) (Pvt) Ltd v Jarvis* 1989 (1) ZLR 344 (SC) at 350G-351B; *Zimbabwe Sun Hotels (Pvt) Ltd v Lawn* 1988 (1) ZLR 143(SC); *Faberlan v McKay & Fraser* 1920 WLD 23 at 26-27; *Bramdaw v Union Government* 1931 NPD 57 at 78. Based on that principle, the respondents clearly cannot claim an entitlement to continue performing the duties to which the employer has not assigned them and in respect of which the employer has contracted another person to perform. The respondents are therefore under a mistaken belief that they have a right to insist on remaining at the applicant's premises without the applicant's consent and to continue to do work. They are not entitled to remain at the applicant's premises, and certainly not to arrogate to themselves the right to work. Their mere presence constitutes an interference with an arrangement which the employer has put in place by employing VS Security Services, and amounts to taking the law into their own hands. If the respondents believe that their contracts of employment were extended then they should enforce their rights according to the law rather than to allocate work to themselves contrary to the wishes of the employer.

In view of the above observations, the court is convinced that the applicant is entitled to relief in terms of the draft provisional order.

Accordingly, the application is granted in terms of the draft provisional order.

*Muza & Nyapadi*, applicant's legal practitioners

*Bothwell Ndhlovu Attorneys at Law*, respondents' legal practitioners