

WILD GOOSE SAFARIS (PVT) LTD

Versus

SIPHO MPOFU

And

JABULANI MPOFU

And

MINISTER OF ENVIRONMENT AND NATURAL RESOURCES

IN THE HIGH COURT OF ZIMBABWE

NDOU J

BULAWAYO 9 SEPTEMBER 2011 & 2 FEBRUARY 2012

C. Dube-Banda for applicant

Advocate L. Nkomo for respondents

Judgment

NDOU J: The applicant, a company with limited liability obtained a provisional order with interim relief evicting the 1st and 2nd respondents from land referred to as Lot 3A, Dete Valley 3, Gwayi Conservancy ("Lot 3A"). The provisional order also granted the applicant further interim relief in the form of a mandatory interdict binding the 1st and 2nd respondents to keep peace with applicant and not interfere with applicant's peaceful possession of the said Lot 3A. The background facts are the following. The land referred to as Lot 3A was acquired by the Government in 2002 under the land reform and resettlement programme. It is trite that after such acquisition the previous title and ownership of the said land was extinguished by operation of law and ownership of the said land vested in the State in terms of section 16B of the Constitution of Zimbabwe. The said Lot 3A was then subdivided by the Government in 2002 into various portions which include subdivision 1, subdivision 2 and subdivision 3. The said subdivisions of Lot 3A were offered by the Government to various beneficiaries who include the 1st respondent who was offered and duly accepted subdivision 1 pursuant to an offer letter dated 2 February 2005. The crux of the matter here is whether the 1st and 2nd respondent took occupation of the said piece of land after the allocation. If they occupied the land since the date of allocation to date of issuance of this application, then there is no spoliation. According to the applicant, since 12 December 2007 it has been in peaceful and undisturbed occupation of Lot 3A. Applicant states that the 1st and 2nd respondents only moved into the property on 27

January 2011 in a clear act of spoliation. The 1st and 2nd respondents on the other hand state that they also have been in peaceful and undisturbed occupation of the property i.e. the applicant and the 1st and 2nd respondents co-existed on the farm since 2005. This is a material dispute of fact to be dealt with when the issue of the ownership of property is determined. I am dealing here with the question of spoliation. The respondents raised two points *in limine* which I propose to consider in turn.

Whether there is property known as “Lot 3A, Dete Valley 3, Gwayi Conservancy”

It is common cause that prior the acquisition by Government, the property was known as Lot 3A, Dete Valley 3, Gwayi Conservancy. Lot 3A was acquired by Government under the land reform and resettlement programme. Upon such acquisition by the state in 2002, the previous title and ownership of the said land was extinguished. Ownership then vested in the State in terms of section 16B of the Constitution of Zimbabwe. The Government, in its wisdom, subdivided Lot 3A into various portions namely subdivision 1, subdivision 2 and subdivision 3. These subdivisions were offered to three beneficiaries by offer letters dated 2 February 2005. The 1st respondent was offered and duly accepted subdivision 1. The legal effect of the subdivision is that land known as “Lot 3A, Dete Valley 3, Gwayi Conservancy” no longer exists – *N & R Agencies (Pvt) Ltd v The Minister of lands and Rural Resettlement and Others* HB-189-11. It therefore follows that the final order sought by the applicant of permanently interdicting the 1st and 2nd respondents from visiting or staying ... or interfering with applicant’s operations or peaceful occupation of “Lot 3A Dete Valley 3, in Gwayi Conservancy” is incompetent as no such land exists. Factually and legal there is no piece of land known as Lot 3A Dete Valley 3, Gwayi Conservancy. Further because the 1st respondent is a holder of an offer letter in respect of subdivision 1 he or she has the legal right to occupy and use the land allocated to him/or her – *Commercial Farmers Union & Others v The Minister of Lands & Rural Resettlement and Others* SC-31-10 at pages 28-29 of the cyclostyled judgment. On this preliminary point alone the application has no merit.

Accordingly the provisional order granted by this court on 8 February 2011 be and is hereby discharged with costs on the ordinary scale.

Dube-Banda, Nzarayapenga & Partners applicant’s legal practitioners
Cheda & Partners, 1st and 2nd respondents’ legal practitioners