GILAD SHABTAI
versus
OFER BAR
and
KEREN KATHLEEN BAR
and
TRINIRIG INVESTMENTS (PRIVATE) LIMITED
and
REGISTRAR OF DEEDS

HIGH COURT OF ZIMBABWE
MAFUSIRE J
HARARE, 11 December 2014 & 24 December 2014

Urgent chamber application – anti-dissipation interdict

T. Zhuwarara with *C. Nhemwa,* for the applicant
P. Paul, for first, second & third respondents
No appearance for fourth respondent

MAFUSIRE J: In this urgent chamber application the applicant sought, as against the first, second and third respondents, an anti-dissipation interdict, or what it called a mareva injunction. An interim anti-dissipation interdict, in the context of the present application, is simply an ordinary temporary interdict the substance of which is the preservation of an asset by prohibiting its disposal pending the determination of a dispute. The object is to give effect to the order that the court might grant by ensuring that there is an asset to attach in the event of execution.

In this case the interim interdict was sought in respect of a certain immovable property known as Unit 8, 19 Kingsmead Road, Borrowdale, Harare (hereafter referred to as "***the Kingsmead property***"). The final relief sought was an order declaring this property executable in satisfaction of any order that the applicant might obtain in its action that was pending against the first and second respondents and others. This was under the case reference number HC10429/14 (hereafter referred to as "***the main action***"). The final relief sought seemed patently odd. But it was not for me to say at this stage.

The draft interim relief was couched in the following terms:

> "First, second and third respondents are interdicted from disposing of or mortgaging or otherwise dealing in any manner which diminishes their rights, title and or value of the immovable property known as Unit 8, 19 Kingsmead Road, Borrowdale Harare …"

I heard argument on 11 December 2014. By consent judgment was deferred. The parties wished to talk things over out of court. The first and second respondents were husband and wife. Like the applicant, they were members of the Israeli community in Zimbabwe. The applicant said he and first respondent had been close friends. Both sides were confident that dialogue would resolve the dispute. The parties promised that by 18 December 2014 they would advise whether or not they would have settled. If they would, no judgment would be necessary. If they would not, then I would go ahead and deliver judgment. The tentative date agreed upon for the delivery of judgment was 23 December 2014.

When 18 December 2014 came and went and I did not hear from the parties I proceeded to prepare my judgment. This is it.

Despite the complex schemes and the seemingly multi-layered transactions, as shall soon become apparent, the nub of the matter, shorn of all those complexities, was basically that applicant desired to preserve his ultimate interest in an immovable property known as Lot 51 Hogerty Hill Township of Hogerty Hill, Harare (hereafter referred to as "***the Hogerty Hill property***"). Alternatively, he sought to ensure that the first and second respondents would be disbarred from disposing of the Kingsmead property so that it would be available for possible execution by him in the event that he won the main action. That is to put it very simply.

As I understood it, the applicant's case was this. The first and second respondents were indebted to him. The debt arose from a certain transaction that, for ease of reference and understanding, I shall simplify as "***the sale deal***". In reality it was far from being a straightforward sale deal. In terms of it the first and second respondents would relinquish in favour of the applicant all their control, all their rights and all their interest in certain two trusts, the Yoyo Family Trust and the Shemoni Family Trust. The first and second respondents had been the Settlors and Trustees of those two trusts. As I understood it, the sale deal would be a fiction. The two trusts would be re-configured. The applicant would become the Settlor. Together with the first and second respondents he would become a co-trustee. The

beneficiaries of the reconstituted trusts would be the applicant's children. One of them went under the name Ofer Shabtai. That also was the name of the first respondent. Neither of the parties touched on this. I take it that it was of no consequence.

The consideration for the sale deal was an amount in the sum of US$650 000. The applicant would pay it to the first and second respondents. In the main action the applicant pleaded that delivery of this amount would be "***by* constitutum possessorium *arising out of the arrangements that the parties had***". It was not explained what that meant. At the hearing applicant's counsel insisted that the applicant had indeed paid this amount to the first and second respondents. The respondents denied that there had been any payment as such. They only recognised a pre-existing indebtedness by themselves to the applicant in the sum of US$400 000. I was left none the wiser. But this was not the main issue.

The matter gets more complex. As part of the sale deal the applicant would obtain immediate occupation of the Hogerty Hill property. This property was neither owned directly by the first and second respondents nor by those two trusts. There was another company called Gelshen Enterprises (Private) Limited (hereafter referred to as the "***Gelshen Company***"). In his declaration the applicant pleaded that it was the Gelshen Company that held the rights, title and interests in the Hogerty Hill property. In turn the entire shareholding in the Gelshen Company was said to be held by those two trusts, the Yoyo Trust and the Shemoni Trust. The applicant then pleaded the essential terms of the sale deal as I have simplified them above, namely that in consideration of the applicant paying them US$650 000 the first and second respondents would relinquish their control, rights and interest in those two trusts. Thus, the idea was basically that the Hogerty Hill property, being owned by the Gelshen Company, which in turn was owned by those two trusts, the applicant would ultimately obtain the entire beneficial interest in it by assuming control of the two trusts. In addition he would get immediate occupation of the property.

The applicant's case for an anti-dissipation interdict, as I understood it, and in my own words, was this. The first and second respondents had done sinister things behind his back, evidently to render nugatory any relief that he might obtain in the main action. For him to assume effective and beneficial interest in the Hogerty Hill property the first and second respondents had to "deliver" to him those two trusts, the Yoyo and the Shemoni. He had paid the consideration of US$650 000 aforesaid. The new trust deeds in which he would replace the first and second respondents as Settlor and become a co-trustee with them had been

drawn up. They had been signed by him and the first respondent. But behind his back the second respondent had reneged and refused to sign. So as his main relief in the main action he wanted an order compelling the second respondent to sign.

The applicant's story went further. With the money he had paid them the first and second respondents had decided, in his own words, to "***upgrade***" by moving to the more upmarket Kingsmead property. The first and second respondents had done worse things. The title deed to the Hogerty Hill property had been lodged with the conveyancers to facilitate the transactions. The applicant had moved into, and taken occupation of, the Hogerty Hill property in part execution of the sale deal. He had done renovations to it worth US$300 000. But behind his back the first and second respondents had duped the conveyancers and surreptitiously retrieved the title deed. They had gone on to mortgage the Hogerty Hill property to a third party, someone called Edward Barry Clinton ("***Clinton***") for a loan of US$850 000. The applicant produced a copy of the mortgage bond.

Therefore, the applicant went on, seeing that the first and second respondents had fraudulently mortgaged away the Hogerty Hill property thereby making Clinton's claim preferent, and in the process virtually dissipating or wiping off his rights in respect to that property, the applicant sought an alternative relief in the main action. It was a claim for a refund of US$650 000.

The first and second respondents did not stop there, said the applicant. They wanted to skip the country and relocate to South Africa. They were stripping themselves virtually of every form of ownership of any assets in this country. The applicant said he had stumbled upon this information quite by chance. The Hebrew community in Zimbabwe is a closely-knit society. An "***impeccable source***", whose identity he was not at liberty to disclose, had told him in confidence that the first and second respondents were busy disposing of their proprietary interests in Harare and Kariba. They had shut down the two businesses that they had been operating in Harare. Because of the opaque manner in which they had chosen to hold their proprietary interests, namely through trusts and companies, nothing would be found registered in their individual names. The applicant said he happened to know about the Hogerty Hill property because he had "***acquired***" it. He also happened to know about the Kingsmead property because the first and second respondents had "***acquired***" it from the proceeds received from him.

Therefore, in a nutshell, the applicant's case was that since the Hogerty Hill property over which he had a vested interest, had been rendered practically valueless to him by virtue of the mortgage bond, he wanted the Kingsmead property embargoed so that in the event that his alternative claim in the main action succeeded there would be something belonging to the first and second respondents upon which execution could be levied. The whole object of the interdict was to avoid any order that this court might give in the main action becoming a *brutum fulmen*.

The first, second and third respondents opposed the application. Mr *Paul*, for the respondents, expressed astonishment on the sale deal. It was unheard of that a trustee could relinquish his trusteeship for value in favour of someone else.

The first and second respondents denied that they were disposing of any real estate in Kariba or Harare. They denied that they were planning to re-locate to South Africa. They said although the first defendant travelled frequently outside the country, they were largely based here and spent most of their time here. They produced a receipt for school fees from Chisipite Senior School for US$600 dated 18 November 2014 which they said was for their daughter for 2015. They argued that if they intended to relocate they would not be making arrangements for their daughter's further schooling in Zimbabwe.

Mr *Paul* blasted the applicant for mounting an application seeking such relief the effect of which would be to seriously interfere with the respondents' rights to deal with their own property when all he had produced by way of evidence were mere rumours from unnamed sources. He argued that both the main action and the urgent chamber application were an abuse of the court process because the applicant himself had admitted to the first respondent that it had been a tactical move by him since everything could eventually be reversed. Mr *Paul* relied on a certain "WhatsApp" message received by the first respondent a day after the urgent chamber application had been filed. It had been in Hebrew. The translation and transcription of that message had been done by the first respondent himself. It read:

> "Hi Ofer, With my lawyers decision I was forced to send to you this summons. I should have done it immediately when I knew that you gave Ted Clinton the house deeds as collateral., and every postponement has worsened my case. This is a tactical move on my behalf and everything can be reversed. I hope that we finish this episode remaining in a good relationship."

Mr *Paul* also relied on that text message to submit that the matter was not urgent since the applicant had admitted that he realised that he could have taken action the moment that he had become aware that the respondents had mortgaged the Hogerty Hill property. The mortgage bond was registered on 8 May 2014.

The respondents denied that the so-called consideration of US$650 000 had actually been paid. They said they had a pre-existing debt owing to the applicant in the sum of US$400 000. That debt would be extinguished by the sale deal. Since the consideration for the sale deal was US$650 000 the applicant would end up paying back to them the difference of US$250 000.

The respondents admitted registering the mortgage bond over the Hogerty Hill property. They said the applicant had breached the sale deal by failing to pay the US$250 000 top up. They had then cancelled the sale deal. The second respondent would therefore no longer sign the re-constituted trust deeds for those two trusts. The applicant had no authority to make the application on behalf of those trusts. He was not a trustee.

Overall, Mr *Paul* attacked the propriety of the so-called anti-dissipation interdict, the result of which was effectively to levy execution before any judgment had been given.

Mr *Zhuwarara*, for the applicant, dismissed the "Whatsapp" message as inadmissible, allegedly for want of compliance with the High Court (Authentication of Documents) Rules, 1971[1]. However, he conceded that he had had no opportunity to take instructions from his client on whether or not he disputed the message. Therefore, he was only objecting to the form rather than the substance of the message. He argued that in terms of those regulations documents translated from other languages into the English language for use in court would be admissible only if the translations had been done by certified translators. The first respondent was not one of them. I shall come back to this aspect later on.

The applicant instituted the main action on 25 November 2014. He said it was on 28 November 2014 that he had heard of the respondents dissipating their estate in order to relocate. He had filed the urgent chamber application on 5 December 2014. I am satisfied that there was no appreciable delay. The applicant had acted within a reasonable period when the need to do so had arisen: see *Kuvarega v Registrar-General & Anor*[2]:

[1] RGN No. 995 0f 1971
[2] 1998 (1) ZLR 188 (H)

At page 8 of his cyclostyled judgment in the *Felix Mfune v Oster Mutiti & Ors*[3] case NDOU J said it is trite that the court has an inherent jurisdiction to grant an interdict. In *Northern Farming (Pvt) Ltd v Vegra Merchants (Pvt) Ltd t/a Vegra Commodities & Anor*[4] I granted an anti-dissipation interdict for the preservation of a certain quantity of maize grain pending the determination, by arbitration, of the dispute between the parties so that should the applicant succeed the arbitration award would not be rendered ineffective by reason that the respondent, who had been proved to be disposing of his only asset - the maize grain - had nothing left to attach. However, the application in that matter had been brought under the purview of the Model Law on International Commercial Arbitration which is a schedule to the Arbitration Act [*Cap 7: 15*]. Article 9 thereof specifically provides for the granting, under certain conditions, of an interim order for the preservation of any goods which are the subject-matter of the dispute at arbitration.

I agree with NDOU J that the court has an inherent jurisdiction to grant an interdict. In my view, the term "***anti-dissipation interdict***" should not confuse matters. In my view, it has no special legal meaning. It is just a term of description. At page 2 of my cyclostyled judgment in *Northern Farming* above I said:

> "What is an anti-dissipation interdict? It is just an ordinary interdict to restrain the disposal of assets. In *Knox D'Arcy Ltd and Others v Jamieson and Others* 1996 (4) SA 348 (A) both the court of first instance and the appeal court debated the propriety of the term 'anti-dissipation interdict'. None of them found the name quite suitable and none of them, for the case before them, could quite understand the content of such interdict. In the end the appeal court was content to say that the South African courts had recognised this type of interdict for many years without giving it any specific name."

In that judgment I referred to the debate over the name for that type of interdict as captured in the judgment of GROSSKOPF JA in the *Knox D'Arcy* case. It was this[5]:

> "It is therefore not surprising that both the name of the interdict and its essential content have been the subject of some debate.
>
> As far as the name is concerned, the petitioners referred to it as a Mareva-type interdict after the term used in English law. The Court *a quo* did not like this name since the use of the English term might suggest that English principles are automatically applicable [see 1994 (3) SA at 705A – 706B]. I agree with this criticism. The alternatives suggested by Stegmann J were not, however, much more

[3] HB 122/2002
[4] HH 328/13
[5] At pp 371 - 372

> felicitous. Thus he referred to an interdict in *securitatem debiti* and an anti-dissipation interdict. The former expression may suggest that the purpose of the interdict is to provide security for the applicant's claim. This is not so. The interdict prevents the respondent from dealing freely with his assets but grants the applicant no preferential rights over those assets. And 'anti-dissipation' suffers from the defect that in most cases and, certainly in the present case, the interdict is not sought to prevent the respondent from dissipating his assets, but rather from preserving them so well that the applicant cannot get his hands on them. Having criticised the names used for the interdict I find myself unfortunately unable to suggest a better one. I console myself with the thought that our law has recognised this type of interdict for many years without giving it any specific name."

The requisites for an interdict are:

1 a *prima facie* right, even if it be open to some doubt;

2 a well-grounded apprehension of irreparable harm if the relief is not granted;

3 that the balance of convenience favours the granting of an interim interdict;

4 that there is no other satisfactory remedy.

see *Setlogelo* v *Setlogelo* 1914 AD 221 at 227; *Tribac (Pvt) Ltd* v *Tobacco Marketing Board* 1996 (1) ZLR 289 (SC) @ 391; *Hix Networking Technologies v System Publishers (Pty) Ltd & Anor* 1997 (1) SA 391 (A) @ 398I – 399A)*; Flame Lily Investment Company (Pvt) Ltd* v *Zimbabwe Salvage (Pvt) Ltd and Anor* 1980 ZLR 378; *Universal Merchant Bank Zimbabwe Ltd v The Zimbabwe Independent & Anor* 2000 (1) ZLR 234 (HC) @ 238;.

In the present case, one of the respondents' major grounds of attack against the granting of the interdict was that the main action was misconceived. It was said the cause of action therein was non-existent in that by the sale deal the applicant was purporting to buy his way into the two trusts. I take it that by this argument the respondents were simply saying that the applicant had failed to establish a *prima facie* right to sustain a case for an interdict.

It was my earnest suspicion that both the application before me, and the main action that was said to be pending, concealed more than they revealed. I acknowledge that shrewd estate planning minimises the various types of estate duty and other taxes. But it sounds rather novel for one to "***sell***" to another who "***buys***" one's trusteeship in a trust. Mr *Paul* dismissed applicant's cause of action in the main action as a "***joke***".

However, at this stage my enquiry is confined to whether or not the applicant has established a *prima facie* right, as opposed to a clear right. The *prima facie* right may be open to some doubt. That will be for the trial court to evaluate eventually. At this stage, I am satisfied that the applicant has established a *prima facie* right. He has established an

entitlement to the effective and beneficial interest in the Hogerty Hill property, however it was intended to be achieved. In the main action, if he did not get the kind of specific performance that the parties had contemplated, his fall-back position would be a refund of the consideration that he said he had paid. The whole deal may have been a "***joke***". But the respondents were part of that "***joke***". Let the trial court decipher the "***joke***". It was not the respondents' argument that the sale deal was unlawful in any way. They expressly admitted owing the applicant US$400 000. The applicant said it was US$650 000, plus US$300 000 for renovations. The trial court would no doubt sort out all that.

The respondents said the applicant had no well-grounded apprehension of an irreparable harm because they were not disposing of their assets. They had not sold their businesses. They were permanently based in this country. They were not selling real estate in Kariba or Harare. It was wrong for the applicant to base his application on mere rumours.

I got the sense that the respondents were not being very open. The applicant may have heard from rumours. But he had also said that he had been close friends with the first respondent and that the first respondent had previously confided in him that he had real estate in Kariba. In his affidavit the first respondent did not categorically refute that. All he said on that point was that he was not selling real estate in Kariba and Harare. That is not the same thing as denying owning real estate. The respondents should have come clean and taken the court in their confidence whether or not they had real estate other than those two properties that the applicant had himself identified.

Whether or not the respondents had real estate in Harare and Kariba would have been of no consequence by itself. But given that they had deliberately encumbered the Hogerty Hill property knowing full well that they had "***sold***" it to the applicant was wrongful. They did not refute the applicant's categorical accusations that they had fraudulently or surreptitiously retrieved the title deed from the conveyancers. Given the huge amount of the mortgage bond in favour of Clinton, the applicant had a well-grounded apprehension of an irreparable harm. If Clinton foreclosed on that property there would be nothing left for the applicant.

The respondents argued that there was no basis for the Trinirig Company to be muzzled in respect of its rights to deal freely with its own property, especially in circumstances in which it was not even a party in the main action. By this argument I

presume that the respondents wanted to show that the balance of convenience favoured the refusal of the interdict.

In the main action, the applicant's claim was against the first and second respondents, the Gelshen Company, Clinton and the Registrar of Deeds. It is understandable why the Trinirig Company, the third respondent herein, was not a party. Therein, the focus was on the Hogerty Hill property that was registered in the name of the Gelshen Company. The remedy sought in the main action is some kind of specific performance. Thus the Trinirig Company would have had no business being in that action. In contrast, in the present case, although both the Hogerty Hill property and the Kingsmead property are the focus of attention, the applicant wants a remedy in respect of the Kingsmead property only. That property was registered in the name of the Trinirig Company. The shares in the Trinirig Company were in turn wholly owned by the Trinirig Trust. In turn the Trinirig Trust was controlled by the first and second respondents.

However, the applicant's answer to the respondents' argument above was simply that the corporate veil be lifted so as to expose the true owners of those two properties.

With respect, it has required little persuasion and effort to pierce the corporate veil in this case. It is in fact common cause that the first and second respondents are in reality the beneficial owners of the true properties in question. Their two companies and their three trusts were mere fronts. They were their *alter egos*. From time to time the courts will rend a company's corporate veil to get to the members hidden behind it. This happens where, for example, the company is a sham or where it has been used as a tool to cause harm to others, or where it would be flagrantly unjust to leave the veil intact. LORD DENNING MR put it this way in *Littlewoods Stores* v *I.R.C*[6]:

> "The doctrine laid down in *Salomon's* case[7] has to be watched very carefully. It has often been supposed to cast a veil over the personality of a limited company through which the courts cannot see. But that is not true. The courts can, and often do, pull off the mask. They look to see what really lies behind."

Thus, in this case, to shield the Kingsmead property behind the corporate veil of the Trinirig Company would be to cause manifest injustice. A company acts through natural beings. It was not Trinirig, the fictitious entity, which surreptitiously uplifted the title deed from the conveyancers and mortgaged away the property. It was Trinirig, the natural persons

[6] [1969] 1 WLR 1241 CA @ p 1254
[7] *Salomon v Salomon & Co* [1897] AC 22, HL

that did. An interdict against Trinirig, the natural beings, shall be an interdict against Trinirig, the fiction, and *vice versa*.

In my view, in this type of interdict one of the major considerations is whether the respondent would still have sufficient property to satisfy any judgment that may eventually be given against him and whether his continued disposal of his assets is deliberately intended to frustrate any such judgment. In *Mcitiki and Another* v *Maweni*[8] HOPLEY J stated[9]:

> "It is said if one were to interdict a man like respondent in such circumstances from parting with some of his property so as to satisfy a judgment, one would be revolutionising the practice of this Court. The practice of this Court is to do justice between people according to the circumstances that may arise. It has, of course, long been the practice of this Court that if the respondent, although an *incola*, were *in fuga*, the Court would in such circumstances restrain him from parting with certain property pending the result of an action; **and that doctrine has been extended a little further where the respondent is a prodigal wasting his money or is purposely making away with funds although remaining an *incola* of the country**, **so that eventually when his creditor gets the judgment it may be a barren one**; and to use a graphic phrase in one of our old law cases, when he went there with his writ of execution, such creditor would find he was 'fishing behind the net'. It is to protect a *bona fide* plaintiff against a defeat of justice in such a case that such orders are given. The cases cited such as *David v Reinhard* 8 E.D.C. 30; *Robinson, Miller and Co.* v *Lennox and Another*, 18 C.T.R. 402; *Fredericks* v *Gibson*, C.T.R. 445, all have their distinguishing features, **but they all proceeded upon the wish of the Court that the plaintiff should not have an injustice done to him by reason of leaving his debtor possessed of funds sufficient to satisfy the claim, when circumstances show that such debtor is wasting or getting rid of such funds to defeat his creditors, or is likely to do so.**" (my emphasis)

Justice requires that a restriction be placed on one's ability to deal with one's assets where it has been shown that one has been acting *mala fide* with the intention of rendering ineffective the judgment that the court may grant against one. This is so even where it would not normally be justified to compel one to regulate one's *bona fide* expenditure so as to retain sufficient funds in one's patrimony for the payment of claims: see *Knox D'Arcy Ltd and Others v Jamieson and Others*[10]. At p 372 -373 the court said in that case:

> "It is often said that an interdict will not be granted if there is another satisfactory remedy available to the applicant. In that context a claim for damages is often contrasted with a claim for an interdict. The question is asked: should the respondent be interdicted from committing the unlawful conduct complained of, or should he be

[8] 1913 CPD 684
[9] At pp 686 - 687
[10] 1996 (4) SA 348

> permitted to continue with such conduct, leaving the applicant to recover any damages he may suffer?
>
> That is not the question which arises here. In the present circumstances **there is no question of a claim for damages being an alternative to an interdict**. The only claim which the petitioners have is one for damages. There is no suggestion that it could be replaced by a claim for an interdict. **The purpose of the interdict is not to be a substitute for the claim for damages but to reinforce it – to render it more effective**. And the question whether the claim is a satisfactory remedy in the absence of an interdict would normally answer itself. **Except where the respondent is a Croesus[11], a claim for damages buttressed by an interdict of this sort is always more satisfactory for the plaintiff/applicant than one standing on its own feet**. The question of an alternative remedy accordingly does not arise in this sort of case. The interdict with which we are dealing is *sui generis*. It is either available or it is not. No other remedy can really take its place (except, possibly, in certain circumstances [of] attachments or arrests." (my emphasis).

I am satisfied that given the zigzag fashion in which the respondents own properties, even though nothing of it was proved to be unlawful, there can be no other satisfactory remedy for the applicant. Among other things, if the applicant eventually succeeds either in the main action or any other claim for damages, ultimately execution is a possibility. But the way the respondents have regulated their proprietary affairs is such that nothing may be traced back to them directly. It was possible for the applicant to do that with the two properties in question because of the sale deal that related to the Hogerty Hill property directly and to the Kingsmead property indirectly. The respondents have not said what else they own and where.

The issue of the "WhatsApp" message is inconsequential. Firstly, there is nothing in the High Court (Authentication of Documents) Rules that deals with translated documents. I presume Mr *Zhuwarara* meant to refer to the Civil Evidence Act, *Cap 8: 01*. But again that Act does not say that it requires certified translators for translated documents to be admissible. Section 17 provides that where it is necessary to produce in evidence a translation of a document into the English language that translation is admissible on its production by the person entitled to produce the original document if it is accompanied by an affidavit made by that person stating that he undertook the translation and that the translation is true and

[11] Croesus was an ancient king of ancient Lydia who was famed for his wealth and whose name is said to be synonymous with terms like 'capitalist', 'deep pocket', 'fat cat', 'moneybags', etc.

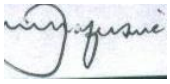
accurate to the best of his ability. If the translation is challenged, all that that person needs do is to prove the accuracy of the translation.

At any rate, in terms of s 27 of that Act the evidence of a statement made by any person whether orally or otherwise, is regarded as first-hand hearsay evidence that is admissible in civil proceedings as evidence of any fact mentioned or disclosed in that statement. Therefore, in my view, the first respondent was entitled to place by affidavit, as he did, the message that he had downloaded from his mobile telephone which he swore had been sent from the applicant's own telephone.

But be that as it may, I have placed no weight on that message. The substance of it was that the applicant's complaints before the court, both in the main action and in this application, were not genuine, but merely tactical moves at the instance of his legal practitioners. Yet before me was a cogent complaint. The respondents had entered into the sale deal with the applicant, irrespective of the legal soundness of that transaction. The applicant had signed. The first respondent had signed. Unbeknown to the applicant the second respondent had reneged on signing. Also unbeknown to the applicant the respondents had purported to cancel the sale deal. They had then Nicodemusly retrieved the title deed of the Hogerty Hill property from the conveyancers and Nicodemusly mortgaged that property to Clinton when they no longer had the right to do so. Even in the absence of evidence of the respondents' ownership of other properties in Kariba and Harare, and even in the absence of any further evidence that they were busy disposing of any such property with intention of leaving Zimbabwe, I am satisfied that the applicant placed before me sufficient grounds for an interlocutory interdict.

In the premises the provisional order is hereby granted in terms of the draft attached to the urgent chamber application.

24 December 2014



C. Nhemwa & Associates, applicant's legal practitioners
Wintertons, first, second and third respondents' legal practitioners