

ZIMBABWE PARENTS OF HANDICAPPED CHILDREN ASSOCIATION

Versus

GRIMMS NURSERY SCHOOL

And

NOREEN CAMPBELL

And

**OFFICER-IN-CHARGE
CENTRAL POLICE STATION N.O.**

And

**INVESTIGATING OFFICER
SERGEANT NEGWEKURU N.O.**

IN THE HIGH COURT OF ZIMBABWE
NDOU J
BULAWAYO 5 MARCH & 22 MARCH 2012

N. Dube, for the applicant
N. Siphuma, for 1st and 2nd respondent

Urgent Chamber Application

NDOU J: The applicant seeks a spoliation order against the respondents. The salient facts of the matter are the following. The applicant was leasing property from 2nd respondent. During the currency of the lease, the applicant became indebted to the 2nd respondent for arrear rentals. In April 2011, the 2nd respondent closed the leased premises and changed locks of the doors thereby denying the applicant access to the building. The applicant approached this court for a re-instatement order under a certificate of urgency. The order was granted on 19 May 2011 under case number HC 1153/11. The interim relief granted is in the following terms:

“Pending the finalization of the matter the applicant be granted the following relief:

1. The respondents be and are hereby ordered to immediately open the premises being Grimms Nursery School, 26 Fife Street, Bulawayo [“the leased property”] and allow the applicant to use the premises in terms of the lease agreement.
2. The respondents be and are hereby interdicted from disturbing the peaceful occupation of the premises by the applicant in any manner.
3. The respondents be and are hereby interdicted from leasing the premises to any other party during the currency of the lease with the applicant.”

After obtaining this provisional order, the applicant still had problems in payment of rentals. The 2nd respondent approached this court under case number HC 1409/11. The 2nd respondent was granted an order which cancelled the lease agreement, evicted the applicant from the leased property and ordered the applicant to pay 2nd respondent the sum of US\$13 850,00 arrear rentals. On 23 February 2012, without a court order entitling it to do so, the applicant went to the leased property and collected movable assets subject matter of these proceedings. The 2nd respondent was not present but her employees were present. Mr *Dube*, for the applicant, concedes that they did not have a court order entitling the applicant to remove these movable assets. There was no order that the Deputy Sheriff was executing when the property was taken. The above-mentioned order granted under HC 1153/11 has nothing to do with this property. The applicant used the said order to be restored into the leased premises. The Deputy Sheriff was correct in assisting the applicant to enter the leased premises. The Deputy Sheriff should have done just that and no more. Once the applicant was restored into the leased premises the Deputy Sheriff had no lawful basis to take away the property subject matter of these proceedings. There was, and still is, no court order authorizing the removal of these items. The applicant was taking the law into its hands and misled the Deputy Sheriff to assist it in this regard. The applicant had the benefit of legal representation throughout. When the 2nd respondent returned she then reported the unlawful taking of her property to the Zimbabwe Republic Police. The police intended to remove the property for the applicant and this resulted in this application. The applicant was acting unlawfully when it took the property without a court order. One of the requirements for applicant of an interdict is that the applicant must be acting lawfully. The police have a right to take the property in the course of their investigations. An interim interdict is not a remedy for prohibiting lawful conduct – *Airfield Investments (Pvt) Ltd v Minister of Lands & Ors* 2004 (1) ZLR 511 (S) at 518C and *Rudolph & Anor v Commissioner of Inland Revenue & Ors* 1994 (3) SA 771 (W) at 775C-D. There is, therefore, no merit in the application. It is accordingly dismissed with costs on the legal practitioner and client scale.

Cheda & Partners, applicant’s legal practitioners
Sansole & Senda, 1st and 2nd respondents’ legal practitioners