FRED MARERE
versus
T. MUKWAZI

HIGH COURT OF ZIMBABWE
ZHOU J
HARARE, 25 June 2019

Opposed Application

H. Mukonoweshuro, for the applicant
Miss *T.L Tshaka,* for the respondent

ZHOU J: This is an application for confirmation of the provisional order which was granted by this court on 24 December 2018. The application is opposed by the respondent. The application was filed under a certificate of urgency seeking in the interim a *mandament van spolie*. The terms of the final order sought are as follows:

> "1. The respondent be and is hereby interdicted from interfering in any way with the applicant's peaceful occupation and enjoyment of subdivision 1 of Uitkyk Farm Mazowe, Mashonaland Central Province, pending resolution of the dispute before the Land Commission.
>
> 2. The respondent pays the costs of this application on a higher scale."

At this stage of the proceedings the court is concerned with whether the applicant has established the requirements for the interdict sought to be granted and not, as suggested by the respondent's counsel, whether the requirements for a spoliation order have been established. The requirements for the *mandament van spolie* are firmly established on the papers and were considered at the hearing of the urgent chamber application which is the reason why the provisional order was granted. The requirements for a final interdict are settled in this jurisdiction. These are:

(a) a clear right;
(b) irreparable harm actually committed or reasonably apprehended; and
(c) the absence of an alternative remedy.

See *Bulawayo Dialogue Institut* v *Matyatya NO & Ors* 2003 (2) ZLR 79 (H)

Minister of Local Government v *Mudzuri & Anor* 2004 (1) ZLR 223 (H); *Setlogelo* v *Setlogelo* 1914 AD 221 at 227.

The authorities show that the word "clear" in the context of the interdict does not really qualify the right itself but speaks to the extent to which the right has been proved by evidence. Whether there is a right is a question of substantive law, whether that right is clearly established is a matter of evidence. What is required where a final interdict is sought is that the right must be established clearly (as opposed to it being *prima facie* established) on a balance of probabilities.

In the instant case the applicant is the holder of an offer letter in respect of the farm which is the subject of dispute between him and the respondent. The offer letter was issued on 9 February 2006 by the relevant Minister in Government then. It is lawful authority entitling the applicant to occupy the farm in accordance with the law. On the other hand the respondent does not have any lawful authority to occupy the farm. The respondent justifies his occupation of the farm by reference to letters issued by a political party to which he belongs – ZANU-PF, and another one by an organisation called Nyabira/Mazowe W.V. Self-Contained Farmers' Association. The law explicitly provides that lawful authority means an offer letter, a permit or a lease duly issued by the responsible Ministry. The documents which the respondent has are not lawful authority. On these facts, therefore, the applicant has established a clear right.

As for harm, this means any interference with a right which is recognized at law. The respondent does not dispute that he has sought to be on the disputed farm. He, in fact, claims to have put a tenant to occupy the farm. This is clear evidence of interference.

There has not been any suggestion that there is an alternative remedy by which the applicant can protect his right to undisturbed occupation of the farm other than through the interdict which is being sought herein. I therefore accept that the applicant has no other remedy other than to seek the interdict.

In all the circumstances of this case, there is no valid ground of opposition to the confirmation of the provisional order.

In the result, the provisional order is confirmed.

H. Mukonoweshuro & Partners, applicant's legal practitioners

Koto ad Company, respondent's legal practitioners