

R. H GREAVES (PVT) LTD

VERSUS

THE MINISTER OF LANDS, AND RURAL RESETTLEMENT

AND

THE COMMISSIONER OF POLICE

AND

**THE OFFICER IN CHARGE, ZIMBABWE REPUBLIC POLICE,
NYAMANDLOVU**

AND

THE CHIEF LANDS OFFICER, MATABELELAND NORTH

IN THE HIGH COURT OF ZIMBABWE

CHEDA J

BULAWAYO 10 JUNE 2010 AND 25 JUNE 2010

Mr T. A. Cherry for applicant

Messrs P. Ndlovu and A Chilonga (representing 4th respondent)

No appearance for 1st, 2nd and 3rd respondents

Opposed Urgent Application

CHEDA J: This is an urgent application whose relief is couched 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) That until such time as the ownership or right to occupy the property known as Highfields Farm, in the district of Nyamandlovu, being the remaining extent of Dlikosch (hereinafter “the farm”) is determined by a court of competent jurisdiction

- and until such time as the Applicant is lawfully evicted by due process of law and the applicant has exhausted all legal remedies available to him, the respondents are interdicted from evicting the applicant or from taking occupation of the farm and are ordered to allow the Applicant to enjoy peaceful and undisturbed possession thereof. It is further ordered that the Respondents are interdicted from interfering in any way of the farming operation carried out by the Applicant or its directors, employees or servants or from entering the farm or placing property or employees thereon (save as may be provided by law).
- 2) That in the event that by the time this order is granted the Applicant has been evicted without due process of law or the Third respondent has remained in occupation of the farm, then it is ordered that the Third Respondent or any person occupying the farm through him, be and is hereby evicted and the Applicant be restored to peaceful and undisturbed possession thereof.
 - 3) That in the event that the appropriate officer of Court is unable to affect the terms of this order on the third and forth respondents then the first respondent is ordered to render all such necessary assistance to the appropriate officer of court in executing such order.
 4. That the respondents jointly and severally, one paying the others to be absolved, pay the costs of this application.

INTERIM RELIEF GRANTED

Pending determination of this matter, the Applicant is granted the following relief:-

- 1) The respondents are interdicted from taking any steps to evict the Applicant from the property described herein save in accordance with an order issued by a court of competent jurisdiction.
- 2) It is ordered and declared that until such time as the relief set out in the final order is determined the Applicant and all those who occupy the farm through him are entitled to remain in peaceful and undisturbed possession of the farm and further entitled to continue farming operations on the property and the third and forth respondents are interdicted from taking any steps to occupy the farm either themselves or through any agent, servant or employee or to hinder or disturb the Applicant in his occupation thereof. In the event that at the time of serving this order upon him the third and forth respondents have remained in occupation of the farm or any portion of the farm, either in person or through his agents, employees or servants, then it is ordered that he immediately vacate the farm and restore the applicant vacant possession thereof.
- 3) It is further ordered that in the event of the first respondent instituting a prosecution under the Gazetted Land (Consequential Provisions) Act, [Chapter 20:28, against the applicant or any director, agent servant or employee of the applicant then such prosecution be commenced by way of summons

SERVICE OF PROVISIONAL ORDER

In terms of the Rules of Court save in respect of the First respondent service may be made by registered post in terms of Order 5 Rule 42.”

Applicant is a registered company which carries on business in terms of the laws of Zimbabwe and carries out farming operations in the Nyamandlovu area, Matabeleland North. Applicant is represented by Gary Denis Godfery who deposed to a founding affidavit in this matter. It is his evidence that up to year 2000, applicant operated five contiguous farms totalling 18000 hectares. This land was gazetted in 2000 by way of Government notice number 509/2000. Despite this process, applicant remained in occupation of the land up to 2007 when according to it, first respondent sympathized with its plight after noticing that it had been left with only 200 hectares out of its original 18000 hectares holding. He expressed a view that applicant should have been left with at least 1500 hectares since it was in the low rainfall region of Matabeleland North. It further stated that first respondent undertook to issue an offer letter to it, but, did not do so. No action was taken towards the finalization of the land occupation process of the property in question until February 2009 when he was arrested and detained under the allegation of illegal occupation. However, the matter did not go to court as the prosecutor declined to prosecute. Applicant, therefore, continue to occupy and till the land to date.

However, on the 28th May 2010, applicant's farm was visited by members of the police, presumably under the instructions of third respondent, they were accompanied by officials from fourth respondent. They were looking for the deponent, but, however, could not find him. They went away and came back on the 31st May 2010, but, again could not find him. It is alleged that they proceeded to occupy the property and prevented workers from carrying on

their daily duties. They further turned-off electricity supply and cut-off water supply to staff on the farm and livestock. As a result of their actions livestock has not been fed or watered.

In paragraph 22 of his affidavit he stated:-

“The applicant has no wish or intention to voluntarily vacate but there is immense pressure and I am truly fearful that the police will act decisively in the face of any opposition. I am aware that a number of white farmers have been detained under the most appalling conditions and indeed the police have intimated that there will be no work allowed on the farm until (the deponent) hands myself (sic) in”.

That Applicant is against occupation of this property by respondent admits of no doubt as it is clear from the above quotation by its representative.

All the respondents were served with the urgent court application as per my directive of the 4th June 2010. Only fourth respondent has filed a notice of opposition. Because of the absence of an explanation by first, second and third respondents, I am unable to comment on the reasons for their action.

Fourth respondent argued that applicant's continuous occupation of this property is unlawful, as this is gazetted land and as such it is now state land. This fact admits of no doubt. It further argued that applicant is defiant of the law as he ought to have ceased operations in terms of section 2 and 3 of the Gazetted Land (Consequential Provisions) Act [Chapter 20:28].

The procedure in acquiring land as I understand it, is that after the land has been gazetted it belongs to the state. The sitting owner or occupier is supposed to cease his operations within a total of 90 days after the land has been acquired. Should he fail to vacate the land he should be charged under the Gazetted Land (Consequential Provisions) Act. Upon conviction, the court is obliged to sentence him/her and issue an eviction order. In the absence of an eviction order by a competent court, the owner/occupier cannot be evicted.

It follows, therefore, that no one can not take over applicant's farm without a court order, as to do so amounts to spoliation and as such is unlawful. Equally unlawful is the occupation and the take-over of applicant's property in order to induce Gary (the deponent) to surrender himself to the police. The police have a wide range of lawful means of effecting a lawful arrest including the use of minimum force to achieve their objective.

In the present matter their actions are understandable though unlawful. They are faced with a situation where a suspect is evading and avoiding arrest, this on its own is frustrating. What is even more frustrating is the fact that while he does not voluntarily surrender himself to the police for questioning, he decides to avail himself to his legal practitioners only and no effort is made by his legal practitioner to bring him to the police station. Such actions by the legal practitioners borders on an attempt to defeat the course of justice. It is, therefore, improper.

Gary's actions are not the actions of a law abiding citizen. In his affidavit quoted above he makes it clear that applicant does not intend to voluntarily surrender the farm to its owner, that is, the state. It is clear therefore that applicant through Gary is not prepared to be governed by the laws of the land, hence his defiance. He is not prepared to be questioned by the police. The laws of this country and indeed all over the world require everybody to cooperate with the law enforcement agents. In *casu*, we have a suspect who prays for an order preventing the police from carrying out investigations where a possible offence has been committed. This is absurd, what is even more absurd is that his lawyer seems to be ill advising him to avoid questioning by the police. Advocate Cherry argued that the police have been arresting white farmers during weekends without charge. While I am not privy to such arrests,

the correct position is that Gary or anyone for that matter is not exempted from arrest, by virtue of his race. His race is not by any stretch of imagination superior to other races. This, unfortunately is his thinking. Police and prison cell walls recognise no colour, therefore, that argument is untenable. The police are within their right to arrest Gary wherever and whenever they find him. The rule of law demands equal treatment before the law irrespective of colour.

Police should not occupy the farm so as to frustrate its operations, but, should do so for the purposes of apprehending Gary who seems to be eluding them. In paragraph 3 of the interim order applicant prays that in the event that first respondent decides to proceed against Gary, they should do so by way of summons. While there is indeed a provision for the police to do so, I find it unreasonable for this court to prescribe the method of arrest in the circumstances. Infact it should be borne in mind that the method of arrest is the domain of the police. To prescribe that police should have a different way of arresting white farmers is to brazenly advocate and promote racism which is unconstitutional. These courts can not be used to promote such illegalities. The police cannot be prevented to carry out their duties in a manner they deem fit.

The application succeeds and the following order is made:-

1. That respondents be and are hereby interdicted from taking any steps to evict the Applicant from the property being Highfields Farm in the District of Nyamandlovu being the remaining extent of Dlikosch (hereinafter referred to as "the farm") save in accordance with an order issued by a court of competent jurisdiction.

- 2. That applicant and all those who occupy the farm through it are entitled to remain in peaceful and undisturbed possession of the property and further entitled to continue farming operations on the property until they are ordered to cease such occupation and/or operations by a court of competent jurisdiction.
- 3. That second and third respondents are entitled to remain on the property for the purposes of interviewing or arresting Gary or any such other person they are interested in, and
- 4. That the respondents jointly and severally, one paying the others to be absolved, pay the costs of this application.

Cheda J.....

Webb, Low and Barry, applicant's legal practitioners
The Chief Land Officer Matabeleland North (Officials) for the 4th respondent