

MERYIEL GAIL NELROSE MARSHALL V RORY MCDUGALL (1989) S.J. (S.C.)

SUPREME COURT
NGULUBE, D.C.J., GARDNER, A.J.S., CHAILA, J.S.
18TH MAY, 1989
(S.C.Z. JUDGMENT NO. 25 OF 1989)

Flynote

Civil Procedure - application to Supreme Court for injunction - whether Supreme Court has jurisdiction to deal with interlocutory concerning Another injunction has been dealt with

Headnote

This was an application referred to the court by a single judge of this court, for an injunction to restrain the respondent and the directors of Ceres Farm Limited from removing the company's statutory books, common seal and other documents from the custody of Service Trustees Limited and for an order that Service Trustees Limited do forthwith register the transfer of sixty percent of the shares to the applicant. A further application contained in the summons was for an order that Service Trustees Limited as company secretaries do forthwith convene an extraordinary general meeting of the members of the company. The matter was referred to the court to rule on the question whether or not this court has jurisdiction to deal with interlocutory injunctions after an appeal concerning another injunction has already been dealt with.

Held:

- (i) The Supreme Court cannot deal with disputed matters of fact, nor can it deal with matters which are properly the subject of the originating summons which has yet to be dealt with in the High Court
- (ii) To enforce payment of a judgment debt ordered by this court, it is proper for the machinery of the High Court to be used by the parties by the issue of writs such as *feri facias* and others

Cases referred to:

- (1) *Jonesco v The Evening Standard* (1992) ALL E.R. 678
- (2) *Miyanda v The High Court* (1984) Z.R. 62

For the Appellant: J. N. Jearey of D.H. Kemp & Kemp & Co.
For the Respondent: Nkabika of M/s. T.L.N. Nkabika & Associates

Judgment

GARDNER, A.J.S.: delivered the judgment of the court.

This is an application referred to the court by a single judge of this court, for an injunction to restrain the respondent and the directors of Ceres Farm Limited from removing the company's statutory books, common seal and other documents from the custody of Service Trustees Limited and for an order that Service Trustees Limited do forthwith register the transfer of sixty percent of the shares to the applicant. A further application contained in the summons is for an order that Service Trustees Limited as company secretaries do forthwith convene an extraordinary general meeting of the members of the company. The matter was referred to the court to rule on the question whether or not this court has jurisdiction to deal with interlocutory injunctions after an appeal concerning another injunction has already been dealt with.

Mr Jearey has argued that this court has power to make orders putting into effect any order we have made as a result of an appeal and in particular he has referred us to two cases, the first of which is that of *Jonesco v The Evening Standard* (1), in which the court of Appeal in England held that a matter which had come before it, in which a firm of solicitors had given an undertaking, could be the subject of an order by the court to enforce the undertaking. In that case the Court of Appeal did not in fact make an order, but, in view of the fact that questions of fact arose, the matter was referred to a master of the High Court to inquire into those questions. The second case to which we were referred was the Zambian case of *Miyanda v The High Court* (2). This was a ruling by the learned Deputy Chief Justice on an application for an order of *mandamus* against a judge of the High Court. In the course of that ruling the learned Deputy Chief Justice commented as follows:

"The Supreme Court would also have jurisdiction like the court of appeal in England to make order requiring the fulfilment of an undertaking given to it and an inherent jurisdiction to strike out an incompetent appeal. I would go so far as to assert that the Supreme Court has an inherent jurisdiction to prevent abuses of process and to protect its authority and dignity."

Mr. Jearey pointed out that in this case this court had made an order allowing an appeal concerning a different injunction in which we set aside an injunction granted by the High Court and made an order precluding the applicant from registering in her name forty percent of the issued share capital in Ceres Farm Limited but saying that she was entitled to register in her own name the remaining sixty percent of the said share capital. Mr. Jearey referred us to his affidavit sworn herein in which he averred that existing company secretary of the company had made inquiries at the previous registered office of the company and had been refused access on the grounds that the registered office of the company had been changed to a private road in Lusaka. He was also informed that there had been a meeting of those who were claimed by the respondent to be the directors of the company whereby the company secretaries had been changed. Mr. Jearey maintained that, as a result of the conduct of the respondent, it was impossible for the company secretary, Service Trustees Limited, to effect the registration of a transfer of shares to the applicant in accordance with this court's order. This, said Mr. Jearey was a deliberate attempt on the part of the respondent to forestall the implementation of this court's order and, in accordance with the *dictum* of the learned Deputy Chief Justice in the *Miyanda* case, he asked this court to make an order to protect its own authority.

Mr. Chilupe, on behalf of the respondent, argued that the original jurisdiction of this court is limited, and that, in order to deal with Mr. Jearey's application on behalf of the applicant, it would be necessary for the facts of the matter to be inquired into. He agreed with Mr. Jearey that registration of a transfer of the shares to the applicant would have to be put into effect by the company through its company secretary and for this reason said that he would require the company books which were at present in the custody of Service Trustees Limited. Mr. Jearey argued that the proposed new company secretary, that is PGK Finance Company Limited, was in fact a company run by a Mr. Katyoka who had, in the proceedings leading to the previous appeal before us, sworn an affidavit on behalf of the respondent. He said that, because the proposed new company secretary had taken sides in the dispute between the parties, it was most undesirable that the books should be handed to him so that he could transact any business on behalf of the company contrary to the terms of the injunction which Mr. Jearey has asked this court to order.

We have considered the question of what jurisdiction is available to this court to enforce its own orders and to make additional orders for that purpose. It is argued that in the ordinary course of events, for instance to enforce payment of a judgment debt ordered by this court, it is proper for the machinery of the High Court to be used by the parties by the issue of writs such as *fiery facias* and others. However, we accept Mr. Jearey's argument that this court is jealous of its own orders and has an inherent jurisdiction to make further orders to protect its authority in terms of the *Miyanda* case. We, of course, agree with the comment in the *Jonesco* case that we cannot deal with disputed matters of fact, nor can we deal in this case, with matters which are properly the subject of the originating summons which has yet to be dealt with in the High Court.

Accordingly, we will deal with this application by making an order that it be remitted to another judge of the High Court to deal with the question of the further injunction, bearing in mind our order made on appeal dated the 30th March, 1989, and also bearing in mind the fact that the issues as to whether the respondent has any right at all to interfere with the affairs of the company, on the grounds that there has been a gift of shares to him, has not yet been dealt with by a final hearing of the originating summons and consequently, the question of whether or not the respondent can change the company secretary and the address of the company's registered office has also not been dealt with.

In the meantime, our order dated the 30th of March, 1989 stands and the respondent and his agents will be well advised to do nothing that might be construed as a contempt of this court in breach of that order. Again for the purpose of protecting our authority, the interim injunction granted by a single judge of this court dated the 6th of April, 1989 will continue in force until the application to a High Court judge is dealt with. The costs of this appeal will be reserved to the High Court judge.

Application granted.

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