

NQOBILE BHEBHE
versus
FIRST BANK CORPORATION (FBC BANK)
and
THE GENERAL MANAGER FBC BANK

HIGH COURT OF ZIMBABWE
MWAYERA J
HARARE, 14 August 2013

N.Mugiya, for applicant
G. Chingoma, for respondents

MWAYERA J. The applicant approached the court through the urgent chamber book on 6 August 2013. The matter was set down for 15 August 2013 on which day both applicant and respondent counsel addressed the court.

The impression created on perusal of applicant's documents was that the respondents had despoiled the applicant by forcefully taking a motor vehicle BT 50 and that the applicant was suffering irreparable harm in that he was incurring exorbitant costs by use of a taxi to ferry his child to and from school.

It was apparent from the written and oral submissions by both applicant and respondent counsel that there used to exist employee employer relationship between the applicant and the respondent. It was also apparent that following a hearing disputed or nor the relationship was terminated. On 24 May 2013 the vehicle BT50 was parked at the respondent's basement. On 6 August 2013 the applicant approached the court on urgent basis seeking to have possession of the said motor vehicle BT50 restored. It is imperative at this stage for one to look at the requirements of urgency and what constitutes spoliation.

Our law is fairly settled that a matter is viewed as urgent if a part sprouts to action when the need to act arose and that if the matter is not treated on urgent basis. The party with a right will suffer irreparable harm and that there is no other remedy and that if the matter waits for the ordinary roll it will render the relief sought hollow. Clearly from the papers filed that the applicant obtained a loan from the respondent for the purchase of the BT50 in question. Another factor not in dispute is that following a hearing the applicant's services were terminated and that on 24 May 2013 the vehicle in question was handed to the

respondent. The nature of the matter is such that one would formulate an opinion that the applicant was despoiled hence the need to hear the matter on urgent basis. Upon being addressed on merit both written and oral submissions it became apparent that the conditions of spoliation namely wrongful, and unlawful and forceful dispossession have that been met. The applicant was requested for the motor vehicle and he drove it to the first respondent's basement and left it there. The assertion that the vehicle was recovered from a garage appears to be an allegation brought as an after thought. There is no evidence or mentioning of the name of the garage from which the vehicle was recovered from. The vehicle appears to have been repossessed with the applicant's consent. There is nothing tangible placed before the court to show that applicant was wrongfully and forcefully disposed of the motor vehicle in question. In fact the in action by the applicant 24 May 2013 when the vehicle was handed over to respondent to only sprout to action on 6 August 2013 (about 2 months later) seems to support the assertion that the application consented to the repossession of the motor vehicle and only cried foul as an after thought. The applicant on 24 May 2013 consented to handing over the vehicle in line with the agreement between him and the respondent. Clause 13 Annexure F2 opposition document the Staff Car Loan Scheme signed by both applicant and respondent and the irrevocable Special Power of Authority Annexure R3 on opposition documents duly signed by the applicant empowering the respondent to dispose of the vehicle, is clearly instructive.

The none disclosure of such material information on the part of the applicant is a clear indication of desire to mislead the court on what actually transpired in a bid to butress spoliation where there was no such unlawful and wrongful dispossession. There is clearly no evidence to show that the applicant was wrongfully and unlawfully disposed of the vehicle in question.

On the contrary the applicant upon falling out with the employer was requested to handover the loan vehicle and in compliance with the standing agreement the applicant drove the vehicle and surrendered it leaving it parked at first respondent's basement. The requirements of spoliation have not been met as the applicant consented to the take over of the said motor vehicle.

In the premises the application is dismissed with costs.

Messrs Mugiya & Macharaga Law Chambers, applicant's legal practitioners
Dube, Manikai and Hwacha, respondents' legal practitioners