THE MINISTER OF STATE FOR NATIONAL SECURITY, LANDS, LAND REFORM AND RESETTLEMENT IN THE PRESIDENT'S OFFICE

Versus

HERMANUS GERHARDUS GROVE

And

DEPUTY SHERIFF

IN THE HIGH COURT OF ZIMBABWE
NDOU J
BULAWAYO 5 AND 11 OCTOBER 2007

M V Mutatu, with H Shenje for the applicant
J Tshuma, for the 1st respondent

Urgent Chamber Application

NDOU J: The applicant seeks an amended order in the following terms:

"Terms of final order sought
That you show cause to this honourable court why a final order should not be made in the following terms:

1. The 1st respondent and all claiming occupation through him be and are hereby interdicted from using, holding and occupying a certain piece of land situation in the district of Kwekwe known as Igogo Farm without lawful authority in terms of section 3 of the Gazetted Land Consequential Provisions Chapter 20:28.
2. The 2nd respondent be and is hereby authorised to enforce this order.
3. Costs on an attorney and client scale.

Interim relief

Pending the confirmation or discharge of the final order, applicant is granted the following interim relief:

a) The 1st respondent and all those claiming occupation through him be and are hereby interdicted from disrupting in any manner the farming operations of the beneficiaries under the Land Reform Programme of a farm known as Igogo situate in the District of Kwekwe."

It seems to me that central to dispute between the applicant and the 1st

respondent is who has better right to property known as sub0division 2 of Igogo in the

District of Kwekwe. Three sets of litigation are born out of this dispute. First, the applicant caused the 1st respondent to be arrested and prosecuted under section 3(3) of the Gazetted Land Act, *supra*, several months ago. In that case, through the operation of law, if it is the finding of the Magistrates' Court that the 1st respondent is not entitled to be in occupation of Igogo Farm, the said Magistrates' Court will give an order for the eviction of the 1st respondent.

Second, after his arrest, the 1st respondent himself sued the applicant and the beneficiaries in Harare. In that matter the parties are mainly the same. In that matter the 1st respondent seeks a declaratory that his occupation, use, possession and production on Igogo be declared lawful. Third, *in casu*, the subject is the same and the parties are mainly the same. The substantive issue in all these matters is who has a better right over the disputed land between the applicant and 1st respondent. This is the main dispute, to suggest otherwise amounts to splitting hairs. The 1st respondent has raised three points *in limine*. The first one is one of urgency. The applicant (the Minister) did not dispose to the founding affidavit in this application. Instead he delegated this to the Provincial Chief Lands Officer in the Midlands Province where the disputed land is situate. The latter deposed to a detailed affidavit on the merits but dealt briefly with the question of urgency. This is what he said:

> "25. I contend that the matter is urgent and if proceeded by way of an ordinary application the 1st respondent will simply buy time to the detriment of Government efforts to conclude the land reform process. Furthermore the 1st respondent has prevented the beneficiaries from planting any crops and has even shot at one of the employees of the beneficiaries. The matter deserves urgent attention. The 1st respondent's conduct if allowed to go unchecked will lead to a total breakdown of law and order.
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> 26. In the circumstances I aver that the 1st respondent's conduct amounts to self-help and is illegal. Redress as a matter of urgency is justified."

The certificate of urgency by Mr I Hore, a legal practitioner was commissioned four days before the founding affidavit was commissioned. Minus a founding affidavit there is strictly speaking, no application to certify as being urgent. Be that as it may, the 1st respondent did not raise this issue and I will not dwell on it. This is what Mr Hore said in his certificate:

> "2. I consider the matter to be urgent in that:
> 3. The applicant as an acquiring authority has an interest in ensuring that the land reform exercise is carried [out] to its logical conclusion.

4. The 1st respondent has resorted to acts of self-help in an endeavour to frustrate the objectives of the Land Reform Programme.
5. It is trite that an application for an interdict is by its very nature urgent and therefore warrants an *ex-parte* application.
6. It is imperative that the 1st respondent be interdicted from disrupting the farming activities of the beneficiaries of the Land Reform Programme. Applicant approaches this honourable court as the Acquiring Authority with *locus standi* to protect the rights of beneficiaries under the Land Reform Programme.
7. This honourable court is the competent court to entertain the relief sought. I respectfully submit that the matter is urgent and deserving of being dealt with on an urgent basis in terms of the rules of this honourable court."

With all due respect to the two deponents it is difficult to understand where the urgency lies. It is not clear why this matter should jump the queue. This is a case of self-created urgency. The applicant should have prosecuted the 1st respondent to the conclusion of the criminal matter at Kwekwe Magistrate's Court and obtained eviction of the 1st respondent by the operation of the law. That could have been done months ago. Alternatively as the applicant (as respondent in the Harare HC 3171/07) has already filed opposing papers he should have anticipated the return date in that matter and the dispute between the parties would have long been resolved. The applicant waited several months before launching another application to resolve the same dispute between the parties as alluded to above. This is not the type of urgency contemplated by the rules. On this issue alone the application must fail – *Kuvarega* v *Registrar-General & Anor* 1998(1) ZLR 188 (H); *Dilwin Investments (Pvt) Ltd t/a Farmscaff* v *Jopa Eng. Co (Pvt) Ltd* HH-116-98; *Mushonga & Ors* v *Min of Local Govt & Ors* HH-129-04 and *Moyo* v *Constituency Elections Officer, Tsholosho & Ors* HB-72-05. The applicant authored this urgency by failing to assert his rights in the other two matters involving the parties. By multiplying the ……. of litigation the applicant is merely delaying the resolution of the dispute between the parties. As the matter is not urgent, I dismiss the application with costs on that account along without determining the other issues raised.

Accordingly, I dismiss the application with costs.

Makone & Partners, applicant's legal practitioners
Webb, Law & Barry, 1st respondent's legal practitioners