

HORTBAC (PVT) LTD
t/a LITTLE FLOWER ENTERPRISES
versus
THE OFFICER IN CHARGE – ZRP GOROMONZI
and
THE COMMISSIONER GENERAL OF POLICE
and
JAMES CHIYANGWA
and
R KITULI
and
TENDAI BONGA
and
TIMOTHY MUYAMBO

HIGH COURT OF ZIMBABWE
MATHONSI J
HARARE, 15 June 2015

Urgent Chamber Application

N Mugiya, for the applicant
LT Muradzikwa, for the 1st and 2nd respondents
K Maeresera, for the 3rd, 4th and 5th respondents
6th respondent in person

MATHONSI J: The applicant is a former farm owner which has been evicted from a farm known as the Glebe in the District of Goromonzi which it held by deed of transfer number 224/96. The farm in question was acquired by the Government under the land reform programme in terms of the Land Acquisition Act [*Chapter 20:10*].

When that happened the applicant must have engaged the acquiring authority succeeding in securing a compromise in terms of which the farm was divided into 2 and a consent order being granted by the Administrative Court on 8 August 2003 in the following:

“IT IS ORDERED BY CONSENT THAT:

1. The acquisition of the under mentioned property in terms of section 7 of the Land Acquisition Act [*Chapter 20:10*] be and is hereby confirmed.
 - (a) Portion of GLEBE measuring 526,81 hectares situated in the District of Goromonzi held under Deed of Transfer number 224/96.

2. The acquisition proceedings in respect of the remaining portion of GLEBE measuring 142,38 hectares situated in the District of Goromonzi held under Deed of Transfer No 224/96 be and is hereby withdrawn.
3. The applicant shall subdivide GLEBE and pay the subdivision costs thereof.
4. There shall be no order as to costs.”

Subsequent to that the acquiring authority allocated portions of the farm left for the applicant under the consent order to the third, fourth and fifth respondents who gladly accepted the offer and moved to claim possession. By letter dated 27 January 2015 signed by the Provincial Administrator, the Chief Lands Officer and the Minister of State for provincial Affairs, the applicant was given notice to vacate the farm coupled with authority to remain at the farm winding up its affairs up to 26 April 2015.

On 12 March 2015, the applicant instituted summons action in HC 2273/15 against the Chief Lands Officer, the Minister of Lands and Land Resettlement and the third, fourth and fifth respondents herein seeking to evict the third, fourth and fifth respondents from the farm and to enforce the consent order issued by the Administrative Court 12 years ago. It says that the summons action is still pending.

The applicant has now made this application on a certificate of urgency seeking the following relief:

“TERMS OF THE FINAL ORDER SOUGHT

1. The respondents are interdicted from interfering with the applicant’s property rights pending the finalisation of HC 2273/15.
2. The respondents’ eviction of the applicant is wrongful and unlawful.
3. The respondents are barred from accessing “The Glebe” Farm without the consent of the applicant.

PROVISIONAL ORDER GRANTED

Pending the confirmation of the provisional order;

IT IS ORDERED THAT:

1. The respondents are ordered to allow the applicant access to ‘The Glebe’ Farm forthwith.
2. The respondents are barred from going to ‘The Glebe’ farm and are prohibited from harassing the applicant’s workers in anyway whatsoever pending the return date.

3. The respondents are ordered to forthwith restore Mathew Hopegood's occupation at 'The Glebe' farm and to his house and not to further interfere with his stay thereat."

In the founding affidavit of Mathew Hopegood the applicant states that the respondents have resorted to self help. Hopegood expressed surprise at receiving the notice to vacate the farm when he had been nursing a consent order issued by the Administrative Court 12 years ago in terms of which the applicant is entitled to conduct business at the farm while he in turn, is entitled to stay there. He says he was "shocked" at being evicted on 8 June 2015 especially as he had filed summons action on 12 March 2015 challenging the eviction of the applicant from the farm and the respondents had not a court order for the eviction and they are not officers of the court charged with execution of court orders.

The 5 respondents cited in the application all opposed it. The police denied being involved at all in the eviction of the applicant and denied posting a sentinel at the gate of the farm. In fact Mr *Muradzikwa* who appeared for them together with Mr. *Mbara* of police head quarters was emphatic that not only did the police not deploy at the farm, they are well aware that they have no power to perform any farm evictions with or without a court order.

The third, fourth and fifth respondents were also adamant that they had nothing to do with the activities of 8 June 2015. They all have offer letters in respect of the portions of the farm being subdivisions 1, 2 and 3 which they occupy while the applicant remains on the more developed portion, namely subdivision 4. If I had any doubt about that then the agreement signed by the applicant and the fifth respondent, in terms of which the latter gave up subdivision 4 which had initially been allocated to him in preference of the undeveloped subdivision 3, removed all the doubt.

If the fifth respondent was so magnanimous as to surrender a farm allocation to the applicant, what would motivate him to return and assist in the eviction of the applicant? I agree that the citation of these respondents was based on suspicion rather than fact. Mr. *Mugiya* for the applicant could not advance any argument to support the allegations against the 5 respondents following the evidence placed before me in opposition.

As it turns out, it was Timothy Tendai Muyambo, the holder of an offer letter dated 28 May 2015 in respect of subdivision 4 of The Glebe, who is the culprit. He was served with this application and appeared in person to make a confession.

Mr. *Mugiya* applied to join Muyambo as sixth respondent as not only does he have an interest in the matter, he in fact is the one who has moved onto the farm and is elbowing the

applicant out of the farm. Muyambo submitted that after he received an offer letter in respect of subdivision 4, he moved to take occupation. Initially he met the applicant's representative and advised him he would be moving onto the farm on 8 June 2015 at which he expected the applicant to have vacated.

When the applicant did not, he hired people from neighbouring farms and brought them to the farm on 8 June 2015. He addressed the workers of the applicant and advised them that he was taking over the farm and that from then on they were working for him as he wanted to continue running the flower business the same way the applicant had. As the warehouse was full of stock he instructed the workers to call Hopegood to come and remove it, sell it and pay the workers their dues up to the takeover.

Muyambo exonerated all the other respondents stating that the guards at the farm at the moment are his own. He did what he did with neither the police nor the other respondents. He admitted that he does not have a court order and did not elicit the assistance of the Sheriff or the police to take over the farm. Clearly therefore, Muyambo has resorted to self-help.

In moving for the grant of interim relief Mr. *Mugiya* cited s 74 of the Constitution of Zimbabwe which provides:

“No person may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances.”

That provision is located right under Chapter 4 of the constitution, the declaration of rights. It contains justiciable rights and binds the state and every person including juristic persons. In terms of s 46 thereof when interpreting Chapter 4, a court is required to give full effect to the rights and freedoms enshrined in that chapter. The right against arbitrary eviction is therefore a fundamental one and may not be derogated from.

Muyambo exhibited his offer letter dated 28 May 2015 meaning that he may have been in a hurry to enjoy the benefits of it given that he proceeded with haste only 10 days after he got it to move onto the farm regardless of the farm being occupied by the applicant, who is conducting a thriving flower business.

The purpose of the *mandament van spolie* is to preserve law and order and to discourage persons from taking the law into their own hands no matter how much of a right they have in the property possessed by another; *Chisveto v Minister of Local Government and Town Planning* 1984 (1) ZLR 240 (H) 250 A-D. It is critical that the *status quo ante* is restored until such time that a court of competent jurisdiction has determined the relative

merits of the claims of the parties, the very principle sought to be protected by s 74 of the new Constitution.

When inquiring on whether spoliatory relief should be granted or not, the lawfulness or otherwise of the applicant's possession does not come into it, it being enough that dispossession was done forcibly or that there was wrongful interference with possession of a thing.

I am satisfied that the applicant has made out a good cause for the relief that it seeks it being common cause that, without a court order or due process, Muyambo arrogated to himself the power to evict the applicant and take over the farm.

In the result it is ordered that:

1. Timothy Tendai Muyambo is hereby joined as the sixth respondent in this matter.
2. The application against the first, second, third, fourth and fifth respondents is hereby dismissed with costs.
3. The provisional order is hereby granted against the sixth respondent, Timothy Tendai Muyambo, in terms of the draft order as amended.

Mugiya Macharaga Law Chambers, applicant's legal practitioners
Attorney General's Office, 1st and 2nd respondents' legal practitioners
Maeresera & Partners, 3rd, 4th and 5th respondents' legal practitioners