

(1) FIVE STREAMS FARM (PVT) LTD
(2) FRANK THOMAS MARTIN (3) ANNE PEARSON MARTIN
v
(1) FRANCIS PEDZANA GUDYANGA
(2) MINISTER OF LANDS AND RURAL RESETTLEMENT

SUPREME COURT OF ZIMBABWE
MALABA DCJ, GARWE JA & HLATSHWAYO
HARARE, MAY 27, 2014

P C Paul, for the appellant

C Phiri, for the respondent

MALABA DCJ: At the end of hearing argument for both the parties, the appeal was dismissed with costs. The court indicated that reasons for the decision would follow in due course. These are they.

The second and third appellants were directors of the first appellant, a company incorporated in terms of the laws of Zimbabwe. The first appellant owned Five Streams Farm before it was compulsorily acquired. The first respondent was given an offer letter on 4 December 2004 and the concomitant right to occupy and use for agricultural settlement a subdivision of the remainder of Five Streams Farm in Mutasa District, Manicaland Province measuring 660 hectares. From the time the land was gazetted and offered to the first respondent, second and third appellants refused to vacate the farm arguing that the Government wanted them to remain in occupation. The appellants attached a letter of recommendation by the acting

District Administrator, that they remain in occupation of the piece of land offered to the first respondent.

The appellants frustrated all attempts by the first respondent to take occupation of the piece of land in terms of the offer letter. The first respondent approached the High Court seeking a declaratory order to the effect that he had lawful authority to occupy the piece of land. He also sought an order that the appellants vacate the land in question. The court *a quo* granted the order against which the appellants appealed. The appellants attacked the correctness of the decision of the court *a quo* on the ground that the first respondent's cause of action had prescribed.

It is not in dispute that the piece of land became State land following compulsory acquisition. To lawfully occupy and use State land one has to have the following documents issued by the acquiring authority:

- (a) An offer letter
- (b) A permit or
- (c) A lease.

The offer letter given to the first respondent stated among other things that:

“1. The offer is subject to the following conditions:-

- (a) that you take up personal and permanent residence in the holding upon your acceptance of this offer which should be communicated to this office within 30 days of receipt.”

The appellants did not have any of the documents that confer on a person lawful authority to occupy and use State land. In terms of s 3(3) of the Gazetted Land (Consequential Provisions) Act [*Cap. 20:28*] the appellants were committing a criminal offence by refusing to vacate gazetted land. The first respondent on the other hand had the right to be assisted by the court to gain occupation of the land in the exercise of the right to do so.

In *CFU & Ors v Minister of Lands & Ors* 2010(2) ZLR 576 CHIDYAUSIKU CJ writing for the full bench of the Supreme Court said at p 591:

“Having concluded that the Minister has the legal power or authority to issue an offer letter, a permit or a land settlement lease, it follows that the holders of those documents have the legal authority to occupy and use the land allocated to them by the Minister in terms of the offer letter, permit or land settlement lease.”

The learned Chief Justice went on to state at p 592G-593A:

“An offer letter issued in terms of the Act is a clear expression by the acquiring authority of the decision as to who should possess or occupy its land and exercise the rights of possession or occupation on it. The holders of the offer letters, permits or land settlement leases have the right of occupation and should be assisted by the courts, the police and other public officials to assert their rights. The individual applicants, as former owners or occupiers of the acquired land, lost all rights to the acquired land by operation of the law. The lost rights have been acquired by the holders of offer letters, permits or land settlement leases.”

The determination by the appellants to obstruct the exercise by the first respondent of the right to occupy the piece of land allocated to him by the acquiring authority is shown by the spurious defences they raised to his application for relief in the court *a quo*. There is no doubt that opposition to the application was mounted for purposes of delaying the eviction

of the appellants from the piece of land concerned. How else could the appellants have thought they had a valid defence to the action in suggesting that their own criminal acts be the basis for denying the first respondent the right to take occupation of the piece of land allocated to him. A person who openly and brazenly defies the law and threatens violence against the holder of an offer letter to ensure that he or she continues in unlawful occupation of compulsorily acquired land cannot be heard to say the right of the holder of an offer letter to evict him or her from the land has expired. It was not for the appellants in the circumstances to accuse the first respondent of having failed to take occupation of the land concerned within thirty days as required by the offer letter.

The first respondent said that he attempted to take occupation of the land but the second appellant prevented him from doing so. He remembered an incident on 5 August 2009 when he tried to enter the farm but was prevented from doing so by a group of aggressive men with various pieces of improvised weapons. The second appellant became violent when he was served with summons for the court *a quo* by the Sheriff. What had to decide the outcome of the application and properly did so was the continued unlawful occupation of the Gazetted land by the appellants.

It is for these reasons that the appeal was dismissed with costs.

GARWE JA:

I agree

HLATSHWAYO JA: I agree

Wintertons, appellants' legal practitioners

Machingura Legal Practitioners, first respondent's legal practitioners