

THULANI NDEBELE

APPLICANT

Versus

JOHN PERCIVAL BAWDEN

RESPONDENT

IN THE HIGH COURT OF ZIMBABWE
CHEDA AJ
BULAWAYO 7 & 21 FEBRUARY 2013

Mrs S. Ngwenya with P. Ncube for the applicant
L. Sibanda, for the respondent

Opposed Court Application

CHEDA AJ: The applicant issued summons against the defendant claiming removal of the defendant and all those claiming occupation through the defendant, from subdivision 2 of Glenorchie Farm, Insiza District, Matabeleland South Province.

At the hearing of the opposed application the court pointed out that while applicant's claim was for subdivision 2 in the summons and the declarations the affidavit referred to subdivision 1 of Glenorchie Farm, Insiza District, Matabeleland South Province. Mr *Ncube* who was with Mrs *Ngwenya* submitted that it was a typing error which could be amended by the court. I considered that it was not proper for a court to amend the applicant's affidavit, a founding affidavit which is within the concrete walls of an oath.

An application was then made for the matter to be postponed so that the applicant could make an affidavit giving the number of the correct subdivision.

Mr *Sibanda*, for the respondent, had by then been barred for failure to comply with the Rules, a bar to which he had conceded. He was therefore unable to contest the application for a corrected affidavit to be made. He had been advised by the applicant not to file any heads of argument in the matter. The application for leave to file a corrected affidavit was granted.

Since the matter was no longer opposed the applicant was granted leave to file an affidavit giving the correct number of the subdivision. The correct affidavit has now been filed.

On the merits, the court is satisfied that the respondent has no defence to the applicant's claim.

Judgment No. HB 45/13
Case No. HC 919/12
X REF HC 160/12; 2006/08; 1634/08

Accordingly, the applicant is granted leave to file his application on the unopposed roll for the order to be granted.

Coghlan & Welsh applicant's legal practitioners
Messrs Webb, Low & Barry, respondent's legal practitioners