CROWHILL FARM (PRIVATE) LIMITED
versus
FLORENCE PAMBUKANI (NEE BEHANE)
and
FELIX PAMBUKANI

HIGH COURT OF ZIMBABWE
CHIKOWERO J
HARARE, 24 and 25 April 2018

**Urgent Chamber Application**

Mrs *T. Pfigu*, for the applicant
*K. Kachambwa*, for the respondents

CHIKOWERO J: This urgent chamber application for an interdict is not urgent at all.

In substance, it seeks the same interim relief that was granted on 20 September 2017 by this court in the matter *Crowhill Farm Pvt Ltd* v *Florence Pambukani (Nee Behane)* HC 8487/17.

I refer in this regard to para(s) 1 and 2 of the interim relief granted in that matter per MUREMBA J appearing on p 17 of the present respondents' opposing papers. It reads:

"INTERIM RELIEF GRANTED

That pending the return day, it is hereby ordered that:

1. The Respondent or any of her agents and/or employees, or anyone acting on her behalf is ordered to vacate Chirika Extension of Borrowdale Estate measuring 121,4029 Hectares; Lot J of Borrowdale Estate measuring 724,0475 Hectares immediately upon service of this order, failing which the Sheriff of Zimbabwe be and is hereby directed forthwith to eject the Respondent or any of her agents and/or employees, or anyone acting on her behalf, from occupation thereon.

2. The Respondent, or any of her agents and/or employees, or anyone acting on their behalf is hereby directed forthwith to remove any equipment, material and/or weapons from thereon."

The land involved in both matters is the same.

Put differently, the applicant in HC 8487/17 alleged that it had been dispossessed by the first respondent, her agents/and or employees, or persons acting on her behalf, on 24 August 2017, of Chirika Extension of Borrowdale Estate measuring 121,4029 hectares and Lot J of Borrowdale Estate measuring 724,0475 hectares.

This court found for it and ordered the present first respondent (hereinafter referred to as "Florence" or "her") or any of her agents/or employees, or anyone acting on her behalf to vacate the pieces of land aforementioned upon service of the provisional order failing which the Sheriff of Zimbabwe was directed to effect the ejectment.

Florence remained in occupation by dint of an appeal filed with the Supreme Court in September 2017.

The appeal, which is still pending, suspended MUREMBA J's provisional order.

The issue in both the present matter and the one which was before MUREMBA J is occupation of the land in question, hence the remedy of spoliation sought in both instances.

In HC 8487/17 the land is Lot J of Borrowdale Estate measuring 724,0475 hectares.

In the instant matter it is an undivided 0,0298% share being share number 702 of Lot J of Borrowdale Estate and the rest of Lot J of Borrowdale Estate measuring 724,0475 hectares.

The land in question is therefore the same.

In para 2 of the certificate of urgency in HC 8487/17 the following is stated:

> "On the 24th of August 2017, the respondent came and unlawfully occupied the above referred to land which is owned by the applicant. She was in the company of several men who continue to occupy the land and I am advised that they have begun chopping down trees with the intention of erecting a fence". (my emphasis)

Paragraph 9.2 of the same certificate reads:

> "Applicant's land is vulnerable to destruction of property as there are already inhabitants on the land as well as a reasonable apprehension that the area will descend into the depths of lawlessness considering the current stand-off triggered by the respondent."

Finally, para 10 of the certificate states:

> "If the matter proceeds as an ordinary chamber application the applicant will continue to be prejudiced and will suffer irreparable harm whilst respondent will continue to benefit from her unlawful activities."

In the matter before me, after highlighting other relevant matters which have been before this court of which HC 8487/17 is one of them (now on appeal before the Supreme Court) as well as HC 2427/18 which is still pending before this court, the applicant's founding affidavit states in para 11:

> "The aforementioned matters are mentioned and incorporated for reference and to bring the court into context and to make the court aware of the long standing dispute on the property." (my emphasis).

The last quoted passage as read with para(s) 2, 9.2 and 10 of the certificate of urgency in HC 8487/17 clearly show that the acts of 16 April 2018 grounding this application are not new.

They are merely a continuation or resumption of activities which commenced as way back as 24 August 2017 and on which this court has already granted relief.

That court order is extant, although the decision has been taken on appeal to the Supreme Court.

On applicant's own version what happened on 16 April 2018 is exactly what it feared would happen if regard is had to para(s) 9.2 and 10 of the certificate of urgency in HC 8487/17.

The need to act did not therefore arise on 16 April 2018.

It arose as way back as September 2017 when HC 8487/17 was taken on appeal to the Supreme Court.

The action that the applicant needed to take to obviate what eventually happened on 16 April 2018 was to apply to this court for leave to execute MUREMBA J's provisional order pending determination of the appeal.

The applicant has never done that.

It is still waiting to do that.

The applicant has deliberately or carelessly abstained from seeking leave to execute MUREMBA J's order. That order provided for ejectment.

The second respondent has simply been cited to disguise the fact that this application is nothing but a ploy to circumvent the appeal pending before the Supreme Court.

This application fails the test of urgency as set out in this jurisdiction. I refer in this regard to Document *Support Centre (Pvt) Ltd* v *Mapuvire* 2006 (2) ZLR 240 and *Kuvarega* v *Registrar-General and Anor* 1998 (1) ZLR 188 (H).

I agree with the respondent's counsel's submissions that this application is a clear abuse of court process.

I note also that in praying for dismissal of the application the respondent has sought costs on the legal practitioner and client scale. That approach is merited.

In view of the conclusion that I have reached on the preliminary point of urgency, it is unnecessary that I deal with the other points raised *in limine.*

In the result, I make the following order:

1. The preliminary point that this matter is not urgent is upheld
2. The application is struck off the roll of urgent matters.
3. The applicant is to pay the respondents' costs of suit on the legal practitioner and client scale.

*T. Pfigu Legal Practitioners*, applicant's legal practitioners
*Samundombe and Partners,* respondents' legal practitioners