

**FATILLA KHAN**

**Versus**

**MOSES JIRI**

IN THE HIGH COURT OF ZIMBABWE  
CHIWESHE J  
BULAWAYO 16 & 24 APRIL 2003

*C P Moyo* for the applicant  
*B Sibanda* for the respondent

Urgent Chamber Application

**CHIWESHE J:** In this urgent application the applicant seeks a provisional order evicting the respondent from Glen Rhoda Farm, Chivhu (“the farm”).

The applicant avers that she is the owner of the farm. On 1 August 1999 she and the respondent entered into a written agreement in terms of which the applicant would lease the farm to the respondent for a period of three years. The lease expired in August 2002. The applicant says that she was approached by the respondent with a request that he be allowed to stay on to enable him to tend and reap his crops which were still in the fields. She acceded to that request and gave the respondent up to the end of March 2003 to wind up his affairs. The respondent has continued occupation after the agreed date. In anticipation of the respondent’s departure the applicant says she had entered into a verbal contract with the Grain Marketing Board in terms of which she is to put a crop of wheat on the farm this winter. The planting period for wheat is now - April 14 to May 10, 2003. It is on the basis of that contractual obligation with the Grain Marketing Board that this urgent application is made.

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The respondent has filed opposing papers, arguing firstly that the matter is not urgent as the applicant has not submitted papers proving her contract with the Grain Marketing Board. Secondly, the respondent avers that the original lease had been verbally extended to 31 August 2004 and not 31 March 2003 as contended by the applicant. To that extent therefore, argues the respondent, there is a material dispute of fact which cannot be resolved on the papers. The applicant, so argues the respondent, should have proceeded by way of action.

I agree with the respondent's submissions. It is incumbent upon the applicant to show the urgency of the application. No written contract with the Grain Marketing Board has been filed. The applicant says the agreement was verbal. No attempt has been made to include an averment to that effect by the Grain Marketing Board. The court is being asked to take the applicant's word for it. In my view the applicant has not in the circumstances made a prima facie case proving the urgency of the application. In that respect the application ought to be dismissed for want of urgency.

In any event it is doubtful in view of the factual dispute whether on the merits this matter is one that can be resolved on the papers.

It was for these reasons that I dismissed the application with costs.

*Messrs Majoko & Majoko* applicant's legal practitioners  
*Messrs Sansole & Senda* respondent's legal practitioner