

DAVID CHAPFIKA  
versus  
TAKADANA MAKINA  
and  
HEDON CHATAMBALALA  
and  
DEPUTY POILCE COMMISSIONER GENERAL MATANGA  
and  
ASSISTANT POLICE COMMISSIONER PFUMVUTI  
and  
THE MINISTER OF LANDS & RURAL RESETTLEMENT

HIGH COURT OF ZIMBABWE  
BHUNU J  
HARARE, 25 March 2010 and 28 July 2010

*Mlotshwa*, for the applicant  
*Dondo*, for the 1<sup>st</sup> and 2<sup>nd</sup> respondents  
Mrs *Hove*, for the 3<sup>rd</sup> and 5<sup>th</sup> respondents.

### **Urgent Chamber Application**

BHUNU J: The first two respondents were issued with offer letters in respect of subdivision 7 and 10 of The Grove in the district of Goromonzi under the Land Reform and Resettlement Programme (Model A2, Phase 11) scheme respectively.

On 25 November the fifth respondent wrote to both respondents withdrawing both offer letters. He then offered the same pieces of land to the applicant. The parties then got embroiled in land disputes concerning the two pieces of land.

The dispute spilled into the courts with the result that the first and second respondents obtained a provisional order from this court on 19 November 2009 in the following terms:

#### **“TERMS OF THE FINAL ORDER SOUGHT**

That you show cause to this Honourable Court why a final order should not be made in the following terms-

- (a) That the respondents or any person acting on their behalf or for the purpose of furthering the interests of the respondents be and is hereby ordered to refrain from in anyway interfering with the first applicant’s possession or occupation of subdivision 7 of Grove Farm in Goromonzi situate in the District of

Mashonaland East Province and the second applicant's possession of subdivision 10 of Grove Farm, Goromonzi situate in the district of Mashonaland East and shall be so interdicted and or restrained from any such future interference save as may be authorized by a binding and operational order of a court of competent jurisdiction.

- (b) The first, second and third respondents shall pay the costs of suit (if they oppose this application).

### **INTERIM RELIEF AMENDED**

That pending the finalization of this matter the respondents are restrained and interdicted as follows:-

- (a) The first respondent be and is hereby interdicted and restrained from forcibly evicting the first applicant from subdivision 2 of Grove farm, Goromonzi District of Mashonaland East and the second applicant from subdivision 10 of Grove Farm, Goromonzi East;
- (b) That the first respondent be and is hereby interdicted from carrying out farm operations on the said subdivisions of Grove farm occupied by the two applicants;
- (c) The first, second and third respondents or any other person(s) acting on their behalf be and are hereby interdicted and restrained from doing any acts likely to interfere with the two applicants' peaceful possession and or occupation of the subdivisions on Grove farm occupied by the applicants in terms of the offer letters dated 1 October, 2008 without due process of the law after a complaint being raised on the acquiring authority; and
- (d) The second and third respondents or any police officer acting on behalf of the respondents are hereby interdicted and or restrained from threatening to arrest and detain or arresting and detaining the applicants for carrying out lawful farming activities on the applicants' respective plots on Grove farm without due process of the law after a complaint has been raised by the acquiring authority

### **SERVICE OF THE PROVISIONAL ORDER**

- (1) Leave be and is hereby granted to the applicants' legal practitioners to serve a copy of this order on the respondents."

Having obtained the above provisional order on 19 November 2009 the first two respondents have to date done nothing in pursuit of the final order and it appears that they have no intention to set down the matter any time soon.

The applicant has submitted that both respondents have no intention to set down the matter because they know that they have no *locus standi* and that their occupation of both pieces of land is unlawful. The applicants have pointed to s 3 (1) of the Gazetted Land (Consequential Provisions) Act which prohibits the occupation or use of gazetted land without lawful authority in the form of a permit, offer letter or lease.

It not being disputed that the applicants' offer letters have since been withdrawn by the acquiring authority there can be no legal basis upon which the first and second respondents can continue to hold, occupy or use the land. I am therefore persuaded that the two respondents are merely using the provisional order to prolong their unlawful occupation and use of the land.

Rule 236 (3) provides that:

“Where the respondent has filed a notice of opposition and an opposing affidavit and within one month thereafter the applicant has neither filed nor set down the matter for hearing, the respondent, on notice to the applicant, may either-

- (a) Set down the matter for hearing in terms of r 223.
- (b) Make a chamber application to dismiss the matter for want of prosecution, and the judge may order the matter to be dismissed with costs or make such other order on such terms as he thinks fit.”

In this case it is quite apparent that the first and second respondents' failure to set down the matter is calculated to perpetuate an illegality. That type of behaviour amounts to an abuse of process which cannot be tolerated by the courts. That being the case the ends of justice can only be met by dismissing the application in case number HC 5564/ 09.

It is accordingly ordered:

1. That the application in case number HC 5564/09 be and is hereby dismissed for want of prosecution.
2. That the first and second respondents pay the costs of this application

*Mlotshwa & Company*, applicants' legal practitioners  
*Chinamasa, Mudimu & Dondo*, 1<sup>st</sup> and 2<sup>nd</sup> respondents' legal practitioners