

GREENDALE ONE DISTRICT T/A 2 MUKUVISI CO-OPERATIVE  
versus  
CALEDONIA ENTERPRISES (PRIVATE) LIMITED)  
and  
PADDY TONGAI ZHANDA  
and  
RINA LEONE DUTOIT  
and  
ZVIDZAI KAWOCHA  
and  
MINISTER OF LANDS AND RURAL RESETTLEMENTS N.O.  
and  
CHIEF INSPECTOR MAHWE-OFFICER IN CHARGE ZIMBABWE  
REPUBLIC POLICE (MABVUKU)  
and  
MINISTER OF LOCAL GOVERNMENT, RURAL AND URBAN DEVELOPMENT N.O  
and  
THE SHERIFF N.O.

HIGH COURT OF ZIMBABWE  
TAGU J  
HARARE, 1 June & 10 June 2015

**Urgent Chamber Application**

*T. Zhuwarara*, for applicant  
*D .P. Drury*, for 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents  
4<sup>th</sup> respondent in person  
*N Mupita*, for 5<sup>th</sup> respondent  
No appearance for 6<sup>th</sup> respondent  
No appearance for 7<sup>th</sup> respondent  
*M Madega*, for 8<sup>th</sup> respondent

TAGU J: It never rains, but pours for Caledonia Enterprises (Private) Limited, (hereinafter referred to as the first respondent). The applicant brought this application on a certificate of urgency seeking the following relief:-

**“TERMS OF THE FINAL ORDER**

To show cause why an order should not be made in the following terms;

1. The eviction of the applicant in satisfaction of the order granted by this court under case No. HC 4187/15 be and is hereby permanently stayed.
2. The 1<sup>st</sup> up to 3<sup>rd</sup> Respondents be and are hereby ordered to pay the costs of suit.

### **INTERIM RELIEF**

Pending the determination of this matter, on the return day, the Applicant be and is hereby granted the following relief:-

1. The 8<sup>th</sup> Respondent be and is hereby immediately ordered to suspend the execution and the ejection of the applicant and its members who are occupying Lot 1 of Caledonia Farm in terms of the offer letter.
2. If the 8<sup>th</sup> Respondent had already effected the eviction of the applicant and /or its members, then the status quo ante of the applicant and or its members prior to the eviction be and is immediately restored, with applicant and or its members being allowed to return to their former occupation of Lot 1 of Caledonia.

### **SERVICE OF THE PROVISIONAL ORDER**

The applicant / applicant's legal practitioners and or employees be and are hereby permitted to serve copies of this provisional order on the respondents or their legal practitioners /employees."

The Historical background to this matter is that the first respondent (Caledonia Enterprises (Pvt) Limited), is a duly registered company in accordance with the laws of Zimbabwe and it is the registered owner of a certain piece of land situate in the district of Goromonzi called Lot 1 of Caledonia measuring 297,4369 ha held under Deed of Transfer 8541/96. Up until 14 August 2013 the company enjoyed quiet and undisturbed peaceful possession of the said property. On 14 August 2013 an unwelcome and strange company called Divine Homes (Pvt) Ltd, being headed by one Washington Jengayenga invaded the said piece of land and despoiled the first respondent, thereby disturbing the prevailing peace at the land.

The first respondent reacted swiftly and made an urgent chamber application for a spoliation order against Divine Homes (Pvt) Ltd and Washington Jengayenga in case No. HC 7021/13. Mtshiya J, and on 30 August 2013 granted the first respondent a final order in the following terms:-

"WHEREUPON, after reading documents filed of record and hearing Counsel

### **IT IS ORDERED THAT:**

1. Applicant,(hereinafter referred to as 1<sup>st</sup> respondent) its employees, agents and invitees be and are hereby restored forthwith to free and undisturbed peaceful possession and control of a certain piece of land situate in the district of Goromonzi called Lot 1 of Caledonia measuring 297,4369 ha registered in the name of Caledonia Enterprises (Pvt) Ltd under Deed Of Transfer 8541/96 (hereinafter called "the property")
2. The respondents and all other persons claiming occupation of the property through them and / or who are not representatives, employees, agents and invitees of the Applicant, be and are hereby ordered to vacate the property forthwith upon the grant of this order and pursuant thereto such persons shall attend forthwith to the removal of all movable

property that may have been introduced by them onto the property. To the extent that such persons neglect or fail to vacate the property, in that event, the Deputy Sheriff be and is hereby authorised to attend to the removal of all such persons and of any movable property owned or introduced by them onto the property and pursuant thereto the Deputy Sheriff is authorised and empowered to enlist the assistance of any member of the Zimbabwe Republic Police force to provide such assistance so that the provisions of this order are implemented and executed in full.

3. The cost of this application shall be paid by the respondents jointly and severally, the one paying the other to be absolved.”

The first respondent then heaved a sigh of relief and continued to enjoy free and undisturbed peaceful possession and control of Lot 1 of Caledonia measuring 297,4369 ha registered under Deed Of Transfer 8541/96 (the property) until 5 May 2015 when the fourth respondent Zvidzai Kawocha and a group of forty (40) or so youths, acting in common purpose summarily invaded and laid claim over the property and its assets.

The first respondent, now assisted by the second respondent (Paddy Tongai Zhanda) and the third respondent (Rina Leone Dutoit) again rushed to this Honourable Court and made another urgent chamber application for a Spoliation Order against the fourth respondent and all those claiming through him.

On 13 May 2015 the High Court sitting at Harare before the Honourable Chatukuta J issued another provisional order in case No. HC 4187/15 in favour of the first, second and third respondents on the following terms-

#### **“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. It be and is hereby declared that Caledonia Enterprises (Pvt) Ltd is the lawfully registered owner of a certain piece of land situate in the District of Goromonzi called Lot 1 of Caledonia measuring approximately 297,4369 ha held under Deed of Transfer 8541/96 ( hereinafter called ‘the property’) and that the summary invasion of the property by the first respondent (now the 4<sup>th</sup> respondent) and other persons acting through or in association with him on Tuesday 5 May 2015 and the continued possession, occupation and use of the property by them up until the execution and implementation of the interim relief was unlawful.
2. First respondent (Now the 4<sup>th</sup>) pay applicants’ (ie. 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents) costs of suit on a legal practitioner and client scale.

#### **INTERIM RELIEF GRANTED**

That pending the determination of this matter, applicants (1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents) are granted the following relief:

- (a) Applicants (1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents) and all persons claiming lawful occupation through them be and are hereby restored to free undisturbed possession, use, occupation and control over Lot 1 of Caledonia measuring approximately 297,4369 ha held under Deed of Transfer 8541/96; and
- (b) First respondent (4<sup>th</sup>) and all persons acting in common purpose with or through him are ordered forthwith to remove all chains, locks, obstructions or other kinds of implements in respect of the permanent improvements on or to the property and failing that the applicants, its agents, representatives or invitees be and are hereby authorised and empowered to do so; and
- (c) First respondent (4<sup>th</sup>) and all other persons acting in common purpose with or through him and / or all other persons who are not the agents, representatives, invitees or employees of the applicants be and are forthwith ordered to vacate the property and in so doing that they remove any movable assets that might have been introduced by them onto the property. Failing their vacation and removal the Sheriff and / or Deputy Sheriff of Zimbabwe be and is hereby authorised and empowered to attend to the eviction of all such persons.

### **SERVICE OF PROVISIONAL ORDER**

That leave be and is hereby granted to applicants' legal practitioners or the Sheriff or his Deputy to attend to the service of this order forthwith upon the respondents in accordance with Rules of the High Court."

Following the granting of the above Provisional Order in HC 4187/15, the eighth respondent who is the Sheriff of the High Court was requested by the first, second and third respondents' legal practitioners to effect the order. On 18 May 2015 a warrant of ejectment was issued giving 29 May 2015 as the date of ejectment.

Surprisingly, on 28 May 2015 the current applicant Greendale One District, Trading as 2 Mukuvisi Co-operative sprang/ emerged from the blues and filed this urgent chamber application for the stay of execution of the order granted by Chatukuta J in case HC 4187/15 in terms of the conditions stated in the provisional draft order.

The applicant is now claiming to have been in occupation of the property in question, that is Lot 1 of Caledonia since July 2013 on the strength of an offer letter purportedly granted to it by the seventh respondent sometime in May 2013. The applicant is distancing itself from the actions of the fourth respondent, Zvidzai Kawocha.

It is the actions of the applicant viewed *vis a vis* the previous orders granted previously in favour of first, second and third respondents that made me say it never rains but pours for Caledonia Enterprises (Pvt) Ltd.

The offer letter relied on by the applicant is written on a Letter- Head of the Ministry of Local Government, Rural and Urban Development and was signed by a Dr IMC. Chombo (MP). It reads as follows-

“29 May, 2013

Mr. N. Mangondo

**OFFER FOR 50 RESIDENTIAL STANDS**

I write to advise you that my Ministry has offered 50 residential stands at Caledonia (Phase 1) in Goromonzi District to Greendale residents. I sincerely Hope that the development will benefit deserving members.

Sincerely,

Dr. IMC Chombo (MP)

**MINISTER OF LOCAL GOVERNMENT, RURAL AND URBAN DEVELOPMENT**”

At the hearing of this matter Mr *Drury* raised some points *in limine* which he felt could resolve this matter without dealing with the merits. The pertinent points *in limine* were as follows-

- (a) Mr *Drury* drew the court’s attention to paragraph (2) of the interim relief order sought which says-

“If 8<sup>th</sup> Respondent had already effected the eviction of the applicant ant/or its members, then the status quo ante of the applicant and or its members prior to the eviction be and is immediately restored, with applicant and or its members being allowed to return to their former occupation of Lot 1 of Caledonia.”

Mr *Drury*’s contention is that this relief has since fallen away because the eighth respondent has not evicted the applicant. This position was not challenged by Mr *Zhuwarara* who represented the applicant, and Mr *Madega* who represented the eight respondent confirmed that he failed to evict the fourth respondent and any other persons from the property, including the applicant because the sixth respondent, the Zimbabwe Republic Police refused to give him manpower to assist him carry out the evictions. I therefore find substance in Mr *Drury*’s submissions that paragraph 2 of the interim relief order has since fallen away. This point *in limine* is upheld.

- (b) Mr *Drury* further, submitted that as far as the relief in paragraph 1 is concerned, the nature and character of the application is flawed. It is flawed in that the applicant seeks a permanent stay of execution of a court order without stating the basis on which the stay of execution has to be effected. It is a stay pending nothing.

Advocate *Zhuwarara*, however, argued that the stay is being sought pending the return date when the proper ventilation of the issues will be done. The question that begs the answer is what issues? I am inclined to accept the argument by Mr *Drury* that stay of execution of a court order has to be allowed pending the determination of a specific issue. No irregularity has been pointed out vis-à-vis the order in case HC 4187/15 which is specific as to who should be evicted and which the eight respondent is to effect. The fourth respondent confirmed that he indeed invaded the said property when he saw others having done it. I accordingly uphold this second point *in limine*.

- (c) The other point raised by Mr *Drury* was that the basis for the claim by applicant is by virtue of the purported authority to hold onto a certain piece of land, being Lot 1 of Caledonia offered in favour of a Co-operative, which is a juristic entity established and set to exist in terms of substantive legislative law, namely, The Co-operative Societies Act [*Chapter 24.05*]. Mr *Drury*'s argument was that s 19 of that Act requires that for purposes of proceedings to be brought about, there is need for the production of a certificate of registration. No certificate of registration to that effect had been attached to the application or the founding affidavit hence due to that omission the founding affidavit is incurably bad at law. The application must stand or fall on the papers filed of record. Indeed, it is true that no such certificate of registration had been filed or attached by the applicant. To me this is a valid point and I uphold the point *in limine*.
- (d) A further point was raised that the applicant lacked *locus standi in judicio* to bring this application. The argument by Mr *Drury* was that the relief being sought is a permanent stay of execution based on an offer letter addressed to one N. Magondo for 50 residential stands. There is therefore no reference to or mention of a Co-operative Society by the name of Greendale One District T/A 2 Mukuvisi Co-operative. He queried why the said N. Magondo was not cited in these proceedings. In any case the order by Chatukuta J in case number HC 4187/15 does not mention the 50 residential stands.

By leave of the court the applicant was allowed to hand over a copy of the registration certificate. The certificate, Registration No. 5159 issued by E. Ndlovu dated 26 June 2013, only refers to 2 Mukuvisi Housing Co-operative Society Limited.

Advocate *Zhuwarara* argued that the applicant had *locus standi* because it has established a *prima facie* right, though open to doubt. (*Mutarisi v United Family International Church and Another* HH 445/12).

He further, submitted that the applicant has *locus standi* in terms of Order 2A r 8 of the High Court Rules, 1971.

However, Mr *Drury* strongly disputed that argument stating that it would have been impossible for the Minister to grant the offer letter before the Co-operative was even formed, let alone registered because the offer letter is dated 29 May 2013 and the Co-operative was registered on 26 June 2013.

In support of this point *in limine* raised by Mr *Drury*, Mr *Mupita* who represented the fifth respondent (The Minister of Lands and Rural Resettlement) stated that this application is based on falsehoods. He told the court that he was a member of the team that went to the property in question and he discovered that this was a private property owned solely by the first to the third respondents, and that there were no other persons or buildings showing the existence of a co-operative except the fourth respondent and his people. He therefore, does not understand on what basis the applicant is claiming to be on that private property. Mr *Mupita* produced a Certificate of No Present Interest on the property by the Ministry of Lands and Rural Resettlement dated 27 February 2015.

In my view, the applicant has failed to show any nexus between the Co-operative and one Mr N. Mangondo. In any case, the applicant is not a party to the proceedings in HC 4187/15, and I see no basis on which it can challenge its execution when the order is very specific as to who should be evicted. I will allow this point *in limine*.

This application has no merits. I therefore decline to hear the matter on the merits. Accordingly, the application is dismissed on the points *in limine* with costs.

*Messrs Mahuni & Mutatu*, applicant's legal practitioners  
*Honey & Blanckenberg*, 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents' legal practitioners