

MYDALE INTERNATIONAL MARKETING (PVT) LTD  
versus  
JONATHAN SAMUKANGE  
and  
CHRISTOPHER VENTURAS  
and  
VENTURES AND SAMUKANGE

HIGH COURT OF ZIMBABWE  
BERE J  
HARARE, 18 SEPTEMBER 2013 and 6 NOVEMBER 2014

### **UNOPPOSED MATTER**

*F.M Katsande*, for the applicant  
*E. Samukange.*, for the respondents

BERE J: There can be not the slightest doubt that this matter has taken a very unhealthy convoluted route having been heard in this court on divers occasion and going as far as the Supreme Court and now back in the High Court again before me. The manner in which this matter has been handled is clearly an affront to the much cherished view that there must be finality to litigation. That approach comments itself well and must be respected by all and sundry. This application has been triggered by the order granted by OMERJEE J on the 30<sup>th</sup> of March 2009 which order was couched as follows:

“IT IS ORDERED THAT:

1. Mydale International Marketing (Pvt) Ltd is entitled to receive from the second respondent and have in its custody and under its control vehicles registration No. AAU 8190, ABC 3354 and AAP 1952.
2. Mydale International (Pvt) Ltd shall record the mileage on each vehicle from the time of receipt from the second respondent.
3. Mydale International (Pvt) Ltd shall be entitled to ordinary use of the motor vehicles and will not sell or otherwise alienate the said motor vehicles without an order of court. Order
4. Messrs Byron Venturas and Partners (Pvt) Ltd shall within 24 hours of the order surrender to the Registrar of the High Court, Harare the US\$28 500 the proceeds for

the sale of the 6 motor vehicles owned by Mydale International (Pvt) Ltd for retention by the registrar pending the determination of any dispute over ownership of Mydale International Marketing (Pvt) Ltd”

There can be no doubt that the order granted did not go down well with Dr Rob Kelly who was one of the parties at the centre of the dispute as evidenced by a wave of applications that followed and are properly captured by the applicant in its founding affidavit.

The first reaction by Dr Rob Kelly was to file an appeal against the decision of OMERJEE J under case No. SC82/09 which the present applicant countered by seeking leave to execute pending the outcome of the appeal. The prayer desired found favour with PATEL J (now JA) after DR Rob Kelly had been barred for failing to file his heads of Argument in time.

There were other developments related to this case which led to my brother TAKUVA J granting the order of 24 July 2013 which led to this current matter to be set down for hearing on the unopposed roll.

This is a very unusual case where two different law firms claim to represent Mydale International Marketing (Pvt) Ltd.

It is precisely because of this that when I unconsciously groped into a related chamber application under HC2470/13 I found myself having to deal with yet another application where the now applicant was being represented by the respondents in the instant case.

After perusing the chamber application that was placed before me and having satisfied myself from the certificate of service filed in that application, I ended up granting the order on 24<sup>th</sup> day of April 2013 which was as follows:

“IT IS ORDERED THAT:

1. The first and the second respondent and anyone acting through them are hereby interdicted from holding themselves out as representatives of the first applicant.
2. The first and the second respondent be and are hereby ordered to pay costs on an attorney and client scale, the one paying the other to be absolved”

As I write this judgment, this order remains in extant.

My order was granted on 24 April 2013 and what this means is that as at the 3<sup>rd</sup> of September 2013 when this instant application was filed, the applicant could not possibly have been in a position to file that application. It was not competent for it to do so because doing so

would have amounted to being in contempt of the order that I had granted irrespective of the correctness or otherwise of that order.

Concrete steps must be taken first to have that order set aside in the usual manner in order to properly clothe the applicant with *locus standi* to appear in this court representing Mydale International Marketing (Pvt) Ltd.

I am fully aware that when the instant application was brought before me in the unopposed application my attention was brought to case HC3360/2013 wherein I was requested to set aside my order of 24 April 2013 on the grounds that it had been obtained through fraud.

My difficulty with this approach is that this court finds again that the two law firms, viz, F.M. Katsande & Partners and Venturas and Samukange Legal Practitioners claim to represent a Company called Mydale International Marketing (Pvt) Ltd.

The stance adopted by the two law firms has caused so much confusion in this court and I am not prepared to perpetuate that confusion by granting yet another order that will further compound the situation.

In any event, it could not have been competent for the applicant to file the instant application before setting aside the order I granted because doing so, would amount to me aiding the applicant to act in contempt of this same court.

For these reasons I find myself unable to grant the order desired by the applicant on p 64 of its bound papers.

*Messrs F.M. Katsande and Partners*, applicants counsel  
*Venturas and Samukange*, respondents legal practitioners