

CHRISTOPHER MASWI  
and  
MAIDEI MASWI  
versus  
MARTIN NHAPATA

HIGH COURT OF ZIMBABWE  
MTSHIYA J  
HARARE, 22 January 2016 & 2 March 2016

**Application for Summary Judgment**

Ms *R. Zvimba*, for the plaintiffs  
A. *Masango*, for the defendant

MTSHIYA J: On 22 January 2015, in an apposed application for summary judgment, I granted the following order:

“IT IS ORDERED THAT:

- a) Summary judgment in case number HC14342/12 be and is hereby granted in favour of the plaintiffs
- b) The defendant and all those claiming occupation through him be and are hereby ordered to vacate Earling Farm, Plot 5 and 16, Mvurwi forthwith or at least not later than 48 hrs from the grant of this order.
- c) The defendant is hereby ordered to return to the plaintiff’s ploughs, 2 tractors, 4 harrows, 2 tractor trailers and several spare parts.
- d) The defendant is hereby ordered to surrender a portion of the plaintiff’s farm which he unlawfully took.
- e) The defendant is interdicted from coming to Plot 15 and 16 Earling Farm, Mvurwi without the consent of the plaintiff’s or such other lawful authority; and
- f) The defendant be ordered to pay costs of suit on a higher scale.”

The original relief sought, per summons issued on 14 December 2012, read as follows:

“Wherefore plaintiff’s claim for;

- a) The defendant and all those claiming occupation through him be and are hereby ordered to vacate Earling Farm, Plot 5 and 16, Mvurwi forthwith or at least not later than 48 hrs from the grant of this order.
- b) The defendant is hereby ordered to return to the plaintiffs’ ploughs, 2 tractors, 4 harrows, 2 tractor trailers and several spare parts.

- c) The defendant is hereby ordered to surrender a portion of the plaintiff's farm which he unlawfully took.
- d) The defendant is ordered to keep (*sic*) to the plaintiff at all times and is barred from making threats of whatever nature to the plaintiffs.
- e) The defendant is interdicted from coming to Plot 15 and 16 Earling Farm, Mvurwi without the consent of the plaintiffs or such other lawful authority
- f) The defendant be ordered to pay costs of suit on a higher scale."

The above relief was, at the hearing, amended by the deletion of para (d).

Over a year later, on 5 February 2016, the Registrar forwarded to me a letter from the respondent's legal practitioners wherein reasons for my order were requested for.

I then indicated to the Registrar that, whilst I was indeed obliged to give reasons for my order, I wanted to know the reasons for the delay in asking for same.

On 19 February 2016, the respondent's legal practitioners advised as follows:

"We advise you that the respondent, Mr Nhapata, made an application for condonation to file an appeal before the Supreme Court, on the 1<sup>st</sup> of September 2015 and a query was raised to the effect that the judgment was needed."

Indeed, in November 2015, the Supreme Court had requested for my judgment from the respondent.

I now give here below reasons for the order that I granted on 22 January 2015.

On 14 December 2012, the applicants issued summons against the respondent for the relief indicated above.

On 10 January, 2013, the respondent (then defendant) entered an appearance to defend. That appearance to defend led to the filing of this application for summary judgment.

The application was filed on 28 January 2013 with the applicant arguing that the respondent had no defence but had entered the appearance to defend in order to delay the proceedings.

It is common cause that on different dates the applicants were allocated Plot numbers 15 and 16 at Earling Farm, Mvurwi. The applicants are now holders of a ninety nine (99) year lease in respect of the said consolidated plots. The lease, in terms of our law, gives the applicants the right to sue without the assistance of the Acquiring Authority. The respondent, if he so wishes, is obviously at liberty to apply for the joinder of the Acquiring Authority.

It is further common cause that the respondent was also allocated plot number 19 on Earling Farm Mvurwi, a fact he indeed confirms.

The record has two notices of opposition filed on 27 December 2012 and 11 February 2013. I shall rely on the latter because it forms part of the indexed official court record.

It is respondent's contention that Plot number 16 was allocated to one Jeffrey Sibanda (Sibanda). To that end the respondent argues that the applicants have no right to seek his eviction.

The said Sibanda is, however, not before the court to assert his rights and to challenge the applicants' rights over Plot number 16. This has led the applicants to say:

- "7. If indeed the said Jeffrey Sibanda is the valid holder of Plot No. 16 he should have instituted legal proceedings against myself. It boggles the mind why the respondent is speaking on behalf of Jeffrey Sibanda and even had the audacity to attach an offer letter which does not belong to him.
8. It is irrelevant to attach another person's offer letter when I actually have a valid offer letter which was never withdrawn.
9. The allegations by the respondent are baseless and unfounded because I never connived with anyone to despoil Jeffrey Sibanda from the plot. The respondent is put to the strictest proof thereof.
10. The respondent is actually confirming that he is at plot 16 but, conceded that I have no right to evict him as the farm is not mine (*sic*). It baffles the mind what respondent would be doing at another person's farm yet he was allocated his own farm. This clearly shows that respondent is not being truthful to the Honourable Court. The letter marked Annexure "B" does not prove that there was corruption in any event if I was corrupt I should have been prosecuted and convicted by the court of law."

The facts in the foregoing paragraphs clearly establish that the allocation of Plot numbers 15 and 16 of Earling Farm to the applicants remains unchallenged and hence their right to institute these proceedings against the respondent. The respondent lays no claim to the plots. He, however, tells the court that one Sibanda should lay a claim on plot number 16. There is no basis for him to speak on behalf of Sibanda, who, as already said, is not before the court. That, in my view, cannot be a defence available to the respondent.

Indeed, purely on the basis that the respondent has no *locus standi*, as regards any issue relating to Plot number 16, any defence attaching to that plot cannot therefore help him. I want to believe that Sibanda has the capacity to fight his own battles.

However, if I am wrong on the issue of *locus standi* with respect to issues relating to plot number 16, which is now part of the lease granted to the applicants, I would still find it difficult to deny the applicants the relief they seek. Plot number 16 is now part of the land leased to the applicants.

In alleging communal use of facilities in the properties leased to the applicants, the respondent is in actual fact confirming his illegal presence on the applicants' property. He avers that his presence is premised on the fact that:

“..... it is government policy that existing tobacco barns, storage facilities and the irrigation infrastructure as reclassified as communal facilities and regardless of where they are allocated every beneficiary is entitled to have access to the facilities: attached hereto is a letter from the Ministry marked Annexure D. Clearly the letter by the District Administrator is another ploy by applicants to bar all the beneficiaries from access to the tobacco barns.”

The above is not borne out in the lease granted to the applicants on 14 May 2012 by the Acquiring Authority. It is only that Authority that can lay such conditions to the lease holders. There is no evidence of that and the applicants have not given their consent to the communal use of facilities on the leased property. That being the case, the respondent has no right to occupy or use any part of the leased land. The respondent also has no right to use or take possession of any equipment that the Acquiring Authority has allowed the applicants to use or purchase.

It should further be noted that on 8 May, 2013, the applicants, in case number HC 14475/12, had already obtained the following order against the same respondent.

“IT IS ORDERED THAT:

1. The respondent be and is hereby ordered not to interfere with the applicants' occupation of Plot No.15 and 16 Earling Farm, Mvurwi.
2. The respondent be and is hereby ordered to desist from making threats of whatsoever nature to the applicants and their family unless in terms of the law.
3. The respondent is ordered to pay costs of suit on a Client-Attorney scale.”

The above order, which relates to plots 15 and 16, now leased to the applicants, is still in force. The respondent has not challenged it because he has no reason or basis to do so. I therefore did not find anything militating against the grant of summary judgment.

The foregoing are my reasons for granting the order appearing at p 1 herein.

*Mugiya & Macharaga Law Chambers, applicant's legal practitioners*  
*Mberi Chimwamurombe Legal Practitioners, respondent's legal practitioners*