

BENJAMIN SAMBARE
versus
SIMBARASHE SINANDAVA

HIGH COURT OF ZIMBABWE
MUZENDA J
MUTARE, 27 January 2020

Opposed Application

Applicant in person
E. L Mvere, for the respondent

MUZENDA J: The applicant has made an application seeking the following order:

“IT IS HEREBY ORDERED THAT:

1. THE Respondent and all those who claim possession or occupation through him, be and is hereby evicted from Plot No. 15B, Bomhani Farm, Cashel as soon as this order has been granted.

In the event that the Respondent fails or refuses to comply with the above order, the Sheriff of the Court, with the assistance of the ZRP, be and is hereby directed and ordered to procure vacant possession by ejecting the Respondent and all those claiming occupation through him.

2. To pay costs.”

Facts

From the facts extracted from the applicant’s founding affidavit filed of record, applicant was allocated Plot 15B Bomhani, Cashel in terms of the land resettlement programme. Respondent was also allocated the identical plot and moved in to practice farming activities on the plot. The applicant filed an application at the Mutare Magistrate Court for an interdict barring Respondent from practising farming on the plot. The application was granted. The respondent appealed against the order. The appeal with the High Court was struck off the roll. The respondent made an application to the Administrative Court which is still pending and also made an application for the reinstatement of the appeal with the High Court. Whilst the applicant acknowledges all the developments, his guarded view is that the offer letter granted to the respondent is fraudulent, the application to the Administrative Court is futile and

hopeless and the application for reinstatement of the appeal has no prospect of success and is only meant to buy time. H is praying that the application for respondent's eviction be granted.

The question for decision by this court is whether the application for respondent's eviction is properly before this court?

The applicant admits in his answering and founding affidavit that the respondent possesses occupation documents relating to the same disputed plot. There is no document from the issuing authority which disqualifies the offer letter, or showing that it was either withdrawn or cancelled moreso when such document was given to the respondent well after the applicant had allegedly been settled on the plot. In my view this conflict can best be answered by the issuing authority, not for the applicant to make conclusion on who the owner is. Where there are two competent documents originating from the issuing authority the quintessence issue for determination lies in the Administrative Court which is well qualified to make determination first obviously after having considered all relevant facts and evidence before it, only then would a court decide on the aspect of eviction. In any case, since the respondent is pursuing both the appeal and the Administrative Court action, it will be premature for this court to resolve on the aspect of ejection, the application for ejection has to wait for due process to be completed, regardless of whether respondent's prospects of success are high or not but to afford respondent opposing to be heard. It is also apparent that on 2 August 2019 a Magistrate's Court also granted an order to the following effect:

"The respondents are hereby interdicted from executing order granted under case No 4471/18 pertaining the outcome of the application made to the Administrative Court under case No ACC 86/18"

Although the applicant in his answering affidavit contends that he had applied for the above order to be rescinded, he did not attach any proof to that effect, otherwise this court infers that the above is still extant and must be allowed to remain operational. Applicant is permitted at law to equally expedite the proceedings in the Administrative Court in his pursuance to attain finality in litigation. As a result the application is dismissed with costs of suit.

Mvere Chikamhi Mareanadzo, respondent's legal practitioners