

ZIMBABWE CONSOLIDATED DIAMOND COMPANY PVT LTD

versus

MASCILINE CHIKOORE

CLEOPATRA MUTISI

ANDREW MURWISI

HC2262/20

HC2261/20

HIGH COURT OF ZIMBABWE

KATIYO J

HARARE, 28 February 2023 and 6 September 2024

Opposed matter

O Kondongwe, for the applicant

P T Chakanyuka, for the respondents

KATIYO J: The applicant in three separate applications petitioned this court for an order against the respondents in the following terms.

WHEREUPON, after reading the documents filed of record

IT IS HEREBY ORDERED THAT:

1. Respondent be and is hereby ordered to return to the Applicant the following property namely: Toyota Land Cruiser Registration Number AED 4825 (2018) and Yoga Laptop (17) Serial Number RO9PFN6T.
2. Should the Respondent fail to return the property as ordered above within forty eight hours of service of this order on him the Sheriff or his lawful agent be and is hereby authorized to remove the property from the custody of the Respondent or any person holding such property on the authority of the Respondent and surrender the property to the Applicant.
3. Respondents to pay costs of suit at attorney client scale.

REFERENCE HC2261/20

1. Respondent be and is hereby ordered to return to the applicant the following

property namely, Toyota Prado Registration Number AEO 6084 (2017) and Yoga Laptop (i7) Serial Number R09POSK8.

2. Should the respondent fail to return the property as ordered above within forty-eight hours of service of this order on him the Sheriff or his lawful agent be and is hereby authorized to remove the property on the authority of the respondent and surrender the property to the applicant.
3. The respondent to pay costs of suit on an attorney client scale.

REFERENCE HC2262/20

1. Respondent be and is hereby ordered to return to the applicant the following property namely; Toyota Land Cruiser Registration Number AEQ4827 (2018) and Yoga Laptop (i7) Serial Number R90POSKU.
2. Should the respondent fail to return the property as ordered above within forty-eight hours of service of this order on him the sheriff or his lawful agent be and is hereby authorized to remove the property from the custody of the respondent or any person holding such property on the authority of the respondent and surrender the property to the applicant.
3. The respondent to pay costs of suit on an attorney client scale.

Reference is made to the two other matters as mentioned above therefore making this judgment a composite judgment.

Equally a similar relief was sought against respondent in HC 2261 and HC 2262. These three cases are similar in all material respect thus the reason all parties involved agreed to have them argued together. This is nothing short of a consolidated file. What this entails is that this court will give one judgment which will resolve the three (3) cases as one as was agreed by all parties. Let me also point out that there were numerous postponements at the instance of parties who had a hope of salvaging an out of court settlement. This caused some considerable delays in concluding the hearings. The court had also implored the need for the parties to find each other but at the end it was not to be thereby forcing this case into a hearing. Both *points in limine* and merits were heard at the same time as they agreed to do so in the interest of time.

Common to the three respondents is that they were employed as senior managers with fixed contracts of six (6) years from about June 2016. Some annexures confirming

the three various contacts were attached to these applications and there is no dispute about them. Also attached as annexures in the three applications are the letters of termination of contracts on three (3) months' notice. Some letters demanding company assets in possession of the three respondents were also attached as annexures in the 3 applications. Chief among the bone of contention is the surrendering back of the company assets in possession of the three employees particularly the top of the range motor vehicles issued to them for both personal and business use during the term of their contracts with an option to buy at the end of four (4) years. However, before the expiry of 4 years the contracts were terminated prompting them to approach a labour officer for conciliation in terms of the Labour Act. There were other items such as laptops and cellphones being demanded back by the applicant. Whilst this application is not concerned with the matter before the Labour officer it takes the judicial notice that this is a fact and the labour officer issued a default judgment upholding that it was a lawful termination. This court has no jurisdiction dealing with labour issues as this a purview of the specialized court specifically created to deal with such cases. It is because of that background that a *point in limine* on the jurisdiction was raised.

The applicants argue that in terms of clause 13.0 of the contract of employment there were additional terms and conditions regulating the employment relationship and issues to do with motor vehicles were covered by such policy. Copy of the policy was attached as annexure A1. The 3 respondents were entitled to the use of the motor vehicles for both personal and business use. Clause 5.1 of annexure A1 states that the vehicle "shall be disposed of to the user after four (4) years of continuous use at book value. A close analysis of the case before the Labour officer does not deal with the issues of assets before this court as all a labour officer can do is to give damages if there is a breach.

The applicant argues that the labour officer has nothing to do with the issue of vehicles as he lacks the requisite jurisdiction on such issues.

The applicant contents that there is no other body under the labour Act which has

rei vindicatio powers to deal with this matter. In any case it is argued that what is before the labour fora is the issue to do with unfair dismissal. There is no complaint about the cars even the laptops.

In my view the issue raised as *point in limine* will not hold as this court is not concerned with the labour dispute regarding termination of the contracts. Even assuming the contracts had not terminated and a dispute resulting in similar application by either party arose, it was still going to be this court to determine the matter. So, termination or no termination it this court which has jurisdiction over the application before it.

Merits

These vehicles and the other assets remain registered in the name of the applicant a fact agreed by all parties. The assumption that it was supposed to be offered does not itself constitute a right because the property remains that of the employer. In the matter of *Montclair Hotel & Casino v Farai Mukuhwa* HH501-15, the learned Mathonsi J expressed his disappointment over employees who seek to hold on to assets of their employers upon the termination of their employment.

He remarked as follows:

“Just from where do former employees think they derive the authority to hold on to property belonging to a former employer given to them for use during the subsistence of the contract of employment in the discharge of their duties as employees, after they have lost employment? This matter is one of several of its nature which are now finding their way to the courts with alarming frequency of late where a dismissed employee would simply not surrender the employer's property but would cling to it as if life itself depends on it.”

In *Selex Es P.A v State Procurement Board and Others* SC 45/16, Honourable Justice Bhunu to the matter even further and stated that:

“While parties and lawyers are entitled to have their day in court, they must exercise that right responsibly with due care and diligence not to abuse court 101 process. It is rather unethical and an abuse of court process for litigants and particularly lawyers to waste the court's valuable time presenting dead unarguable cases in the vain hope that fogging a dead horse will somehow resurrect it to life.”

In granting an order of *rei vindicatio* in *Lafarge Cement Zimbabwe~ Chatizembwa* HH-413/18 Justice Mathonsi had this to say;

“I have stated before that an employee who has lost employment has no right to hold onto the property of the former employer allocated to him or her by virtue of employment or as a condition of employment merely on the grounds that he or she is challenging the termination of the employment contract”.

See *Montclair Hotel and Casino v Farai Mukuhwa* HH 501-15.

The point is also made in *William Bain & Co Holdings (Pvt) Ltd v Nyamukunda* HH 309-13 that;

“A former employee cannot lawfully confiscate or hold onto a former employer's property after termination of the employment contract because the right to hold on to the property is extinguished by the termination. Put in another way, a former employee does not acquire a right of retention as can be used to resist a *rei vindicatio* on the basis of a challenge of a completed dismissal from employment and a forlorn hope that such dismissal may be reversed at a future uncertain fate.”

Conclusion

This position is unassailable despite the fact that it appears to be unfair on the part of the employee who has to fight the whole company full of resources. It is my hope that this position will change one day as it may leave the employee improvised as compared to the company with the means to survive. There is very little this Court can do to help the respondents in the face of these advertises. The owner of the property remains the owner as long there is proof to that effect. The respondents can only resort to alternative means other than the course they decided to take in this case. It was evident *ab initio* that they had no case no wonder why there was need to find each other out of court.

Disposition

Applicant had petitioned the court to issue costs on an attorney client scale. However, the court has not seen any justification for such a punitive cost. The court is therefore inclined to grant costs at ordinary scale thereby amending paragraph 3 of the draft orders mentioned above. Having considered the issues as above the applications

in respect of the three files that is case number HC 2264/20, HC 2261/20 and HC 2262/20 be and are hereby granted. The costs will be on ordinary scale.

IT IS ORDERED THAT;

REFERENCE HC 2264/20

1. Respondent be and is hereby ordered to return to the Applicant the following property namely: Toyota Land Cruiser Registration Number AED 4825 (2018) and Yoga Laptop (17) Serial Number RO9PFN6T.
2. Should the Respondent fail to return the property as ordered above within forty-eight hours of service of this order on him the Sheriff or his lawful agent be and is hereby authorized to remove the property from the custody of the Respondent or any person holding such property on the authority of the Respondent and surrender the property to the Applicant.
3. The costs will be on ordinary scale.

REFERENCE HC2261/20

1. Respondent be and is hereby ordered to return to the applicant the following property namely, Toyota Prado Registration Number AEO 6084 (2017) and Yoga Laptop (i7) Serial Number R09POSK8.
2. Should the respondent fail to return the property as ordered above within forty-eight hours of service of this order on him the Sheriff or his lawful agent be and is hereby authorized to remove the property on the authority of the respondent and surrender the property to the applicant.
3. The costs will be on ordinary scale.

REFERENCE HC2262/20

1. Respondent be and is hereby ordered to return to the applicant the following property namely; Toyota Land Cruiser Registration Number AEQ4827 (2018) and Yoga Laptop (i7) Serial Number R90POSKU.
2. Should the respondent fail to return the property as ordered above within forty-eight hours of service of this order on him the sheriff or his lawful agent be and is hereby authorized to remove the property from the custody of the respondent or any person holding such property on the authority of the respondent and surrender the property to the applicant.
3. The costs will be on ordinary scale.

KATIYO J:

Dube, Manikai & Hwacha, applicant's legal practitioners

Messera Mtetwa and Nyambirai, respondents' legal practitioners