CORE-WELLNESS CENTRE
and
ITAI NGWERUME
versus
HEATHER LYNN FLIGHT
and
CHERI KAYLA LONG
and
BRIAN NUGENT

HIGH COURT OF ZIMBABWE
TAGU J
HARARE, 27 April 2017 and 17 May 2017

URGENT CHAMBER APPLICATION

S T Mutema, for applicants
S Noormahomed, for 1st and 2nd respondents
No appearance for 3rd respondent

TAGU J: This is an urgent chamber application for an interdict directing the first and second respondents to restore the status quo ante at the first applicant's place of business being number 9B Ridgeway South, Highlands, Harare, as well as prohibiting them from further interference with the terms and conditions stated in the second applicant's operating licence.

The brief facts of the matter are that sometime towards the end of 2014 the second applicant who has a sole registered licence and trading as core-wellness centre had an idea of creating a care-wellness centre. Pursuant to her vision and qualifications she made an application to the City of Harare which is the authority ceased with the right to issue health practicing licences. The registration certificate was then issued in her names. She then incorporated other practitioners and consultants to ease the business operations which included but not limited to the first and second respondents. She mandated the first and second respondents to find suitable premises for purposes of running the first applicant's business operations. The respondents then found a place at number 9B Ridgeway South which belonged to the third respondent. The place was inspected and she was issued with a licence as the proprietor and qualified practitioner. Surprisingly, the first and second respondents just woke up in a twinkling of an eye having a newly self-styled mandate and

purportedly gave the second applicant an eviction notice. On 24 April 2017 she found that the set up at number 9B Ridgeway had been changed in such a way that had a direct affront to the terms and conditions of the licence. In particular, the reception area had been moved. This according to her had been done because the respondents felt that they wanted to make more benefits out of her licence. She was forced to temporarily close the premises since the changes were not in terms of para 8 of her operating licence. This has caused her to file this application for a temporary interdict against the first and second respondents seeking the following relief-

"1. TERMS OF THE FINAL ORDER SOUGHT

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

a. The 2nd Applicant be and is hereby declared the registered owner of core-wellness Centre hereto referred as the 1st Applicant.
b. The operations of the 1st and 2nd Applicant be and are hereby declared to be in conformity with paragraph 8 of the terms and conditions of the operating licence.
c. The lease agreement over property number 9B Ridgeway South be and is hereby declared to be between the 1st Applicant and the 3rd Respondent.
d. The 1st and 2nd Respondents shall pay cost of suit on an attorney client scale.

2. INTERIM RELIEF GRANTED

Pending the finalisation of this matter, the Applicant is granted the following relief.

a. That the 1st and 2nd Respondents be and are hereby ordered to restore the conditions of operation required for Applicant's business as was at the time of inspection of the premises commonly known as 9B Ridgeway South.
b. The 1st and 2nd Respondent be and are hereby interdicted from interfering with 2nd Applicant's right of running 1st Applicant in terms of the operating licence issued by City of Harare's Director of Health.
c. Costs of suit shall be costs in the cause.

3. SERVICE OF PROVISIONAL ORDER

Leave be and is hereby given to the Applicant's Legal Practitioners to serve this Order on the Respondents provided they would not have attended the hearing."

The first and second respondents opposed the application and filed opposing affidavits. The respondents took six points *in limine*. The preliminary points raised were-

1. That the first applicant was not before this court. They submitted that the first applicant is a duly registered company of which the first and second respondents are Directors as per the certificate of incorporation and the CR14 Form. According to them the first applicant did not authorise the Stansilous & Associates or the second applicant Itai Ngwerume to represent them in the present proceedings.
2. That the second applicant was not authorised to represent the first applicant by the respondents as Directors and Shareholders of Core-Wellness Centre (Private) Limited.
3. That the second applicant is operating at premises as normal.
4. That the matter is not urgent.
5. That second applicant has not met the legal requirements for an interdict to be granted in her favour and
6. That the second applicant has failed to disclose all material facts."

I will deal with the preliminary points in their order.

(a) IS THE 1ST APPLICANT NOT BEFORE THIS COURT?

There are two applicants before the court. The first applicant is Core- Wellness Centre and the second applicant is Itai Ngwerume. The second applicant clearly stated in her founding affidavit that she has a sole registered licence and trading as core-wellness. As such she was bringing these proceedings on her own names as well as that of the first applicant. The first applicant is but a trade name being used by the second applicant. This is buttressed by Annexure "A" which is a Health Registration Certificate which shows that one Miss Itai Ngwerume trades as Wellness Centre. The first and second respondents produced a certificate of incorporation and a C.R. 14 for Core Wellness Centre (Private) Limited. Core Wellness Centre and Core Wellness Centre (Private) Limited are two distinct entities. Core Wellness Centre (Private) Limited is clearly not before the court. What is before the court is Core Wellness Centre. If at all the first and second respondents are directors of Core Wellness Centre (Private) Limited they are not the ones who instituted these proceedings and are not the ones operating at 9B Ridgeway South Highlands, Harare to which licence Annexure "A" relates. It is surprising how Core Wellness Centre (Private) Limited is operating at 9B Ridgeway South, Highlands, Harare when the so called Directors do not have a licence to operate there. The papers clearly shows that the respondents lodged their application with the City of Harare to operate at this address on the 24th April 2017 the day the changes were effected and to date the City of Harare has not responded to their application. Their first point *in limine* has no merit and it is dismissed.

(b) DID THE 1ST APPLICANT REQUIRE TO BE AUTHORISED BY THE RESPONDENTS?

As I pointed out in the first point *in limine* the first applicant did not require the authority of the respondents to institute these proceedings. The respondents are mere subordinates who were incorporated by the licence holder Itai Ngwerume into Core Wellness Centre and have no power to institute proceedings on behalf of the first applicant. It is Core Wellness (Private) Limited which requires the authority of the respondents to institute any proceedings. Core Wellness only requires the authority of one Itai Ngwerume who is the sole holder of the trading licence shown in Annexure "A". Core Wellness (Private) Limited is not before this court and for these reasons the second point *in limine* is also dismissed.

(c) IS PLACE 9B CLOSED OR IS IT OPERATIONAL?

It is not in dispute that the respondents served the applicants with a notice of eviction dated 11th April 2017 giving the applicants up to the 30th of April 2017 to leave the premises. In my view the respondents are probating and reprobating. If in fact the place is open and

operating as usual one wonders why the respondents made an application to the City of Harare on or about the 24th April 2017 requesting for a health report at 9B Ridgeway, South Harare for purposes of conducting classes as a fitness centre? The only conclusion to be drawn from the facts is that the centre had been temporarily closed. I agree with the counsel for the applicants that the fact that clients came to the centre on the 24th and 25th April 2017 is neither here nor there because bookings are done in advance. I am satisfied that the operations at 9B Ridgway had been interfered with. It is not correct that the centre is running normally and is opened. For these reasons the third point *in limine* is dismissed.

(d) IS THE MATTER URGENT?

According to the respondents urgency in this matter is self-created because the place is operating normally but the second applicant went to the premises and told the workers to shut the place because of this urgent application. In my view the need to act arose on the 24th April 2017 when the second applicant realised that some changes have been effected at the licenced premises. Even the notice to vacate the premises without a court order created urgency in this matter. In my view the matter is very urgent and the urgency was not self-created but was created by the respondents. See *Kuvarega* v *Registrar General and Anor* 1998 (1) ZLR 188 (H) as to what constitutes urgency. This point *in limine* is dismissed.

(e) HAVE THE REQUIREMENTS OF AN INTERIM INTERDICT NOT MET?

The requirements for an interdict are well known. These are a *prima facie* right, imminence of irreparable harm, lack of alternative remedy and balance of convenience. The counsel for the respondents submitted that the second applicant has not met the requirements for an interdict because the centre in question is a registered entity and that she does not own the first applicant. He said second applicant is neither a shareholder nor a director of the first applicant hence she does not have a *prima facie* rights. Reference was made to the case of *Batsirai Children's Care* v *Minister of Local Government & Ors* 2011 (2) ZLR 203.

In casu the second applicant has a valid licence authorising her to operate at the premises in question until the 31st of July 2017. In my view this creates a clear right since a licence has not been cancelled nor has it expired. It follows therefore that one major requirement of an interdict has been met. The case of *Batsirai Children's Care* v *Local Government supra* is not applicable. For this reason the point *in limine* is dismissed.

(f) ARE THERE MATERIAL NON DSICLOSURES?

The respondents' contention was that the second applicant has failed to disclose a material fact that she was given due notice to vacate the premises. It is their further

contention that this application was to avoid the imminent arrival of the day of reckoning. With the greatest of respect I found this submission to have no merit at all since a reading of paragraph 6 of the second applicant's founding affidavit clearly captured the fact that the respondents served her with a notice of eviction. The relevant part of Itai Dorine Ngwerume's founding affidavit reads as follows-

> "6. …Surprisingly, the 1st and 2nd Respondents just work up in a twinkling of an eye having a newly self-styled mandate purporting to be giving me an eviction notice for want of meeting the conditions specified in the license. This came as a shock because the license it in my name, secondly the 3rd Respondent accepted the terms of operation of the 1st Applicant hence his premises being leased, inspected and approved for 1st Applicant's operations. I was further shocked when on the 24th of April 2017 I found the setup at number 19B (*sic*) Ridgeway changed in such a way that was a direct affront to the terms and conditions of the license. It was this very act which has resulted in me filing this urgent Application,"

The averments that there were material non-disclosures in this application are non-existent. I therefore dismiss this last point *in limine* as well.

AD MERITS

This is an urgent chamber application for an interdict directing the first and second respondents to restore the status core ante at first applicant's place of business being number 9B Ridgeway South, Highlands Harare as well as prohibiting them from further interference with the terms and conditions stated in the operating license. The second applicant stated in her founding affidavit that she is a sole registered owner of a license authorising her to operate a core-wellness centre, which is a health facility at number 9B Ridgeway, Highlands Harare. The first and second respondents are consultants whom she co-opted into her business. However, on or about the 11th April 2017 the respondents gave her a notice to vacate the premises and they went on to change the setup at the premises which is against the conditions of her license. She now wants the respondents to be interdicted.

The third respondent did not oppose the application. The first and second respondents opposed the application and are claiming to be the shareholders and directors of the first applicant. They denied that the centre has been closed. They claimed to be the rightful owners of the centre. I do not agree because they have not been licensed to operate at this place by the City of Harare. Only the second applicant has a valid operating license.

In order for this application to be successful the applicants have to satisfy four requirements. These are a *prima facie* right, imminence of irreparable harm, lack of alternative remedy and a balance of convenience.

I dealt with some of these requirements earlier own when I was dealing with preliminary points raised by the respondents. In particular I demonstrated that the second applicant being the sole owner of the licence has *prima facie* rights. The respondents are mere subordinates who have no *locus standi* to alter the terms and conditions of the licence. As things stand the respondents do not have a licence to operate at the centre in question. The license is in the names of Itai Doreen Ngwerume. The respondents submitted their application to the City of Harare on or about the 24th April 2017 which application has not been granted. In my view the manner in which the first and second respondents have changed the set up at Number 9B has the potential of causing irreparable harm to the applicants because the City of Harare may cancel the licence of the second applicant. In view of the fact that the respondents have gone a step further to give applicants notice to vacate and have changed the set up means that the applicants have no alternative remedy than to interdict the respondents. The balance of convenience therefore favours the restoration of the status core ante until the matter is finalised.

The applicants have managed to establish the requirements for the granting of a provisional interdict. The first and second respondents have shown a desire to take over the second respondent's operations through the back door without a court order for their selfish needs. The application therefore succeeds.

In the result it is ordered that-

The application is granted in terms of the provisional draft order.

Stansilous and Associates, applicants' legal practitioners
Ahmed & Zyambi, 1st and 2nd respondents' legal practitioners