

SALLY MUGABE HEIGHTS HOUSING COOPERATIVE  
versus  
BIGBOY STOWA NGWENYA  
and  
SIMBARASHE MUSHAYI  
and  
NEVER SANDAKO  
and  
SERVIOUS PAWAKARAMBA  
and  
NYASHA CHIVAVIRO  
and  
RICHARD ZAKARIA  
and  
MARY MADYAMBUDZI

HIGH COURT OF ZIMBABWE  
CHIGUMBA J  
HARARE, 7 November 2016, 8 February 2017

### **Civil Trial**

*C. W. Gumiro*, for plaintiff  
*G. T. Mharapara*, for defendant

CHIGUMBA J: The plaintiff is a duly registered housing co-operative. The defendants are all occupying the plaintiff's administration block at Acorn Farm in Harare. The plaintiff issued summons against the defendants on 18 December 2014, for an order that they vacate its administration block. The basis of the plaintiff's claim is an offer letter for the servicing and development of residential stands for the benefit of its members. An administration block was built in order to provide offices for the plaintiff's management committee. The seven defendants are all former members of plaintiff's original management committee who have refused to vacate the administration office block without any lawful right, authority or the consent of the plaintiff. The defendants entered notice of appearance to defend on 6 February 2015.

They filed a plea on 24 March 2015, in terms of which they challenged the plaintiff's authority to institute legal proceedings against them. They averred that they constitute the plaintiff's legitimate management committee. They averred that;- the matter had been struck off the roll at the Administrative Court for the reason that domestic remedies had to be exhausted, this action was premature, the building in question did not belong to the plaintiff but to the Group of Eight Holdings Private Limited [98] which used it initially for a poultry project, the building was used as a point of sale for chickens and eggs. On 28 July 2015, the matter was referred to trial on the following issues;-

1. Whether the plaintiff is authorized to institute these proceedings.
2. Whether the building in question is owned by the plaintiff or by the Group of Eight Holdings Private Limited.
3. Whether the defendants should be evicted from the building in question.

At the hearing of the matter, the plaintiff withdrew its claim against the fourth defendant Servious Pawakaramba, because he is now deceased. The plaintiff opened its case by calling Ms Eva Mtisi, one of its members who resides at stand 80, and its current chairperson. She produced plaintiff's certificate of registration as a cooperative, dated 2001. She stated that;- the administration block occupies 400 square metres and that this is where the defendants started operating from when the plaintiff was initially set up, after being issued with an offer letter which forms part of the record on 7 January 2005.

The plaintiff initially poured foundations for eight houses, and managed to build one to completion from the monthly subscriptions of its members. The first house was supposed to be a model or demonstration house. The plaintiff's members rejected it because the plan was wrong, the kitchen faced the toilet. It was also agreed that the size of the stands be reduced to 200 square metres instead of 400. It was agreed that the 8 slabs would be used as temporary structures after they had been built using monthly subscription contributions from the plaintiff's members. After the eight houses were built the defendants took them over, claiming that the houses belonged to them. The company mentioned by the defendants [98] comprises of all of them because the 8 of them occupied the farm during the land reform programme. The eight defendants refused to handover control of the cooperative after being removed from the management committee by a

vote of no confidence in terms of the law that governs cooperatives. Letters were written to the parent ministry to advise them of these developments (rp10, 12, 17-18). An Annual General Meeting was held on the advice of the parent ministry.

An audit finance report was tabled at this meeting and the defendants were removed from the management committee (rp19-23). New office bearers were duly elected, in the presence of officials from the parent ministry. The defendants approached the Administrative Court seeking to challenge their ouster and the election of new office bearers. Officials from the parent Ministry wrote a letter to Borrowdale Police Station advising of the appointment of a new Chairperson of the plaintiff (rp25-26) on 14 October 2015. The current committee was subsequently recognized by the Administrative Court (rp28). Its judgment is at rp29-30. The defendants appealed against the finding of the Administrative Court. The judgment was rescinded and the matter set down again but struck off the roll (rp31). Parallel structures now exist at the plaintiff's offices, with defendants harassing plaintiff's members and fleeing members of the public in the name of the plaintiff, as well as purporting to allocate stands without any lawful authority to do so.

During cross examination the witness told the court that she was not among the group of people who originally invaded the farm. She insisted that she was a member of the plaintiff from its inception and she produced receipts to show that she has and still is making monthly contributions. She denied any knowledge of a lease which had been issued to the Group of 8 Holding Company for the same piece of land that had vested in the plaintiff through the offer letter. She told the court that the plaintiff has a register of its members, a file of the minutes of its meetings and a record of all of its resolutions. She told the court that the Ministry of Local Government was supposed to issue them with title deeds when they had completed the developing of the residential stands. She said that if the defendants had been given a lease by the Ministry of Local Government their offer letter took precedence.

The plaintiff's second witness was Caroline Dare, another member of the cooperative, from 2001 to date. She told the court that;- she resides in the administration block which is the subject of these proceedings. She was allocated that house by Daniel Mavaka when he was still plaintiff's Chairperson. He died in 2005. She left the administration block for a two year period, then went back there in 2008 and has resided there up to now. The plaintiff owns the

administration block and she resides there temporarily while her house is under construction. She has never been asked to pay rent or to leave by the Group of Eight Company. During cross examination the witness told the court that as a member of the cooperative they paid construction and administration subscriptions which were used to construct what is now known as the administration block, which belongs to the plaintiff and not to individual members or any other company. The plaintiff was the one which used to run a poultry project from the administration block. She has never heard of a lease given to the Group 8 Company. The plaintiff closed its case.

The defendant called Richard Zakaria as its witness. He told the court that;-he resides at number 184 Sally Mugabe Heights. In the year 2000 a group of war veterans from Harare East resolved to invade Acorn Farm during the land reform period. They raised money from well-wishers to start farming activities. They built temporary structures which are now being called the administration block. They ran a poultry project from these temporary structures. Their chicken coops were destroyed in 2005 as being unsuitable in an urban area. The administration block was built when a lease was issued to the Group of 8 Holdings (G8) consisting of war veterans, by the Ministry of Local Government, in 2005 rezoning part of Acorn Farm as commercial premises. G8 paid a sum of USD\$1 344-00 to the Ministry. The administration block was built before the cooperative was formed. The issue is currently being handled by the Ministry of Cooperatives.

During cross examination the witness told the court that;-the Ministry of Small and Medium Enterprises which oversees cooperatives was seized with the dispute between the parties and was in the process of resolving it. The administration block was built in 2001 and that the plaintiff had been incorporated by then. He collected money from the plaintiff's members. In 2005 the plaintiff resolved to construct the administration block as evidenced by the minutes filed of record. The administration block is situated on the land allocated to G8 as part of its lease of commercial premises. He is currently paying subscription fees to the plaintiff. He had no proof that the G8 paid for the lease issued to them by the Ministry of Local Government. In closing submissions it was submitted on behalf of the defendant that the plaintiff does not have the requisite authority or mandate to institute these proceedings, that the stand in question was now held in terms of a permit with an approved layout plan, the plaintiffs offer letter had been

overtaken by events, and that the G8 are the rightful beneficiaries to the piece of land in question.

This matter was referred to trial to determine the plaintiff's *locus standi in judicio* to bring these proceedings, the ownership of the administration block, and the question of whether the plaintiffs are entitled to evict the defendants from it. The issue that arises for determination in my view is whether, the parties, all card carrying and fully paid up members of the plaintiff, can evict each other from the administration block and not provide each other with alternative fully constructed houses in line with the objectives of their cooperative? It is common cause that the plaintiff is a duly registered cooperative which is regulated by the Ministry of Medium and Small Enterprises. It is common cause that on 19 February 2011 a vote of no confidence was passed against the management committee that was running the affairs of the plaintiff, and that a new management committee was elected into place. The court accepts that the evidence favors the conclusion that Ever Mtisi was elected to chair the new management committee in 2012. The relevant Ministry clearly accepted her election into office as plaintiff's chairperson. The court accepts that, there is no pending challenge to that witness's election which is currently pending before any court, the application for review having been struck off the roll by the Administrative Court.

The defendants are obliged to accept the new management committee as the governing committee until such time as it is voted out of office in accordance with plaintiff's constitution, or their appointment is lawfully set aside. It is trite that citizens are obliged to obey the law then argue afterwards. See *Associated Newspapers of Zimbabwe (Pvt) Ltd v Minister of State for Information and Publicity & Anor*<sup>1</sup>. The court accepts that the current management committee of the plaintiff, led by Mtisi has the requisite *locus standi in judicio* to institute these proceedings, on the basis of the power conferred on it by s 57 Cooperative Societies Act [*Chapter 24:03*], to administer the affairs of the cooperative.

Turning to the merits of the matter it is common cause that;-on 15 November 2001 the plaintiff was duly registered as a cooperative, at this time, the plaintiff's members were in occupation of Acorn Farm, an offer letter was issued to the plaintiff on the 7<sup>th</sup> of January 2005,

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<sup>1</sup> 2004 (1) ZLR 538 (S) @ 548 B-C

on 15 January 2005 the director of physical planning issued the plaintiff with a layout plan, which was subsequently amended on 20 April 2008. It is trite that an offer letter is a contractual agreement. See *Masunda v Minister of State for Land & Anor*<sup>2</sup>. The terms and conditions of such a letter cannot be unilaterally altered without due process as set out in the Land Acquisition Act. The terms of the offer letter clearly were that Acorn Farm be developed for the benefit of the plaintiff's members. It is common cause that the G8 is not a member of the plaintiff. It is trite that an offer letter is issued in respect to agricultural land only. See *Vodage Investments (Pvt) Ltd v Toro & Ors*<sup>3</sup>. The land in question is under Goromonzi Rural District Council. In order for the council to have properly issued a development permit for commercial purposes for this land, the use of the land would have had to be gazetted as urban instead of agricultural. Agricultural land is alienated by the Ministry of Lands, not by the Ministry of Local Government whose mandate is over urban land.

The court accepts that Goromonzi Rural District Council purported to issue some sort of permit to the G8. It has no lawful authority to issue such a permit as long the land is designated as agricultural and held in terms of an offer letter issued to the plaintiff by the Ministry of lands. See *Dusabe & Anor v City of Harare & Ors, Adore Gold Private Limited v Ministry of Lands and 2 Ors*<sup>4</sup>. The court finds that in terms of the Rural District Councils Act [Chapter 29:13], a rural district Council cannot issue a sub divisional permit in respect of agricultural land which is held in terms of an offer letter which has not been set aside in respect of the land that is subject to the lease or permit issued. Goromonzi Rural District Council's lease or permit is null and *void ab initio*. It cannot protect the defendants, as directors of G8 from eviction because it is a nullity.

It follows that the evidence supports the probability, with a reasonable degree of certainty, that the plaintiff is the lawful holder of Acorn farm in terms of a valid offer letter which has not been cancelled or set aside in terms of the Land Acquisition Act. It is more probable than not, that the administration block was constructed using subscriptions from plaintiff's members. It belongs to the plaintiff, and the plaintiff is entitled to evict the G8 from it. What is giving the court pause, is the question of whether the plaintiff can evict the defendants if they are its current card carrying fully paid up members, without allocating them their houses which they are

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<sup>2</sup> 2006 (2) ZLR 72 (H)

<sup>3</sup> 2015 (1) ZLR 509 (H)

<sup>4</sup> HH 44-14

entitled to. The plaintiff can certainly evict the G8 from the administration block, but not its fully paid up members, without providing them with alternative accommodation or issuing them with their houses which they are entitled to as its members. The plaintiff's claim is allowed, with costs. In the result, it be and is hereby ordered that:-

1. The Group of Eight Holding Company Private Limited be and hereby evicted from the administration block at Acorn Farm, forthwith.
2. The Group of Eight Holding Company Private Limited shall pay the costs of suit, together with the defendants, jointly and severally, the one paying the others to be absolved.
3. The defendants be and are hereby evicted from the administration block at Acorn Farm, forthwith, provided that those defendants who are fully subscribed members of the plaintiff shall be allocated suitable alternative houses by the plaintiff, within Acorn farm on the date of the eviction.

*Ngarava, Moyo & Chikono*, plaintiff's legal practitioners

*Mtombeni, Mkwesha, Muzawazi, & Associates*, defendants' legal practitioners