

DERECK SITHOLE
versus
CHRISTOPHER BENGWANI SIBINDI
and
CLOVER LEAF PANEL BEATERS

HIGH COURT OF ZIMBABWE
HUNGWE J
HARARE 30 July 2004 and 6 August 2004

Mrs *P. Chihota*, for the applicant
Mr *L. Uriri*, for the 1st respondent
Mr *D.M. Foroma*, for the 2nd respondent

HUNGWE J: This matter was brought by way of an urgent chamber application on 27 July 2004. On perusing the application I noted that there was no indication that these papers had been served on the respondents. I directed that service be effected on the respondents and that matter be set down for hearing on 30 July 2004.

The background to this application is that applicant and 1st respondent entered into an agreement of sale of a motor vehicle an Opel Kadett 200 GSI registration number 576-573A on 20 February 2004 for \$10 000 000.00. It was a term of the agreement between the parties that the purchaser will take delivery of the said motor vehicle after the full purchase price had been paid. It was also a term of that agreement that the purchaser will take delivery of the said motor vehicle within fourteen days of the date of the agreement. In other words it was in the contemplation of the parties that the full purchase price will have been paid within fourteen days so that ownership is passed to the purchaser.

By 13 April 2004 only \$9 840 000.00 had been paid towards the purchase price. According to the applicant the 14 day period matured on 5 March 2004. He did not get delivery of the vehicle. On inspection of the motor vehicle, that Opel Kadette motor vehicle was not in a sound mechanical condition, or such condition as to answer to the purpose for which it had been bought. The parties then varied their agreement and substituted a Mitsubishi Colt Rodeo registration number 677-317 N which is in 2nd respondent's possession.

Applicant does not say when this new agreement came into being or its terms. He however points out that he had paid more than the initial purchase price as 1st respondent demanded excess payments to make up what he would have got in interest. No other details of the subsequent agreement are given except that on 20 July 2004 applicant in the company of a police officer approached 1st respondent and demanded specific performance of the subsequent agreement i.e. that he delivers to him the Mitsubishi Colt Rodeo. 1st respondent then threatened to resile from the contract.

On the basis of the above facts applicant seeks an interim interdict interdicting second respondent from releasing the Mitsubishi Colt Rodeo in its custody to anyone including 1st respondent, pending the finalisation of this matter.

The respondents both opposed the grant of the provisional order sought. They both argued firstly that there was no urgency in the matter and secondly that there was no merit for the grant of the order.

Both respondents did not file opposing affidavits but relied on the point of law taken by 1st respondent's legal practitioner.

In order for a matter to be dealt with on an urgent basis, the court invariably relies on the certificate of urgency filed by a legal practitioner in which he certifies the matter to be urgent. In that certificate a legal practitioner puts his name and honour on the line vouching that in his belief there are grounds sufficient enough for the matter to qualify as one deserving to be dealt urgently and ahead of others. He or she sets out briefly the facts upon which he/she entertains the belief. That certificate must also support the claim that if the application is not dealt with and relief granted immediately then applicant could suffer irreparable harm.

See *Kuvarega v Registrar-General and Another* 1998 (1) ZLR 188 @ 193 where CHATIKOBO J says-

"There is an allied problem of legal practitioners who are in the habit of certifying that a matter is urgent when it is not one of urgency What constitutes urgency is not only the imminent arrival of the day of reckoning, a matter is urgent, if at the time the need to act arrives, the matter cannot wait. Urgency which stems from a deliberate or careless abstention from action until the deadline was near is not the type of urgency contemplated by the rules."

The certificate of urgency states;

"Time is of essence in this matter as First Respondent has unexplainably left for Malawi, for an unknown duration and applicant has no knowing whether he will come back further, applicant further fears that first respondent may have sold the Mitsubishi Colt Rode to another individual. The applicant will be grossly prejudiced, should the motor vehicle be sold, disposed of or released to the first respondent."

The fact that a party to litigation has travelled abroad without leaving indications as to how a motor vehicle in dispute should be handled cannot create urgency. Even the fear that he has sold it to another party cannot make such a matter as this one an urgent one. There is no basis for the fear that he may have sold it or will in the future sell it. Without substantiation of such facts, the certificate of urgency cannot be said to be founded on facts. The belief that case is one of urgency without being buttressed by such facts, cannot be reasonable. The fact that a litigant with a claim sounding in money may suffer financial consequences by having to wait his turn for the hearing of his claims does not entitle him to preferential treatment.

See *Silvers Trucks (Pvt) Ltd v Director of Customs and Excise* 1999 (1) ZLR 490 @ page 452.

I am not persuaded therefore that this is a matter which deserves to be enrolled as a matter of urgency. I therefore strike it off the roll as it is not one of urgency. There is no order as to costs.

Costa & Madzonga, applicant's legal practitioners
Honey & Blankenberg, 1st respondent's legal practitioners
Sawyer & Mkushi, 2nd respondent's legal practitioners