JOHN HAPAZARI
versus
GRANT PATERSON

HIGH COURT OF ZIMBABWE
BERE J
HARARE, 31 OCT0BER 2012 AND 27 MARCH 2013

J. C. Muzangaza, for the plaintiff
M. Hogure, for the defendant

Civil Trial

BERE J: After hearing and assessing the evidence led in this case, on 27th of March 2013 I pronounced the following order;-

" Consequently I order as follows:-

1. The defendant and all those claiming occupation or ownership through him of subdivision 1 of Roslin farm in Seke District of Mashonaland East Province measuring approximately 390.58 hectares in extent be and are hereby evicted from the said farm on or before 30 May 2013.
2. That the defendant pays costs of suit."

I did indicate at the time that my detailed reasons would follow. Here they are;-

The plaintiff is the current holder of a valid offer letter entitling him to occupy subdivision 1 of Roslin in Seke District of Mashonaland East Province. It is not in dispute that this farm was properly acquired by the Government of Zimbabwe for purposes of resettlement. The respondent, being the former owner of this farm has stubbonly refused to give vacant possession of the farm to the plaintiff.

The basis of the respondent's refusal to pave way for the plaintiff's occupation of the farm is the defendant's averment that he has been advised in some corridors of power that he should stay put on the farm whilst some alleged replanning exercise on the farm

takes place. According to the defendant, the much talked about replanning is meant to accommodate both the plaintiff and the defendant on the farm.

In his testimony in court, the defendant stated that he has remained on the farm in question because the Ministry of Lands, Land Reform and Rural Resettlement officials and the Governor of Mashonaland East Province have asked him to remain on the property and continue with his farming activities.

Mr Paterson went on to state that a Mrs Sakala and other Ministry officials have twice visited the farm for purposes of the aforesaid replanning after the defendant himself had provided them with transport.

It is quite significant that neither the Ministry officials nor the Governor referred to in the defendant's testimony were called by the defendant himself to testify on his behalf despite it being clear that the onus was on him to justify his continued occupation of the land in the light of the plaintiff's documented entitlement to occupy the same land. The averment by the defendant that the acquiring authority or the Minister responsible had blessed his continued occupation of the farm remained unsubstantiated.

In the absence of the evidence from the Ministry officials or the Governor, let alone the Minister concerned one cannot avoid coming to the conclusion that the defendant was merely determined to soil the integrity of the officials in question. The Minister and the Governor's alleged oral and unsubstantiated promises to the defendant cannot be afforded greater weight than the offer of land to the applicant by the offer letter of 13 March 2008.

In fact, I find it to be inconceivable that the Minister through his officials or via the Governor would have the audacity or guts to vary the applicant's offer letter by word of mouth, or to try and counter the effect of such an offer letter by oral or verbal assurances to the defendant.

I am in total agreement with the plaintiff's counsel Mr Muzangaza when he remarked that:-

> "it was incumbent upon the defendant to produce before this Honourable court evidence, documentary or otherwise, of the replanning exercise, and to convince

this Honourable court as well that the legal effect of such (if proven) would be to set aside or suspend the rights accruing to the plaintiff as holder of an offer letter."

The need to protect individuals with offer letters like the plaintiff has been emphasised for times without number. Once an individual has been given an offer letter, that letter cannot be unilaterally withdrawn by the acquiring authority. In the case of *Langton T. Masunda v Minister of State for National Security, Lands, Land Reform and Resettlement and John Landa Nkomo*,[1] where I had to deal with an almost similar argument I remarked as follows:-

> "The Act does not give the Minister of Lands, Agriculture and Rural Resettlement or the Minister of State for National Security, Lands, Land Reform and Resettlement in the President's office (the then acquiring authority) unilateral powers to withdraw "land offers" from beneficiaries of the Land Reform Programme.
>
> If it were so it would make almost every citizen of this country who benefitted from the land Reform Programme vulnerable. It would mean for example, that such beneficiaries (the two respondents inclusive) would wake up one day to find that they have been evicted from their respective pieces of land in complete violation of the *audi alteram partem* rule."

It is my conviction that in the instant case if the acquiring authority had intended to revisit the offer of the land to the plaintiff as alleged by the defendant, such an exercise could not have been clandestinely done without the knowledge and involvement of the plaintiff. If it is true that there was such an exercise, then it was a non event, it had no legal effect.

In this regard the supreme could not have put it in any better way when CHIDYAUSIKU CJ eloquently stated as follows:-

> " An offer letter issued in terms of the Act is a clear expression by the acquiring authority of the decision as to who should possess or occupy its land and exercise the lights of possession or occupation on it.

[1] HB 75/05 at page 9-10.

> The holders of the offer letters, permits or land resettlement leases have the right of occupation and should be assisted by the courts, the police and other public officials to asset their rights. The individual applicants as former owners or occupiers of the acquired land lost all rights to the acquired land by operation of the law. The lost rights have been acquired by the holders of the letters, permits or land resettlement leases. Given this legal position, it is the holder of offer letters, permits and land settlement leases and not the former owners or occupiers who should be assisted by public officials in the assertion of their rights."[2]

Having said this, it is clear to me that the defendant has been unable to table anything before me that justifies his continued occupation of the land in question and consequently the defendant has no lawful right to continue obstructing the plaintiff, Mr John Hapazari in his determined smooth occupation of the farm.

I am concerned though by the defendant's intransigence in refusing to vacate the farm for no good cause shown. I must confess, this is one case which screamed for costs on a punitive scale. The defendant's only salvation is that no such order has been asked for.

It was for these reasons that I granted the order of 27 March 2013.

Messrs Muzangaza and Tomana, plaintiff's legal practitioner
Messrs Hogore, Dzimirai and Partners, defendant's legal practitioners

[2] Commercial farmers union and 9 others v The Minister of Lands and Rural Resettlement and 6 others. Judgment No. SC31/10 at page 23.