EDWARD MANGENA

And

MALAKI MPOFU

Versus

NINO FILANINO

And

DISTRICT ADMINISTRATOR, UMZINGWANE RURAL DISTRICT COUNCIL [*sic*]

And

OFFICER-IN-CHARGE, ESIGODINI POLICE STATION N.O.

And

ANGELINE MASUKU, GOVERNOR MATABELELAND SOUTH

And

MINISTER OF STATE FOR NATIONAL SECURITY, LANDS, LAND REFORM & SETTLEMENT

And

MINISTER OF HOME AFFAIRS

And

WILLSGROVE FARM ENTERPRISES (PVT) LTD

IN THE HIGH COURT OF ZIMBABWE
NDOU J
BULAWAYO 15 JANUARY AND 19 AUGUST 2010

S S Mazibisa, for the applicants
J Tshuma, for the 1st and 2nd respondents

Opposed Application

NDOU J: The applicants seek an amended order in the following terms:

"It is ordered that

1. The eviction of the applicants by the respondents jointly and severally from their land namely plot number Lot 32 and 33 Essexvale be and is hereby declared to be unlawful.
2. The 1st respondent's occupation of land without a lawful court order evicting the applicants be and is hereby declared to be unlawful.
3. The respondents jointly and severally be and are hereby interdicted from interfering with the applicants' occupation, use and possession of the piece of land namely plot 32 and 33 Essexvale, without a lawful court order authorizing the confiscation of their land.
4. The 1st and 7th respondents be and are hereby ordered to pay costs of suit."

The salient facts of this case are, briefly, the following. The applicants were allocated plots in the disputed land by the office of the District Administrator, Esigodini, in July 2001. These plots are part of the 7th respondent ("Willsgrove farm"). This allocation was done after Willsgrove Farm was acquired by the 5th respondent, the acquiring authority. After acquisition, the Willsgrove Farm was sub-divided into several contained units in 2001. As alluded to above, the two applicants together with several others were given offer letters to take up the units. By letter dated 19 September 2001, the Provincial Administrator for Matabeleland South wrote a letter to the District Administrator Esigodini (Umzingwane) recommending the delisting of Willsgrove Farm. The lands committee for the area met to consider, *inter alia*, the delisting of Willsgrove Farm. At that meeting held on 7 March 2003, the importance of Willsgrove Farm to the nation was emphasized and it was recommended that it be delisted and that those allocated units on the farm, including the two applicants, should be relocated elsewhere. By letter dated 20 January 2004 the applicants and other people settled at Willsgrove Farm were ordered to vacate by the Umzingwane District Lands Committee. By letter dated 26 March 2004, the applicants and other plot holders were advised that Willsgrove Farm was delisted in 2002. By letter dated 19 September 2005, the applicants were advised to vacate Willsgrove Farm before 21 October 2005. The 5th respondent offered the affected plot holders, including the applicants, alternative plots in South Lyn in the same district. They were given offer letters for the latter pieces of land. From that date, the 7th respondent has been in factual judicial possession and in use of the improvements and the land known as Willsgrove Farm. Of the plot holders, the two applicants were apparently not happy with their relocation from Willsgrove

Farm to South Lynn Farm. On 2 February 2007, they filed this court application. The following averments appear in their founding affidavits-

> "2.13 We are currently at South Lyn Farm where there are no proper facilities for us to engage in our agricultural activities and we are there without offer letters either from the District Administrator or the Minister of Lands. We are insecure because of any supporting documents of our stay at the new place. [*sic*] We are also angry because none of the relevant authorities has come up with any document terminating our occupation of Essexvale Farm. …
>
> 2.14 …
>
> 3. I am accordingly seeking an order that we be reinstated to our respective plots at Lot 32-33 of Essexvale Farm [Willsgrove Farm] with the assistance and aid of the perpetrators of our eviction …
>
> I am seeking an order further that the Honourable Minister of lands after compliance with all the necessary formalities issue us with the relevant and further security of tenure documents at Essexvale Farm. As far as the Governor clearly she must stop any direct or indirect authorization of our evictions from our land.
>
> 4. We went to war to fight as war veterans so that we could get our land and we have respected the courts … and we hereby do seek an order for our reinstatement and our land [*sic]* and for our continued protection against unlawful, arbitrary, unjust and malicious eviction." (Emphasis added)

It is beyond dispute that the applicants were never issued with offer letters signed by the 5th respondent in respect of Willsgrove Farm. All they are relying upon are letters from the local District Administrator. In respect of the 1st applicant the letter reads:

> "RE: ALLOCATION OF SELF CONTAINED PLOT: FARM NAME: LOT 32 & 33 ESSEXVALE: PLOT (200 HAC)
>
> The above refers.
>
> I have pleasure to inform you that the Umzingwane Land Identification and Resettlement Committee has allocated you the above self contained plot at the above farm, under Government's Fast Track resettlement programme.

It is hoped that you will fully utilize this opportunity to improve both your … and Zimbabwe's Agricultural Economy.

Yours sincerely

W M Dhewa
For: DISTRICT ADMINISTRATOR"

In respect of the 2nd applicant the letter reads:

"RE: ALLOCATION OF SELF CONTAINED UNITS: LOT – 32-33 ESSEXVALE

The above refers.

Please be advised that you were selected and offered a self contained unit.

You are now required to report to the office of the District Administrator Esigodini on Thursday 12 July 2001 at 9.00 am where details will be revealed.

Thank you

W M Dhewa
For: DISTRICT ADMINISTRATOR"

The applicants deserted their plots allocated to them by the 5th respondent at South Lynn Farm via offer letters issued pursuant to the provisions of the Agricultural Land Settlement Act [Chapter 20:01]. They defied the allocation by the acquiring authority and went back to the plots at Willsgrove Farm that were allocated to them by the District Administrator in terms of the above-mentioned letters. It is trite that once the land is gazetted and acquired by the 5th respondent ownership rests with it. It follows, that the applicants cannot dictate the manner in which the 5th respondent chose to utilize or exercise the rights of ownership in respect of the land – *Airport Game Park (Pvt) Ltd & Anor* v *K Karodza & Anor* SC 18-04 and *Airfield Investments (Pvt) Ltd* v *Minister of Lands and Ors* SC 36-04. The acquiring authority resettled the applicants at South Lynn Farm. This is in terms of the offer letters signed by the 5th respondent. The applicants, as his invitees, cannot unilaterally defy this allocation and go to a piece of land of their own choice. In this case it is clear that the applicants initially complied with the decision to move them to South Lynn Farm. During the period that the applicants were at South Lynn

Farm the 1st and 7th respondents had quite and undisturbed possession of the land and improvements forming the entire Willsgrove Farm. When they returned to Willsgrove Farm, for whatever reason, they took the law into their own hands and settled themselves in what they believed to be their plots. They have refused to listen to the 5th respondent's agents that they return to South Lynn Farm where they were lawfully settled in terms of 5th respondent's offer letters. Their action is unlawful in the context that the dispossession took place without 1st and 7th respondents' consent or without due legal process – *Chisveto* v *Minister of Local Government and Town Planning* 1984 (1) ZLR 248 (H) at 250A-D.

In any event what the applicants seek is a review of the decision by the 2nd, 4th and 5th respondents that removed them from Willsgrove Farm to South Lynn Farm and decision to delist Willsgrove Farm. The applicants were informed of the said decision in March 2004. They were advised to vacate Willsgrove by letter dated 19 September 2005. This application was only filed on 7 February 2007. It is an application for review it would have required condonation. Even clothed as an application for a declaration of rights, it was filed very late. Be that as it may these issues were not raised and I will not determine them.

From the foregoing the application is devoid of merit and should be dismissed.

In their heads of argument, the 1st and 7th respondents also seek eviction of the applicants. They, however, did not see it necessary to file a counter-application. The question is whether I can grant a counter-claim where there is no such counter-application. It is trite law that counter-applications are subject to the general principles applicable to applicants – *Willowvale Estates CC* v *Bryanmore Estates Ltd* 1990 (3) SA 954 (W) at 916H-J and *Superior Court Practice* (Nathan, Barnett & Brik) – H J Erasmus (Juta 1994) at B1-52. Thus the court will dismiss a counter-application if the respondent when launching it, did not follow the general principles set out in the High Court Rules, 1971 i.e. Order 32 Rules 226-240. The 1st and 7th respondents did not exhibit seriousness in launching their counter-application. In fact there is no counter-application at all.

Accordingly, I dismiss the 1st and 2nd applicants' application with costs.

Cheda & Partners, applicants' legal practitioners
Webb, Low & Barry 1st and 7th respondents' legal practitioners