

OMEGA SIPANI - HUNGWE
versus
HUWAMBO (PVT) LTD

HIGH COURT OF ZIMBABWE
TAKUVA J
HARARE; 26 June 2024 and 14 February 2025

Urgent Chamber Application

R Mahuni, for the applicant
S Murondoti with S Machigere, for the respondent

TAKUVA J: This case is an urgent chamber application wherein the applicant seeks an interdict against the respondent enjoining it from taking possession of the machinery located at applicant's premises at No. 65 VA Great Riversdale Farm Ward 22, Mazowe. The relief is sought to ensure the preservation of the subject machinery as security for the determination and recovery of applicant's legal entitlements, including compensation for the respondent's breach of the agreement between the parties.

Synopsis

On 26 October 2023, the parties executed a contractual agreement for the purpose of extracting minerals from applicant's property pursuant to a special grant awarded to applicant by the relevant government Ministry. In terms of the contract, respondent was obligated to commence operations within a period of six months from the date of its execution. However, according to the applicant, respondent has failed to fulfil its responsibilities under the contract. Applicant alleges that she suffered considerable financial losses, which have been incurred in reliance on the respondent's contractual promises and obligations.

On 28 May 2024, the respondent visited applicant's property with the intent to unlawfully seize the machinery held by applicant as security for the due and unpaid compensation. Applicant contended that this is a violation of her rights under the contract in that it constitutes an unlawful interference with her property.

Applicant then filed this application praying for the following relief:

TERMS OF FINAL ORDER SOUGHT

“That you show cause to this court why a final order should not be made in the following terms:-

- (a) That the respondent be permanently ordered not to remove machinery listed in the schedule marked as “EQ” from No 65SA Great Riversdale Farm Ward 22 Mazowe.
- (b) That the respondent shall pay costs of suit on a legal practitioner client scale only if it opposes the application.

INTERIM RELIEF GRANTED

Pending the determination of this matter, the applicant is granted the following relief-

- (a) The respondent is interdicted from removing any machinery from listed in this schedule marked (EQ) attached here to
- (b) The respondent shall pay costs of suit on a legal practitioner and client scale.

SERVICE OF PROVISIONAL ORDER

- (a) Leave be and is hereby granted for the applicants’ legal practitioner to serve the PROVISIONAL ORDER on the respondent.”

The respondent opposed the application. Respondent raised a multitude of points *in limine*. In my view the point that is dispositive of the matter is that on the court’s jurisdiction. Parties made an election that in the event of a dispute they would go to Arbitration – See clause 15 of the agreement. It states;

“15 DISPUTE RESOLUTION

15.1 Any dispute arising in connection with this agreement shall be settled by Arbitration, in accordance with the Arbitration Laws of Zimbabwe.

15.2 The parties shall agree on the appointment of the Arbitrator failing such agreement either party may write to the President, for the time being of the Commercial Arbitration Centre at Harare who shall nominate an arbitrator to preside over the dispute.”(my emphasis).

In my view this clause is crystal clear. It ousts the jurisdiction of courts of law. Applicant submitted that this clause does not oust the court’s jurisdiction because applicant is not seeking a substantive relief but an interdict. It is applicant’s contention that she decided to preserve value first before pursuing arbitration. Unfortunately, the Founding Affidavit does not mention Arbitration. A party’s case stands or falls on its Founding Affidavit. Further, the court’s duty is to enforce the parties contract and not to make one for them. See *Smith v Smith* SC 50/20.

Clause 15 says “Any dispute.” It does not exclude disputes that do not seek substantive relief. Applicant says she intends to keep property as security. This is precisely why it should go to Arbitration.

I take the view that Clause 15 of the parties contract ousts this court's jurisdiction to deal with this dispute. The parties should refer their disputes to arbitration in line with their intention expressed in their contract.

In the result the matter is struck off the roll for lack of jurisdiction. The respondent be and is hereby ordered to pay costs of suit.

Mahuni Gindiri Law Chambers, applicants' legal practitioners
Absolom and Shepherd Attorneys, respondents' legal practitioners

TAKUVA J:.....