

CALEB SITHOLE
versus
KINGSTONS HOLDINGS LIMITED

HIGH COURT OF ZIMBABWE
MAFUSIRE J
HARARE, 13 & 16 January 2015

Opposed application

R.R. Mutindindi, for applicant
A. Musoni, for respondent

MAFUSIRE J: On 5 June 2013 this court, MATHONSI J, registered an arbitral award that had been granted in favour of the applicant (hereafter referred to as “*Sithole*”). Paragraph 2 of that order directed the respondent (hereafter referred to as “*Kingstons*”) to sell to Sithole a certain Mazda vehicle (hereafter referred to as “*the vehicle*”) at book value as per Kingstons’ motor vehicle policy. That was not done. On 8 April 2014 Sithole applied for contempt of court. The draft order was couched as follows:

- “1. The Respondent be and is hereby declared to be in contempt of Court and hereby ordered to comply with the High Court order dated 5th of June 2013 under case number 3681/13 within 5 days of this Court Order.
2. In the event that the Respondents (sic) fail to comply with paragraph one (1) above, be (sic) and is hereby fined \$US10000.00 (sic) and the committal to prison of the General Manager for 60 days at a designated prison (sic).”
3. The Respondents (sic) to pay the applicant’s costs of suit at the legal practitioner-client scale.”

Following criticism by myself on the reference to committal to prison in paragraph 2 of the draft order of someone whose name was not mentioned; whose “sins” had not been tabulated; and where service of process had not been effected upon him personally, as required by Order 5 r 39(1) of the Rules of this Court, which directs, in peremptory terms, that process in relation to a claim affecting the liberty of a person shall be served on him personally, Ms *Mutindindi*, for the applicant, moved for an amendment to the draft order to delete the reference to committal to prison.

Kingstons admitted that it had not complied with the court order. However, it denied that its failure had been wilful. It said the vehicle, to Sithole's knowledge, was held up at the auctioneers. It had been attached by the Sheriff in pursuance of a writ issued by Sithole himself. The auctioneers were demanding a whopping US\$4 600 in storage costs. They were exercising a lien over the vehicle and therefore would not release it without payment of the amount. Sithole was accused of not having joined the auctioneers to the action.

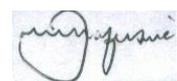
That the vehicle was being held up at the auctioneers had not been mentioned in Sithole's founding papers. His reply on the point was wishy-washy. He latched onto the misjoinder argument and said the auctioneers had no interest in the matter and so could not have been joined. He was adamant that as far as he was concerned the vehicle was in the possession and control of Kingstons. However, in court Ms *Mutindindi* conceded that the vehicle was held up at the auctioneers.

During argument I queried both parties' stance. All that the court had directed Kingstons to do was to "sell" the vehicle to Sithole. The order had not directed it to sell **and deliver** the vehicle. The fact that the vehicle could have been in the custody of someone else could not have been a hindrance to Kingstons complying with the court order. The question of the auctioneers' storage charges and their supposed lien over the vehicle were separate matters altogether.

After the parties had conferred between themselves, and after several exchanges with myself, the matter was resolved on the basis that Sithole would withdraw his application and the parties would engage in dialogue in terms of which Kingstons would comply with the court order by selling the vehicle to Sithole whereafter both parties would engage the auctioneers to resolve the question of the storage charges. I stressed that I would endorse the basis upon which Sithole was withdrawing his application so as to prevent Kingstons from renegeing later on. Thus, the matter was concluded as follows:

"Matter is withdrawn from the roll on the understanding that the parties will engage in dialogue to comply with the court order and to resolve the aspect of removal of the motor vehicle from Ruby Auctions for delivery to the applicant."

16 January 2015



Matsikidze & Mucheche, applicant's legal practitioners
Muvingi & Mugadza, respondent's legal practitioners