

WILLIAM WACHENUKA
versus
JOHN STRONG (PRIVATE) LIMITED
and
TOBS STRONG (PRIVATE) LIMITED
and
MINISTRY OF LANDS AGRICULTURE AND
RESETTLEMENT

APPLICANT
1ST RESPONDENT
2ND RESPONDENT
3RD RESPONDENT

HIGH COURT OF ZIMBABWE
BERE J
HARARE, 23 & 24 March 2010

D. Mushambi, for the applicant
J. Samkange, for the 1st & 2nd respondent
M. Chimombe, for the 3rd respondent

BERE J: After listening to the submissions made by both legal practitioners what has exercised my mind is whether or not this matter is urgent.

What is apparent to me is that the parties have been in and out of this court on numerous occasion with allegations and counter allegations being thrown at each other as the parties stampeded on each other in order to obtain the court's sympathy.

I do not believe that this case ought to be determined on the submissions made by both legal practitioners when they appeared before me. It occurs to me that when ever there are allegations of contempt such allegations must be investigated first and the party alleged to be in contempt given an opportunity to explain his or her conduct. This is so because of the effect or implications of a party being found to be in contempt. Being in contempt of court carries with it a drastic penalty which might lead to a party in contempt having to be deprived of his liberty and such recourse must only be had to when all the rules of naturally justice have been fully adhered to and followed to the letter.

What has caught my attention in this matter is that this urgent application has been prompted by the assumed delay in the conclusion of matter HC 1916/09 which was heard before my sister judge GOWORA on 16 July 2009.

That hearing was prompted by the parties desire to have the court determine *inter alia* the fate of the tobacco barns, grading shades, storage sheds, workshop, office and irrigation pump station on the part of the land allegedly allocated to the applicant in this matter.

This court is already seized with this matter and in my view it would be undermining the very authority of this court if it were to make a determination that would render nugatory the ruling of this same court in the main matter.

Once a matter is awaiting judgment the same dispute no matter how camouflaged cannot be brought under the banner of urgency in a desperate effort to bring finality to that same litigation. There are various options available which a party desiring judgment to be pronounced soon must initiate.

But to bring the same case on urgent basis can only amount to an abuse of the whole process of urgency and such an approach cannot be countenanced by this court.

In fact I cannot imagine a more pointed way of abusing this process than what the applicant has done in this matter.

One only needs to imagine what would happen to the awaited judgment in HC 1916/09 if this court which has not even had the opportunity and privilege of hearing all the evidence like in the main case were to make a determination in this urgent application.

For these reasons I decline to entertain this matter on an urgent basis.

The application is dismissed with costs

Gula-Ndebele & Partners, applicant's legal practitioners
Venturas & Samukange, 1st & 2nd respondent's legal practitioners