

lib

**IN THE HIGH COURT FOR ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA**  
*(Civil Jurisdiction)*

**2014/HP/1967**

**BETWEEN:**

**MARTIN GROBBELAAR**



**APPLICANT**

**AND**

**ELIZABETH DE KOCK GROBBELAAR  
MERWIE DE KOCK GROBBELAAR  
HENDRY DE KOCK GROBBELAAR  
ELMAR ENGINEERING LIMTED**

**1<sup>ST</sup> RESPONDENT  
2<sup>ND</sup> RESPONDENT  
3<sup>RD</sup> RESPONDENT  
4<sup>TH</sup> RESPONDENT**

**Before the Honourable Justice Mrs. M. C. Kombe on the 10<sup>th</sup> day of June 2015**

*For the Applicant* : *Mr. F. Sikazwe from Messrs Milner Katolo and Associates.*

*For the Respondents* : *N/A*

---

**R U L I N G**

---

**Cases referred to:**

- 1. Moonde Jane Mungaila-Mapiko (suing on behalf of the Traditional Council of the Mungaila Royal Establishment), John Muchabi V Victor Makaba Chaande (2010) 1 Z.R 397.**
- 2. Elias Tembo V Lusaka City Council -2013/HP/0677 (unreported)**

**Material referred to:**

- 1. The Rules of the Supreme Court of England, 1999 Edition (White Book).**
- 2. Halsbury's Laws of England Volume 9, Fourth Edition.**

This is a Ruling on an *ex parte* application for an Order for leave to commence contempt proceedings. The application was made pursuant to Order 52 rules 1 and 2 of the Rules of the Supreme Court of England 1999, Edition.

In support of the application is a statement verifying facts relied on for leave and affidavit in support. The affidavit was deposed to by Martin Grobbelaar, a Director in the 4<sup>th</sup> Respondent Company. He deposed that he obtained an *ex parte* Order of interim Injunction on 2<sup>nd</sup> February, 2015 which restrained the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents from excluding him from having access to the house and the company premises as Director. That the Ruling marked as **'MG1'** was served on the Respondents' Lawyers Messrs M & M Advocates. He deposed that the Respondents' Advocates responded and indicated that the Respondents' were aware of the injunction. The letter from the Respondents' advocates was produced and marked **'MG3'**.

The witness further deposed that he had been to the company premises so that he could work as a Director at the company premises on several occasions but the 1<sup>st</sup> and 2<sup>nd</sup> Respondent had denied him access to the company. That he went in the company of a legal assistant to the company premises at plot 401/88/D Lilayi on 26<sup>th</sup> March, 2015 so that he could obtain some company papers for his perusal but the 1<sup>st</sup> and 2<sup>nd</sup> Respondents refused to open the premises.

He further deposed that the *ex parte* Order of Interim Injunction restored him to the position of Director in the 4<sup>th</sup> Respondent Company and as such; he was entitled to have access to the company premises and documents to see how the finances of the company were being utilized. That the conduct of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to refuse and or deny him access to the company premises at plot 401/88/D was deliberate and calculated to disobey this Court's Order notwithstanding written assurance from their Advocates that they would comply with the Order of the Injunction.

At the hearing of the *ex parte* application, learned counsel for the Applicant, Mr. F. M. Sikazwe relied on the affidavit in support and the statement verifying the facts. He submitted that Order 52/1/3 stated that the chief instance of civil contempt or contempt in procedure was disobedience to an Order of the Court by a party to the proceedings. He argued that the affidavit contained an Order of this court which was delivered on 2<sup>nd</sup> February, 2015. He submitted that this Order of the Court contained an injunction and an Order to restore the Applicant to his position as Director. That the 1<sup>st</sup> and 2<sup>nd</sup> Respondents had acted in defiance of this Courts' Order and their acts bordered on disobedience of the Order. He argued that this was one of the instances in which this Court should grant leave to commence committal proceedings.

I have considered the affidavit evidence adduced by the Plaintiff and the submissions made by counsel in support of the application.

By this application, I am being called upon to grant an Order for leave to commence contempt proceedings against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.

Order 52 rule 1 of the Rules of the Supreme Court (White book) gives powers to the High Court or Court of Appeal to punish for contempt of court by granting an order of committal. Paragraph 52/1/3 of the White book states that the chief instance of civil contempt is disobedience to an order of the Court by a party to the proceedings.

Further Paragraph 52 of the ***Halsbury's Laws of England*** states that:

***'It is a civil contempt of court to refuse or neglect to do an act required by a judgment or order of the court within the time specified in the judgment or order or to disobey a judgment or order requiring a person to abstain from doing a specified act or to act in breach of an undertaking given to the court by a person on the faith of which the court sanctions a particular course of action or inaction.'***

In the case of Moonde Jane Mungaila-Mapiko (suing on behalf of the Traditional Council of the Mungaila Royal Establishment), John Muchabi V Victor Makaba Chaande<sup>(1)</sup> Matibini, S.C, J. held inter alia that:

***‘Proceedings for contempt are essentially punitive in character and the purpose is to secure compliance with Court orders.’***

In view of the above, the power of the court to order committal for civil contempt is a power to be exercised with great care. In this regard, leave from the court is required so that the court can consider whether there are reasonable grounds to warrant commencement of committal proceedings which are considered serious because of the criminal nature. Thus, Order 52 rule 2 provides that:

***‘No application to a Divisional Court for an order of committal against any person may be made unless leave to make such an application has been granted in accordance with this rule.’***

The application for such leave must be made *ex parte* and must be supported by a statement setting out the name and description of the applicant, the name, description and address of the person sought to be committed and the grounds on which his committal is sought and by an affidavit to be filed before the application is made, verifying the facts relied on.

In this case, the Applicant’s contention is that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents have disobeyed the Ruling of this Court dated 2<sup>nd</sup> February, 2015 by denying him access to the company premises and documents so that he can see how the finances of the company are being utilized. Therefore, he seeks leave from this Court for an Order of committal to be made against the Respondents.

A brief background to the Order of this Court dated 2<sup>nd</sup> February, 2015 is that the Applicant had sought an *ex parte* Order of interim injunction to restrain the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents’ from removing him as Managing Director of the

4<sup>th</sup> Respondent Company and from preventing him from carrying out his duties as Managing Director. This *ex parte* Order of interim injunction sought was not granted by this Court.

However, since the Plaintiff was also a Director in the 4<sup>th</sup> Respondent Company, this Court made a finding on page 8 of the Ruling that the Applicant was entitled and obliged to perform his duties as a Director pursuant to both the Companies Act (Act) and Articles of Association (Articles) of the 4<sup>th</sup> Respondent Company. In this regard this Court found it appropriate to protect Applicant's rights only in respect of the purported removal of the Applicant as Director of the 4<sup>th</sup> Respondent Company.

In view of the above, an *ex parte* Order of interim injunction dated 2<sup>nd</sup> February, 2015 was granted restraining the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents from interfering, restraining or otherwise excluding the Plaintiff from carrying out his duties and obligations as a Director of Elmar Engineering Limited.

The actions complained of by the Applicant are contained in paragraphs 7 to 11 of his affidavit in support. According to the Applicant, he contends that the actions by the Respondents touch on the discharge of his duties as a Director in the 4<sup>th</sup> Respondent Company and therefore the Respondents have acted in disobedience of the *ex parte* Order of interim injunction.

Although the effect of the said Order granted by this Court restored the Applicant to his position as a Director, this Court made a finding that the Applicant was entitled and obliged to perform his duties pursuant to both the Act and the Articles. Therefore in order to ascertain whether or not there are reasonable grounds to warrant leave being granted for the alleged breach of the Order, I have found it imperative at this stage, to consider some of the relevant provisions of the Act as they relate to Directors. I should hasten to mention

that the provisions of the Act apply when the provisions of the Articles are silent.

Section 215 of the Companies Act which deals with powers and duties of directors provides that:

**215. (1) Subject to this Act, the business of a company shall be managed by the directors, who may pay all expenses incurred in promoting and forming the company, and may exercise all such powers of the company as are not, by this Act or the articles, required to be exercised by the company by resolution.**

Further, Section 203 (2) (a) provides that:

**(a) a reference to "the directors" is a reference to the directors acting collectively;**

In relation to proceedings of directors, section 217 (2) and (3) provides that:

**(2) The directors may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit.**

**(3) A director may at any time, and a secretary shall on the requisition of a director, convene a meeting of the directors.**

The import of the above provisions is that management of the affairs of the company cannot be done in isolation of the other directors but as directors acting collectively. It therefore follows that access to company documents and information can only be done within the context and confines of a directors meeting which may be convened by a director at anytime.

I have considered the fore going in the light of the actions complained of by the Applicant against the Respondents that he has been to the company premises on several occasions to work as a Director but has been denied access to the company and the documents. I am of the view that the said actions do not appear to touch on the discharge of the Applicant's duties and obligations as a

Director as envisaged by the Act and the Articles for the actions to constitute a breach of the *ex parte* Order of interim injunction. Going by the provisions of the Act, the Applicant as a Director in the 4<sup>th</sup> Respondent Company is supposed to discharge his duties and obligations collectively with the other Directors and not individually.

Therefore, I am of the considered view that the alleged action of denying the Applicant access to the company premises on several occasions in order for the Applicant to work, touch on the discharge of duties of a Managing Director of a company who is responsible for the day to day management of the affairs of a company. However, this Court did not grant the Order of interim injunction sought by the Applicant to restrain the Respondents from removing the Applicant as Managing Director of the 4<sup>th</sup> Respondent Company and from preventing him from carrying out his duties as Managing Director.

Having said so, I find that on the documents before me, there is nothing to show that the Applicant was denied access to the company premises for the purposes of attending a directors meeting in order to conduct the business of the company in accordance with the provisions of the Act and the Articles.

As I have already alluded to, the power to punish for contempt should be exercised with great care. This observation was also made by Mulenga. J in the case of ***Elias Tembo V Lusaka City Council***<sup>(2)</sup> when she stated that:

***‘Contempt proceedings are very serious in nature and should not be lightly employed... therefore for leave to be granted, the Court must be satisfied that there is a prima facie case against the alleged Contemnor and in this case that there was a breach of the injunction herein’.***

I am persuaded by the above pronouncement and I respectfully adopt it as my own. On the evidence adduced, I am not satisfied that there is prima facie case against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents that they have breached the *ex parte*

Order of interim injunction of this Court in relation to the discharge of the Applicant's duties and responsibilities as a Director as envisaged under the Companies Act and the Articles of Association.

In view of the foregoing, I do not think this is a fit and proper case to signal the launch of contempt proceedings. Therefore, leave to commence committal proceedings is hereby denied. Costs will remain in the cause.

Leave to appeal is granted.

**Delivered at Lusaka this 10<sup>th</sup> day of June, 2015**



.....  
**M.C. KOMBE**  
**JUDGE**