

NYASHA EUNICE CHIKWINYA
and
APOSTOLIC FLAME MINISTRIES
and
ABMET HOUSING CO-OPERATIVE
versus
JUSTINE ZVANDSARA
and
HARARE NOTH HOUSING CO-OPERATIVES UNION
and
LOCAL GOVERNMENT RURAL AND URBURN PLANNING
AND RUZAWA DANDA
and
JIMSON ZULU
and
GOODWELL CHIWOESO

HIGH COURT OF ZIMBABWE
BHUNU J

HARARE, 25 August 2011, 29 August 2011, 31 August 2011, 30 September 2011, 13
October 2011, 24 October 2011 and 18 January 2012

Urgent Chamber Application

Mr *Kamusasa*, for the applicants
Mr *Kabasa*, for the 1st and 2nd respondents

BHUNU J: Most issues relevant for the determination of this case are by and large common cause. The undisputed facts are that the first applicant Nyasha Chikwinya was allocated 84,027 hectares of State land at Pilgrims Rest Farm in the township of Hatcliffe situate in the district of Salisbury by the Government of Zimbabwe under the lawful authority of the third respondent being the Ministry of Local Government Rural and Urban Development. The applicant was given the land as compensation of land she had lost at the behest of the Ministry as duly confirmed by its permanent secretary Mr Shawatu.

She was subsequently issued with a sub-divisional permit in terms of the Regional, Town and Country Planning Act [*Cap 29:12*]

The first respondent Justine Zvandasara is the chairman of the second respondent Harare North Housing Co-operatives a federation of housing co-operatives operating in the area. Despite the first respondent's protestations to the contrary, I am satisfied that this matter is urgent so as to restore peace and tranquility on an ugly volatile situation that can easily turn violent if allowed to fester and go out of control.

The applicant's complaint is that on 6 August 2011 she discovered that the first respondent acting in consort and common purpose with others had invaded the piece of land and allocated stands to members of his co-operatives.

It is common cause that the first respondent and his compatriots invaded and unlawfully occupied the land lawfully allocated to the first applicant. The Ministry being the owner of the land in dispute it has the final say regarding its alienation and disposal. To this end, the permanent secretary in the Ministry Mr Shawatu had this to say at this hearing in front of all the concerned litigants:

"The position is that, going through our files we have not seen anything relating to the allocation of this land to Harare North Housing Co-operative. I actually signed the MOU agreement between the Ministry and Ms Chikwinya. I think that is all.

I don't know who authorised their occupation of the land. We allocate land when someone has applied for it. In our files we have seen no application and its not automatic that when someone applies for land he gets the land.

The land was legally allocated to Ms Chikwinya and my suggestion is that Harare North Housing Co-operative should submit an application which the chairman has already done and we are considering it. The permanent secretary has no final say".

The first respondent was unable to contradict the Ministry's position as articulated by its permanent secretary. That being the case, I accept Mr Kamusasa's submissions to the effect that save for the Ministry the respondents were not given the land by anyone. Being foreigners to the contractual arrangement between the Ministry and Ms Chikwinya

they have no legal right whatsoever to question the allocation of the land by its owner. They therefore lack the *locus standi in judicio* in this respect.

The mere fact that the respondents have since unlawfully erected structures on someone's land without her consent cannot sanitize or legalize their unlawful conduct in allocating to themselves land belonging to another without lawful authority. The respondent clearly erected those structures at their own risk knowing fully well that their conduct was unlawful.

Having found that the respondents have no *locus standi in judicio* I come to the conclusion that it is not open to them to challenge the format of the applicants' draft order.

The courts generally detest issuing a final order through an urgent application, a final order in this case is however, warranted in that the respondents have no arguable case at all as their opposition virtually amounts to an admission of liability. The applicant previously during the course of the hearing consented to the issuing of an order substantially on the same terms and format previously agreed to by the parties.

That being the case I can perceive no prejudice if the same order is repeated. It is accordingly ordered:

1. That the first and second respondents and all those claiming through them, be and are hereby interdicted and or restrained from interfering with the applicant's peaceful occupation and development of a certain piece of land of land measuring 84,027 hectares of Hatcliffe North State land of Hatcliffe Township situate in the District of Salisbury depicted on Plan number HOE27
2. That the first and second respondents be and are hereby interdicted from selling, allocating, developing interfering with developmental work or otherwise disposing of residential situated at Hatcliffe Township depicted on Plan HOE27 measuring 84,027 hectares, without the applicant's consent.
3. That the first and second respondents and all those persons claiming occupation through them be and are hereby ordered to vacate occupation of any stand situated within the 84,027 hectares of land allocated to the applicant and situated at Hatcliffe North State Land of Hatcliffe Township, depicted on Plan No. HOE27 within 48 hours of service of this order upon them failing of which the Deputy Sheriff, Harare being assisted by members of the Zimbabwe Republic Police be and are hereby authorised to evict them; and

4. That the first and second respondents be and are hereby ordered to pay costs of suit.

Kamusasa & Musendo, applicant's legal practitioners
Muza & Nyapadi, 4th respondent's legal practitioners