

MARIA SJAMBOK
and
BEAUTY CHIRAU
versus
TRUST CHINYAMA
and
MINISTER OF LANDS & RURAL RESETTLEMENT

HIGH COURT OF ZIMBABWE
MATHONSI J
HARARE, 3 February 2015

Urgent chamber application

Ms *G Dzitiro*, for the applicants
No appearance for the 1st respondent
N M Muzuva, for the 2nd respondent

MATHONSI J: The two applicants are beneficiaries of the land reform programme having been allocated Plots number 40 and 41 Selby Farm in Mazoe. They have produced certificates of occupation under the government's A1 Resettlement Scheme issued to them by Mazoe Rural District Council and Certificates of A1 Farm Settlement issued by the District Lands Committee in Concession as proof of their right to occupation of their respective plots.

Clearly the certificates of occupation is not an offer letter issued by the acquiring authority (who, in terms of s 2 of the *Gazetted Land (Consequential Provisions) Act [Chapter 20:28]* is the Minister responsible for Land) in terms of that Act to confer rights to individuals over land acquired for resettlement. However, those certificates of occupation fall squarely under permits to occupy land. A permit is defined in s 2 of the Act as:

“Permit; when used as a noun, means a permit issued by the state which entitles any person to occupy and use resettlement land....”

The certificates of occupation relied upon by the applicants were issued by the state through Mazoe Rural District Council, as locomotive to confer rights of occupation over the land in question. There can scarcely be any doubt that the local authority under whose jurisdiction the land falls was clothed with authority to allocate the land to the applicants the way it did. The certificate itself is self explanatory in its content. That of the second applicant reads in relevant part as follows:

“CERTIFICATE OF OCCUPATION

A1 RESETTLEMENT SCHEME

This is to certify that Mr/Mrs/Miss Chirau Beauty National Identity Number 75-282469X75 is the legal holder of Plot number Forty (40) which consists of six (6) hectares of land. The plot is at Selby resettlement area in Mazoe Rural District Council. Issued on this 12(th) day of January 2010.”

The certificate is signed by all the relevant officials namely the C.E.O/Council Chairman, District Administrator, District Lands Officer and DCC. It is indeed a document issued by the state with all the hallmarks of a permit conferring upon the holder the right to occupy the land as I have said.

The two applicants complain that from the time that they were issued with the certificates of occupation and moved onto the land, they encountered problems with the first respondent, who is the holder of an adjacent plot, being number 49 Selby Farm. They say that the first respondent claims their plots as his. He has always threatened to seize their plots. On numerous occasions he has ploughed their fields and planted his crops. When peggers from the Ministry of Lands are called to mark the boundaries, the first respondent, who brags that as a member of the Central Intelligence Organisation he is “untouchable” systematically removes the pegs and continues to till the applicants’ land.

When the first applicant constructed cabins for her employees in December 2014 this angered the first respondent who responded by directing more threats towards the first applicant’s employees and her son Adrian using his own employees. At some point the first respondent’s employee called Nhau smashed the windscreen of Adrian’s vehicle in the presence of a police officer. Several criminal cases have been opened against the first respondent, an activity which has not abated the harassment.

On 18 January 2015 the first applicant’s employee by the name of Axon Kubunga together with the second applicant’s employee called Prosper Bangano went missing and when a missing persons report was made to the police, they were found murdered in one of the new cabins built by the first applicant at plot number 41. This is what has prompted the application, as both applicants feel there is need for their rights over the plots to be confirmed and protected by the court. Although the police are still investigating the murders and are yet to unravel the case, the applicants are of the view that in the meantime they should be protected by an interdict against the first respondent in the following:

“ TERMS OF FINAL ORDER SOUGHT

That you show cause to this Honourable Court why a final order should not be made in the following terms;

1. 1st and 2nd applicants be and are hereby declared to be the lawful occupiers of Plot 41 and Plot 40 Selby Farm, Mazoe respectively, in terms of the offer letters issued to them by the Ministry of Lands and Rural Resettlement.
2. The 1st respondent and all those claiming occupation through him be and are hereby ordered to desist from trespassing or entering into Plot 41 and Plot 40 Selby farm cultivating or interfering in any way with the agricultural activities being conducted by the applicants on Plot 40 and Plot 41 Selby Farm, Mazoe.
3. The 1st respondent pay (s) costs of suit of this application on a legal practitioner and client scale.

TERMS OF INTERIM RELIEF SOUGHT

Pending determination of this matter, the applicants (are) granted the following relief:

1. The 1st respondent and any such person claiming occupation through him be and are hereby restrained from engaging in unlawful acts, individually or jointly or in consent(*sic*) with other persons, directly or indirectly calculated to or with the result of entering or occupying Plot 41 and Plot 40 Selby Farm, Mazoe or interfering in any way in the farming activities at Plot 41 and Plot 40 Selby Farm, Mazoe.
2. The 1st respondent and all those claiming occupation through him be and are hereby ordered to immediately vacate Plot 41 and Plot 40 Selby Farm, Mazoe upon service of this order failure to which the Sheriff be and is hereby authorised to evict the 1st respondent and any such person claiming occupation of Plot 41 and Plot 40 Selby Farm, Mazoe.
3. The 1st respondent be and is hereby ordered to refrain from interfering with 1st and 2nd applicants' peaceful and undisturbed possession of business on Plot 40 and Plot 41 Selby Farm.”

The applicants therefore seek an interim interdict against the first respondent whom they accuse of interfering with their peaceful occupation of the pieces of land allocated to them by the state. To that extent they must show that:

- (a) they have a *prima facie* right;
- (b) they have a well grounded apprehension of irreparable injury;
- (c) they have no other ordinary remedy; and
- (d) that the balance of convenience favours the grant of the interdict.

See *Ericksen Motors (Welkon) Ltd v Proton Motors, Warrenton and Anor* 1973 (3) SA 685 (H) 691 C-G; *Charuma Blasting and Earthmoving Services (Pvt) Ltd v Njainjai and Ors* 2000 (1) ZLR 85 (S) 89 E-H.

I have already pointed out that the applicants have exhibited the documents upon which they lay claim to the two plots, the certificates of occupation issued by the local authority entitling them to occupy the land in question. Also, as already stated, the certificates fall under the definition of a permit contained in s 2 of the Gazetted Land (Consequential Provisions) Act [*Chapter 28:28*].

The Supreme Court made it clear in *CFU & Ors v Min of Lands & Ors* 2010 (1) ZLR 576 (S) 591 E-G that:

“The Minister has an unfettered choice as to which method he uses in the allocation of land to individuals. He can allocate the land by way of an offer letter or by way of a permit or by way of land settlement lease. It is entirely up to the Minister to choose which method to use. I am not persuaded by the argument that because the offer letter is not specifically provided for in the Constitution it cannot be used as a means of allocating land to individuals. I am satisfied that the Minister can issue an offer letter as a means of allocating acquired land to an individual. Having concluded that this Minister has the legal power or authority to issue an offer letter, a permit or a land settlement lease it follows that the holders of those documents have the legal authority to occupy and use the land allocated to them by the Minister in terms of the offer letter, permit or land settlement lease.”

The only question which arises is whether the Minister can lawfully delegate the power to issue offer letters, permits or land settlement leases to other bodies or individuals like the Rural District Council and / or the Land Committee. I have made the point that the Local Authority under whose jurisdiction the land is located has a right to allocate it to an individual who should, after that, hold good title. It is also common cause that the people on the ground in the districts who are the “eyes” of the Minister, so to speak, are the District Land Committees and the Land Officers who identify the land and make recommendations to the Minister. Where they have issued a Certificate of Occupation, they would be acting on behalf of the Minister, and the issuance of an offer letter after that would be a mere formality. I conclude therefore that the applicants have succeeded in establishing a *prima facie* right over their respective plots.

In fact the second respondent has put clarity to the issue. In the opposing affidavit of Kundai Makuku the point is made that the applicants could not be issued with offer letters because they were allocated land under the government’s A1 Settlement Scheme as opposed to the A2 scheme where offer letters are issued. For that reason they were issued with valid A1 permits for Plots 40 and 41 while the first respondent was issued with the same for Plot 49. That should put the issue to rest really.

The applicants complain that the first respondent has been interfering with their rights, has ploughed their fields and repeatedly threatened them and their employees using his office as a member of the CIO to instil fear in them. As to why CIO members think they should use their office to intimidate law abiding citizens and to be a law unto themselves is just about one mystery which is difficult to fathom. There is a pressing need for the authorities to reign in these people and remind them that they cannot act with impunity in a constitutional democracy like Zimbabwe. Their lumpen behaviour cannot be allowed to

perpetuate. How can a person who has been allocated their own piece of land go on to spread his tentacles onto other people's land without any regard to the law? The existence of a well grounded apprehension of irreparable injury where a neighbour behaves in the manner chosen by the first respondent cannot be doubted.

I am of the view that there would be no other remedy available to the applicants where resort to the police and the criminal justice system has not only failed to contain the primitive acquisitive exploits of the first respondent but has also yielded negativity. Of course, in the circumstances of this matter, the balance of convenience would seem to favour the applicants especially as the acquiring authority seems to be behind them. The first respondent may live to fight another day.

I am therefore satisfied that the applicants have made out a good case for the relief that they seek. Accordingly the provisional order is granted in terms of the amended draft order.

Mutimbwa, Mugabe & Partners, applicants' legal practitioners
Civil Division of the Attorney General's Office, 2nd respondent's legal practitioners