DATATA ESTATE (PRIVATE) LIMITED
versus
MUTIZWA MANYERE
and
R. MAKOSA
and
MR TUMBWI

HIGH COURT OF ZIMBABWE
BHUNU J
HARARE 16 January and 18 February 2004

Urgent Application

Mr *Mafukidze,* for the applicant
Mr *Musitu,* for the respondents

BHUNU J: On the 23rd December 2004 the applicant lodged an urgent application under case number HC 11547/03 seeking an interdict against the 3 respondents. The interdict sought to bar the respondents from interfering with its ownership, occupation and use of commercial and social activities, assets and personnel at Datata Estate Goromonzi.

The matter was set down for hearing on the 5th January 2004. Following the applicant's non-attendance at the hearing the respondents obtained default judgment dismissing the urgent application.

The applicant intends to apply for rescission of the default judgment granted against it but pending the determination in that application it seeks to interdict the respondents substantially on the same terms sought under the original application in case number HC 11547/03.

The respondents opposed the application on the ground that it is not urgent. They also attack the application on the basis of form and non-compliance with the rules. It also argues that there is no legal basis for granting the provisional order sought. It seems to me that once the court had accepted that the original application is urgent it follows that related applications meant to put back the application on track are also urgent. As regards form it appears to me that there has been substantial compliance. In my view it is undesirable to resolve legal disputes by fastening onto legal technicalities unless there is a flagrant or deliberate disdain of the rules or form the court should endeavour to resolve legal disputes on the merits rather than on technicalities.

I therefore proceed to deal with the application on the merits.

The brief facts are that the applicant was the previous owner of Datata

Estate. The farm was duly acquired in terms of the Land Acquisition Act [*Chapter 20:10*] and the applicant was served with a section 8 order. Section 9(1)(b) of that Act provides that:

> "(b) in relation to any agricultural land required for resettlement purposes, the making of an order in terms of subsection (1) of section 8 shall constitute notice in writing to the owner or occupier to cease to occupy, hold or use that land forty-five days after the date of service of the order upon the owner, or occupier, and if he fails to do so, he shall be guilty of an offence and liable to a fine not exceeding one hundred thousand dollars or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.
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> Provided that –
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> (i) the owner or occupier of that land may remain in occupation for a period not more than ninety days after the date of service of the order;
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> (ii) the owner or occupier shall cease to occupy his living quarters after the period referred to in proviso (i) and if he fails to do so he shall be guilty of an offence and liable to a fine not exceeding one hundred thousand dollars or to imprisonment for a period of not exceeding two years or to both such fine and such imprisonment."

An interdict is an extraordinary remedy allowed where an unlawful interference or threatened interference with another's rights exists. It is trite that in an application of this nature the applicant must establish the existence of a *prima facie* right.

The applicant justifies its continued presence on the farm despite the issuing of a section 8 order on the assertion that its application to down size was accepted.

In its affidavit deposed to by its managing director the applicant does not say who approved the downsizing. Apart from the managing director's mere say so the court has not been furnished with any evidence of such approval by the appropriate authority. What is clear on the papers is that there is a dispute pending in the Administrative Court regarding that issue between the applicant and the acquiring authority.

On the other hand the respondents claim title to the land by virtue of offer letters lawfully issued by the acquiring authority. Those letters have not been withdrawn or revoked. There is no dispute between the acquiring authority and the respondents.

It is surprising that the applicant has deliberately omitted to cite the acquiring authority or to seek confirmation that the Minister has authorized the

downsizing.

On the papers before me I am satisfied that the applicant has failed to establish the existence of a *prima facie* right. That being so granting the interdict is fraught with the danger of sanctioning an illegality for the applicant may be violating section 9 of the Land Acquisition Act.

It is accordingly ordered that the application for a provisional order be and is hereby dismissed with costs.

Jakachira & Company, the applicant's legal practitioners.
Mandizha & Company, respondents' legal practitioners.