

**GLENULAS TRADING (PVT) LTD t/a
SITATUNGA SAFARIS ZIMBABAWE**

Versus

**ZIMBABWE NATIONAL PARKS AND WILDLIFE
MANAGEMENT AUTHORITY**

And

CARBON GREEN AFRICA (PVT) LIMITED

IN THE HIGH COURT OF ZIMBABWE
KABASA J
BULAWAYO 4 AND 13 JUNE 2024

Urgent Chamber Application

V. Majoko, for the applicant
P. Zhangazha, for the 1st respondent
No appearance for 2nd respondent

KABASA J: This is an urgent chamber application wherein the applicant seeks the following relief:

- “1. An order of spoliation be and is hereby granted.
2. The 1st and 2nd respondents yield to the applicant the complete use and occupation of Chirisa Safari Area during the currency of the lease agreement between applicant and 1st respondent.
3. The respondents jointly and severally pay costs of the application, the one paying the other to be absolved.”

The background facts are these: The applicant has a lease agreement with the 1st respondent wherein its leasing Chirisa Safari Area for a period of 10 years. The applicant has been operating in that area without hindrance. In April 2021 the 1st respondent introduced the 2nd respondent to the applicant. The 1st respondent had partnered with 2nd respondent in a project called Chirisa Redd Project. The exact terms thereof were not known to the applicant. In October 2021 the 2nd respondent went into the leased area by agreement with the applicant. It started renovating structures at one of the camps within the safari area. The applicant took

no issue with this as it was the lessor's right to renovate its premises. On 7 April 2022 the applicant sought clarity as to the 2nd respondent's role in the leased area. The 1st respondent subsequently wrote to the applicant clarifying that the 2nd respondent was renovating the camp on behalf of the 1st respondent and the applicant had no right to stop such renovations. On 10 April 2024 applicant received clients who were to hunt in the leased area. Applicant needed to use Ingwe Camp to accommodate the clients. The 2nd respondent however advised the applicant that it wanted to use the camp over the same period. Applicant had to accommodate its clients in tents. In pursuance of the same agreement between the 1st and 2nd respondent, the 2nd respondent has now demolished Inyathi Camp in preparation to build a new camp. The 2nd respondent's activities have infringed on the applicant's undisturbed use of the Safari area as applicant is not able to enjoy the full use of the leased property. The 1st respondent's agreement with the 2nd respondent has had the effect of subtracting from applicant's rights thereby dispossessing the applicant of its peaceful and undisturbed occupation of the leased property.

The application is opposed by the 1st respondent. The 2nd respondent did not file any papers which is indicative of its intention to abide by the decision of the court. In opposing the application, the 1st respondent took points *in limine*. The first point *in limine* is on dirty hands and the second lack of urgency.

The parties, with the court's direction, argued on the dirty hands issue as all other issues could only follow after a finding that applicant could be heard. In the event that the dirty hands issue succeeds it follows that until the applicant purges their defiance, they cannot have audience.

Mr Zhangazha, for the 1st respondent, submitted that the applicants were ordered to pay rentals to the 1st respondent under this very lease they now seek relief from the court. There is an extant court judgment under case number HC 2074/22 against the applicant which has not been complied with. After filing of the current proceedings the applicants were alerted to the non-compliance with the judgment and warned that should such not be complied with the issue of dirty hands would be raised.

The applicants can therefore not seek to have audience with the court whose order they have failed to comply with.

Counsel referred to the decision in *Associated Newspapers of Zimbabwe (Pvt) Ltd v Minister of State for Information and Publicity & Ors* 2004 (1) ZLR 538 (S) in support of this argument. In that case CHIDYAUSIKU CJ had this to say:-

“This court is a court of law, and, as such cannot connive at or condone the applicant’s open defiance of the law. Citizens are obliged to obey the law of the land and argue afterwards for the avoidance of doubt the applicant is not being barred from approaching this court. All that the applicant is required to do is submit itself to the law and approach this court with clean hands on the same papers.”

The judgment under HC 2074/22 has not been complied with. The applicant was ordered to pay US\$36 814.11 for arrear rentals. They are aware of the judgment but are yet to comply with it.

In *Econet Wireless (Private) Limited v The Minister of Public Service Labour and Social Welfare & 2 Ors* SC 31-16 the appellant had refused to comply with a legal requirement to register with the National Employment Council as an employer in the industry. The appellant sought to challenge the order which had been issued by the Registrar including them as employers covered by the National Employment Council for the Communications and Allied Services Sector and approached the High Court on review. The court non-suited it on the principle that it had dirty hands.

BHUNU JA in dismissing the appellant’s appeal had this to say:-

“The doctrine of obedience of the law until its lawful invalidation was graphically put across by Lord RADDIFFE in *Smith v East Elloe Rural District Council* [1956] AC 736 at 769 when he observed that:-

“An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of illegality on its forehead. Unless the necessary procedures are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders.”

A judgment of the court is a lawful order which, unless vacated by whatever means, calls on the one against whom it is granted, to obey and comply with it.

Whilst the *Econet Wireless* case and the *Associated Newspapers of Zimbabwe (Pvt) Ltd* case involved the lack of compliance with the law, a court judgment is equally an expression

of the law and the principles enunciated in these cases apply with equal force when the lack of compliance relates to a judgment of the court.

Counsel for the applicant held a different view. *Mr Majoko* cited *Chisveto v Minister of Local Government and Town Planning* 1984 (1) ZLR 248 in support of the submission that dirty hands cannot be a bar to a litigant in spoliation proceedings. The mere failure to pay or settle a judgment does not in itself constitute contempt or dirty hands.

The 1st respondent has continued to do business with the applicant. Its conduct is not contumelious as was the case in the *Associated Newspapers of Zimbabwe* case where the appellant sought to challenge a law that required it to be registered to practise as a media house.

The distinction made by counsel fails to appreciate the import of the decision in the *Associated Newspapers of Zimbabwe* case. The point is one must obey the law and a judgment of the court is no less. The *Chisveto* case is authority for the proposition that a possessor of property who has such forcibly taken from them is entitled to have such property restored by means of a spoliation order. It matters not that that litigant's possession was unlawful. This is not the case *in casu*. The point in this case is that the applicant has not complied with a court order to pay rentals for this Safari area which it complains it has been despoiled. It seeks assistance from the same court whose judgment it has not complied with.

In *Stelix Civils (Private) Limited v Moyo* HB 79-24 DUBE-BANDA J put it thus:-

“An extant order of court must be obeyed and given effect to unless it has been varied or set aside by a court of competent jurisdiction... In *Rose Natalie Heuer v Two Flags Trading (Private) Limited & Ors* SC 45-23 the court said:-

“A court order is the means by which decisions of judgment of judicial officers are issued from a court. A court order by its very nature is one which is binding upon the parties it is made against and must be one which the parties can enforce. It follows that, every person against or in respect of whom the order is made by the court of competent jurisdiction must obey it, unless and until that order is discharged. In the absence of a challenge against the order through an appeal, review or procedure for rescission, an order of court unlimited jurisdiction remains extant and binding.” (See *Manning v Manning* 1986 (2) ZLR 1 (S), *Mkize v Swemmer & Anor* 1967 (1) SA 186)

Mr. Majoko did not dispute that there is an extant judgment against the applicant. The applicant was ordered to pay rentals for this very Safari area they now come to court seeking that they be allowed full undisturbed use of.

The *Chisveto* case (*supra*) is authority to the fact that if one is despoiled, the one who has despoiled cannot seek to show that the possession was in itself unlawful. The law discourages self-help and so a litigant must engage the law in order to assert his/her rights. This is not the issue here. *In casu*, the applicant has not complied with an order to pay 1st respondent's outstanding rentals. The applicant in coming to court is in essence saying, it matters not that I have an order against me to pay the 1st respondent rentals for this Safari area, the 1st respondent's conduct has denied me full use of the lease and so I would like to assert that right. Is the applicant saying his rights take precedence? Is the 1st respondent not equally entitled to be protected by the law? It most certainly is.

The extant court order is directly related to the Safari area the applicant is crying foul over. The issue is not that the 1st respondent has refused the applicant entry into the area until payment of the sums owed. The facts are not at all linked to the extant court order but such extant court order ought to be complied with before this court allows the applicant to approach it.

A litigant cannot fail to respect a court order and then come to the same court and expect to be heard. They must purge their default first, clean their hands before approaching the court.

I am therefore persuaded by counsel for the applicant's argument. The applicant must comply with the extant court order which relates to the rental amounts for this Safari area before approaching the court for its own relief.

In the result I make the following order:-

1. The point *in limine* on dirty hands be and is hereby upheld.
2. This court therefore declines to exercise its jurisdiction over this matter.
3. Applicant shall pay costs of suit.

Majoko and Majoko, applicant's legal practitioners
Chinogwenya and Zhangazha, 1st respondent's legal practitioners