REPORTABLE (05)

(1) EDWARD MANGENA (2) MALAKI MPOFU
v
WILSGROVE FARMING ENTERPRISES (PRIVATE) LIMITED

SUPREME COURT OF ZIMBABWE
GUVAVA JA, UCHENA JA & CHITAKUNYE JA
BULAWAYO: 20 & 21 NOVEMBER 2024

M. Ndlovu, for the appellants

J. Tshuma, for the respondent

GUVAVA JA:

[1] This is an appeal against the whole judgment of the High Court ('the court *a quo*') sitting at Bulawayo dated 5 March 2024. The court *a quo* held that the appellants were in contempt of court following the appellants' failure to comply with court orders issued in case number HC 2424/10 dated 18 November 2010 and case number HC 2354/11 dated 22 January 2012. After hearing submissions from both parties, the appeal was dismissed with costs. We indicated that the reasons for this decision would be availed at a later date. These are they.

FACTUAL BACKGROUND

[2] The relevant facts that have given rise to this appeal are generally not in dispute. The parties are fighting over the possession and occupation of Lots 32 and 33 Essexvale, known as Willsgrove Farm ('the farm'). In 2009 the appellants, whilst in occupation of the farm, unsuccessfully attempted to declare their occupation lawful. They also sought an order to evict the respondent. The court which dealt with the matter found that the

appellants did not have *locus standi* to institute the proceedings and dismissed their application. In 2010 the respondent filed and obtained a court order under case number HC 2424/10 directing the appellants to restore possession of the farm to it. The court issued the following order:

> **"TERMS OF THE FINAL ORDER SOUGHT**
>
> A. That you show cause to this Honourable Court why a final order should not be made in the following terms:
>
> 1. That the 1st and 2nd Respondents' and all those claiming under or through them immediately restore to Applicant occupation of Plots 32 and 33 Wilsgrove Farm, Essexvale.
>
> 2. That the 1st and 2nd Respondents' and all those claiming under or through them hence forth refrain from in any way interfering with Applicant's business and occupation of Plots 32 and 33 Wilsgrove Farm, Essexvale.
>
> 3. That the 1st and 2nd Respondents' and all those claiming under or through them hence forth refrain from threatening, harassing and molesting Applicant in the conduct of its business or its officers and staff.
>
> 4. That the cost of this application be borne by 1st and 2nd Respondents' jointly and severally one paying the other being absolved on an attorney client scale.
>
> **INTERIM RELIEF GRANTED**
>
> B. That pending the determination of all pending matters the Applicant is granted the following relief:
>
> 1. That the 1st and 2nd Respondents' and all those claiming under or through them immediately restore to applicant occupation of plots 32 and 33 Wilsgrove Farm, Essexvale.
>
> 2. That the 1st and 2nd Respondents' and all those claiming under or through them hence forth refrain from in any way interfering with Applicant's business and occupation of Plots 32 and 33 Wilsgrove Farm, Essexvale.
>
> 3. That the 1st and 2nd Respondents' and all those claiming under or through them hence forth refrain from threatening, harassing and molesting Applicant in the conduct of its business or its officers and staff."

[3] This order was duly confirmed on the return date. In 2012, upon the respondent's refusal to grant the appellants' lawful possession of the farm, it obtained a writ of ejectment under

case number HC 2354/11 from the court *a quo*. Thereafter, the appellants were evicted by the Deputy Sheriff and committed to Bulawayo Prison for contempt of court for a period of 90 days.

[4] In 2014 the Government of Zimbabwe, through the Minister of Lands, Agriculture, Fisheries, Water and Rural Development, issued offer letters in respect of the farm to the appellants. Armed with the offer letters the appellants proceeded to reoccupy the farm. This was without the consent of the respondent and without due process. In 2022, the respondent filed contempt of court proceedings against the appellants, in the court *a quo* based on the spoliation order granted in 2010 and the contempt of court order granted in 2011.

PROCEEDINGS BEFORE THE COURT *A QUO*

[5] In the contempt of court proceedings, the respondent, through its counsel, Mr *Tshuma* submitted that the appellants were in contempt of two court orders issued under case numbers HC 2424/10 and HC 2354/11. Counsel also submitted that the appellants had willfully disregarded and refused to comply with the orders which were still extant. He argued that as long as the court orders were extant the appellants did not have a lawful right to occupy the farm without the consent of the respondent or a court order.

[6] On the other hand, the appellants' counsel, Mr *Ndlovu* submitted that the respondent had no right to charge them with contempt as they had no lawful title to the farm as it was acquired by the Government of Zimbabwe through the Land Acquisition Act [*Chapter 20:10*]. His contention was that, prior to 2014 when the appellants received their offer letters, their cases did not succeed because they did not have any legally recognized rights to the farm. He argued that since they now had offer letters the appellants could not be held in contempt of court as their possession of the farm had been regularized.

[7] The issue that the court *a quo* determined was whether the contempt of court orders, which had been issued prior to the respondents receiving offer letters, were no longer valid.

[8] The court *a quo* found that it was persuaded by the respondent's contention that as long as the court orders remained extant, they ought to be respected by all. The learned Judge stated as follows in the judgment:

> "I hold the view that whether the court order, is practical, impractical, correct, or incorrect, overtaken by events or not, divorced or aligned to the situation on the ground or not, it remained in force until set aside by a court of law. That whatever the predicament faced by a litigant *vis-à-vis* a court order they view either to be wrong or out of line or overtaken by events, it is not for them to choose to disobey the order."

On this basis the court *a quo* granted the order sought by the respondent and held that the appellants were in contempt of court.

PROCEEDINGS BEFORE THIS COURT

[9] Disgruntled by the decision of the court *a quo* the appellants filed the present appeal on the following grounds:

> "1. The court *a quo* erred when it held that the appellants were in contempt of the High Court Orders HC 2424/10 dated 18th day of November 2010 and HC 2354/11 dated 22nd February 2012 in respect of Lot 32 and 33 Essexvale, also known as Willsgrove Farm Enterprise when the appellants are in possession of offer letters dated 25th September 2014 in respect of Lot 32 and 33 Essexvale, issued by the Minister of Lands and Rural Settlement.
>
> 2. The court *a quo* erred in failing to appreciate that the rights of the respondent to enforce High Court orders HC 2424/10 dated 18th day of November 2010 and HC 2354/11 dated 22nd of February 2012 were extinguished once the Minister of Lands and Rural Settlement acquired Lot 32 and 33 Essexvale and issued offer letters to the appellants in respect to the aforesaid Lots."

The appellants prayed for the success of the appeal, the setting aside of the judgment of the court *a quo* and an order dismissing the respondent's application for contempt of court.

[10] From these two grounds of appeal it appears to me that the sole issue for determination is whether or not the appellants were correctly found to be in contempt of court.

SUBMISSIONS BEFORE THIS COURT

[11] Mr *Ndlovu*, for the appellants submitted that the narrow issue for determination was whether the appellants were in contempt of the 2010 and 2011 court orders. It was his submission that as the appellants now had offer letters which were issued to them in 2014 the court orders which were issued under different circumstances no longer applied. He submitted that the appellants' situation had changed as they now had offer letters that gave them the right to occupy the farm. He argued that since the court orders had been issued on the basis of a different *causa* they should no longer apply.

[12] *Per contra*, Mr *Tshuma* for the respondent contended that the offer letters could not supersede court orders. He submitted that the court orders remained extant until they were varied or set aside by a court of law. Counsel further submitted that the appellants remained in unlawful occupation of the farm and thus in contempt of a court order. He argued that the respondent's occupation of the farm was not an issue before the court. What was at issue was the occupation of the appellants as they entered the farm forcefully and without the consent of the respondent who was in peaceful possession. It was counsel's contention that once an order is issued by a court it had to be protected and enforced until it was lawfully set aside.

ANALYSIS

[13] There is need at the outset to state that the question of ownership of the farm was not an issue for determination before the court *a quo* when the respondent approached it in HC 2424/10. The respondent, who had been despoiled, approached the court *a quo* for an order returning possession of the farm to it. Hence, what was before the court *a quo* in HC 2424/10 was an application for spoliation, which had nothing to do with the ownership or legal rights of the parties. In *Ngukumba* v *Minister of Safety and Security & Ors* 2014 (7) BCLR 788 (CC) para 10, it was held as follows at p 8:

> "The essence of the *mandament van spolie* is the restoration before all else of unlawfully deprived possession to the possessor. It finds expression in the maxim *spoliatus ante omnia restituendus est* (the despoiled person must be restored to the possession before all else). The spoliation order is meant to prevent the taking of possession otherwise than in accordance with the law. Its underlying philosophy is that no one should resort to self-help to obtain or regain possession. The main purpose of the *mandament van spolie* is to preserve public order by restraining persons from taking the law into their own hands and by inducing them to follow due process."

[14] I now turn to the appellants' contention that since they have now acquired offer letters, they have an automatic right to take possession of the farm. In my view the appellants' assertion cannot be supported. The appellants could not proceed to the farm waving newly acquired offer letters to the respondent and take up possession of the farm where the respondent was resisting their stay. They had to follow due process. This position is now settled. It was initially set out in no uncertain terms in *Commercial Farmers Union & Ors* v *Minister of Lands and Ors* 2010 (2) ZLR 576 (S). At p 596 F-G it was held as follows:

> "The holders of offer letter, permits or land settlement leases are not entitled as a matter of law to self-help. They should seek to enforce their right to occupation through the courts."

[15] This position was restated recently in *Mswelangubo Farm (Private) Limited & Ors* v *Kershelmar Farms (Private) Limited & Ors* SC 80/22 where MWAYERA JA stated at p 7 of the cyclostyled judgment the following:

> "The fact that the appellants had an offer letter does not entitle them to resort to self-help in taking over possession without due process of the law. It is this disregard of the law which prompted the respondents to approach the court *a quo* for redress."

These cases and many others make it clear that the mere possession of an offer letter or permit or lease agreements do not grant a person an automatic right of possession to a farm that has been acquired by the State. It is without doubt that a holder of an instrument supporting ownership or possession to a farm cannot use such instrument to disregard the law. The holder of an offer letter or such other instrument must approach the court for relief if their attempt to peaceful possession is resisted.

[16] *In casu*, the appellants, were aware that the respondents did not want them on the farm. The action of returning to the farm with offer letters without the consent of the respondent amounted to self-help.

[17] The appellants' argument that the respondent could not rely on previously obtained spoliation orders to hold them in contempt due to change in their circumstances is without merit. The appellants are relying on offer letters issued to them on 25 September 2014. They argue that as they are now lawful holders of offer letters, they should not be held in contempt of court based on an order that was obtained prior to the issuance of these offer letters. In other words, the assertion by the appellants seems to suggest that the issuance of the offer letters supersedes the court orders.

This argument is flowed and untenable. The law is clear that once an order is issued by a court it remains extant and must be obeyed.

In *Magauzi & Anor* v *Jekera* SC 54/22 UCHENA JA stated the following at p 6 of the judgment:

> "When a court grants an order, all subsequent acts affecting the dispute between the parties rely on the court's order and not the reason or facts the court based its judgment on. Execution of the judgment is based on court orders and not the reason for which the court order was granted. Therefore, a party or the parties cannot disregard a court order as they are bound by it. In the case of *Chiwenga* v *Chiwenga* SC 2/14, it was stated that: The law is clear that an extant order of this Court must be obeyed or given effect to unless it has been varied or set aside by this court and not even by consent can parties vary or depart therefrom. See also *CFU* v *Mhuriro & Ors* 2000 (2) ZRL 405 (S)."

[18] This position was further cemented in *Mauritius & Anor* v *Versapark Holdings (Private) Limited & Anor* SC 2/2022 when the Court said:

> "It is trite that once a court has made an order it binds all and sundry concerned. Everyone bound by the court order has a duty to obey the order as it is until it has been lawfully altered or discharged by a court of competent jurisdiction or statute. In *Hadkinson v Hadkinson* ROMER LJ recited the duty to obey court orders with remarkable clarity when he said:
>
> > 'It is the plain and unqualified obligation of every person against or in respect of whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of the obligation is shown by the fact that it even extends to where the person affected believes it to be irregular or even void.'"

(See also *Chiangwa & Ors* v *Apostolic Faith Mission in Zimbabwe & Ors* SC 67/21)

[19] In light of the above authorities, it is apparent that not even a change of circumstances, can extinguish an extant court order. The appellants remain in contempt of court until the court orders are varied or set aside. The issue of ownership or legal rights to the farm are issues which must be determined separately. The offer letters may provide an argument for the appellants when they approach a court of law to support either the setting aside of the prior orders or to seek the eviction of the respondent. The offer letters cannot be used to forcibly take possession of the farm.

DISPOSITION

[20] Once it is accepted that the court orders were not set aside, then the only conclusion that can be made is that the appeal lacks merit. The appellants are in contempt of court and their acquisition of offer letters does not set aside the court orders they are in contempt of. The appellants will remain in contempt of the court orders until they legally regularise their stay on the farm.

With regards to costs the respondent has been successful and no adequate reasons have been advanced by the appellants on why they should not pay the costs of this appeal.

[21] It was for the above reasons that the following order was issued:

"The appeal be and is hereby dismissed with costs."

UCHENA JA : I agree

CHITAKUNYE JA : I agree

Sansole & Senda, the appellants` legal practitioners.

Webb, Low & Barry, the respondent's legal practitioners