GRACE KANDEMA AND TWO OTHERS (nee MUGADZA)
and
EDIAS KANDEMA
and
SIMON MAKANYANGA
versus
THE COMMISSIONER OF POLICE
and
THE OFFICER IN CHARGE, ZRP BEATRICE
and
THE OFFICER IN CHARGE, ZRP CHIVHU
and
THE GOVERNOR FOR MASHONALAND EAST
and
ASSISTANT DISTRICT ADMINSTRATOR, SEKE
and
DISTRICT ADMINISTRATOR, SEKE
and
COMRADE CHARLES MLAMBO (a.k.a. Chando)

HIGH COURT OF ZIMBABWE
HUNGWE J
HARARE 16 October and 3 December 2003

Mr *L Murinda* for the applicants
Mr *Mutsonziwa* for 1st, 2nd, 3rd, 4th, 5th, 6th respondents
No appearance for 7th respondent

HUNGWE J: This matter was placed before me under a Certificate of Urgency on 10 October, 2003. After perusal of the papers I directed that the matter be heard on 16 October, 2003 as I was satisfied, for reasons different from those advanced by the applicants, that the matter ought to be

heard urgently.

Applicants seek the following interim relief:

"1. The respondents' acts of participating in, authorizing, aiding and abetting the eviction of the applicants, and all the other settlers on Eden Farm without an order of court be and are hereby declared unlawful and null and void.

2. The respondents be and are hereby ordered and directed to allow the applicants, and all the other settlers on Eden Farm to return to Eden Farm.

3. The respondents be and are hereby ordered and directed to desist from interfering with the applicants' (and all the other Eden Farm settlers') occupation of Eden Farm or to any way disturb the quite and peaceful return to and occupation of the farm.

4. The respondents be and are hereby bound over to keep the peace towards the applicants and all the other settlers on Eden Farm.

5. **The 4th respondent be and is hereby directed to instruct the 5th and 6th respondents, and any other state officials falling under his and their jurisdiction, to ensure compliance with the terms of this Order.**

6. **The lst and 6th respondents be and are hereby interdicted from evicting or removing the applicants and all the other Eden Farm settlers, from Eden Farm, until the reallocation to them, and proper resettlement of them on other land lawfully acquired."**

The events which led to this application are set out by

the applicants in their founding affidavits. The may be summarised as follows.

During the invasions of privately owned farms, a group of people invaded Eden Farm in the Beatrice area. It met resistance from the lawful owner of that farm which resistance included the burning of those invaders shacks and property. Eventually the farm was gazetted and the owners gave up and left.

This group settled themselves at Eden Farm. The precise number is in dispute but there is proof on the respondents' papers that as at 12 March, 2001, the farm owner, one G S Theron, executed a document in which he and the seventeen settlers came to some accommodation.

Up to this stage Eden Farm had not been lawfully acquired by the State. More people moved on the farm.

The District Land Committee authorised the handing out of 74 plots on this farm in July 2003. By this time only eleven of the original seventeen settlers remained on the register of the Ministry of Lands as being pre-March 2001 occupiers. On the ground however the figures had swollen. In between these periods relevant government departments i.e. Ministry of Local Government and the Ministry of Lands held meetings in which the settlers were advised of the processes involved in land allocation. It was made clear that those who would not be allocated land on Eden farm should expect to be allocated land elsewhere.

In August 2003 the District Land Committee published its list of beneficiaries of land on Eden Farm. Those whose names were not on that list to move off Eden Farm.

Trouble then began.

Respondents say that in terms of government policy they were entitled to evict those settlers who had not been allocated land on the farm.

In explanation of the procedure used, the respondents state that there is a lawfully set up committee which authorizes the demarcation of plots and subsequent allocation of the same to selected people on recommendations by the Agricultural and Extension Officers (Arex). It is chaired by the District

Administrator, the sixth respondent.
Sixth respondent, who deposed to the opposing affidavit on behalf of, and the respondents, states that the applicants had been given several warnings to comply with the orders of the committee. The three applicants physically resisted the orders to move. There was physical removal of the settlers. First respondent resisted the eviction by indecently exposed herself to the team that had come to supervise an orderly eviction of illegal settlers. Third applicant came to his wife's rescue as she resisted police officers who attempted arrest her.
Third respondent admits insulting the police officers.
It is contended by the respondents that these applicants and those that they represent are lawless citizens trying to take advantage of the land reform program by refusing to comply with lawful orders. They have no legal basis to refuse to be moved away and be settled elsewhere. They are not entitled to the interdict they seek against respondents.
The law relating to interdicts is well known.

The requirements have been formulated by CORBETT J in *L F Boshoff Investments (Pty) Ltd* v *Cape Town Municipality* 1969(2) SA 256 at 267A-F -

> "Briefly those requisites are that the applicant for such temporary relief must show -
>
> **(a)** **that the right which is subject matter of the main action and which he seeks to protect by means of interim relief is clear or, if not clear, is *prima facie* established, though open to some doubt;**
>
> **(b)** **that, if the right is only *prima facie* established, there is a well grounded apprehension of irreparable harm to the applicant if the interim relief is not granted and he ultimately succeeds in establishing his right;**

(c) that the balance of convenience favours the granting of interim relief; and

(d) that applicant has no other satisfactory remedy."

Interdicts are established on rights which in terms of the substantive law are sufficient to sustain a cause of action. Such rights may arise out of contract or delict, or on some or other statute. It may be a real right or a personal right. The applicant for an interlocutory interdict must show a right which is being infringed or which he apprehends will be infringed, and if he does not do so the application must fail. See The Law and Practice of Interdicts *C B Prest (1996).* See also : *Coolair Ventilator Co (SA)(Pty) Ltd* v *Liebenberg & Another* 1967(1) SA 686(W).

An application for a interlocutory or temporary interdict need not be shown on a balance of probabilities. If it is "*prima facie*" established though open to some doubt that is enough.

Applicants base their prayer for the relief that they seek on a claim that (a) they are protected by the Rural Land Occupiers (Protection from Eviction) Act 13 of 2001; (b) that the respondents action in forcibly evicting them amounted to spoliation.

In order for applicants to enjoy the statutory protection afforded land occupiers by Act 13 of 2001, they must show that they were, by the stipulated date, in occupation of the land to which the dispute relates.
Besides their say so the applicants do not have any

corroboration of their claim. Those that were in such occupation appear on the list produced by the relevant authority during the hearing. They are 17. None of them are part of the applicants, for reasons given by the respondents.
In any event I am unable to hold that this application is being made by more than the three applicants because there is nothing on the papers to show that the rest of the so-called 74 applicants associated themselves with the application.

Without the extension of protection afforded to illegal settlers by Act 13 of 2001, the applicants cannot point to any right, *prima facie* or otherwise. The respondents were at pains in their affidavit to demonstrate that they are charged with the maintenance of law and order. In the discharge of their duties elements such as the applicants leave them with no option but to use minimum force to establish law and order on the farms.

I must remark that there has now appeared a new wave of suits arising out of the land reform programme. These suits pit in some instances illegal settlers against the legally settled. The effect of this has been to throw the agricultural sector into further uncertainty as the newly resettled farmer who has been "invaded" or threatened with invasion cannot commit his resources to the task of agricultural production on the appropriate scale. The Police have been criticised, in the early stages of the exercise, of siding with "invaders" or "settlers". There have been cases of double allocations leading to skirmishes on the farms. All these are problems

which would not have arisen if the statutory duty of the Police and other organs of the state had been observed and or if the Police had been left to deal with situations as they deemed appropriate. It would be an unusual situation for the Court to dictate the policy of government to the executive arm of government (as I am being asked to do here). Those who are charged with policy implementation should enjoy the assistance of the Police where it is for the benefit of orderly and good administration of the affairs of Government.

It is this Court's view that the Courts should not hesitate to pronounce where the rights of the parties lie notwithstanding the morality of that judgment. In this instance the applicants have no right whatsoever to take the respondents to court in the manner they did. In the circumstances the application is dismissed with costs.

***Mandizha & Company*, applicant's legal practitioners**

***Civil Division, Attorney-General's Office*, respondents' legal practitioners.**