

Martin C Grobblers & Anor v Ivy Rupande & Ors

HH 638-20
HC 5080/20

MARTIN C GROBBLER
and
PROTEA VALLEY (PVT) LTD
versus
IVY RUPANDE
and
THE MINISTER OF LANDS & RURAL RESETTLEMENT N.O.
and
THE SHERIFF N.O.

HIGH COURT OF ZIMBABWE
MAFUSIRE J
HARARE,

Urgent chamber application

Date of *ex tempore* order: 24 September 2020

Date of written judgment: 13 October 2020

Mr *W.F. Mandinde*, for the applicants
Mr *T. Shumba*, for the second respondent
The first respondent in person
No appearance for the third respondent

MAFUSIRE J

[1] The first respondent is a beneficiary of the land reform and re-distribution programme embarked upon by the Government of Zimbabwe from 2000. For a long time now since about 2010, she has been locked up in legal battles with the applicants in respect of a certain piece of land in the district of Goromonzi called Subdivision 4 of Lot 1 of Buena Vista, Goromonzi. She was allocated this property by Government in 2003. The applicants, or one or other of them, were the former owners. They are still on the land, even though it is now Government property. Section 3 of the Gazetted Land (Consequential Provisions) Act, *Cap 20:28*, says, in paraphrase, every former owner of Gazetted land, subject to a few exceptions, ceases to occupy, hold or use that land forty-five (45) days after its Gazetting, or else they commit a criminal offence. As a matter of fact, the applicants carry a conviction from the Magistrate's Court for refusing to vacate the farm after it had been acquired. They admit there is an order for their eviction from the same court dating back to 2012. There are several

other judgments of this court over the same parties, over the same property and over the same or kindred issues. The applicants claim equal rights, or some colour of rights, over the disputed property. They assert they were allocated the same property by Government. They claim they have appeals pending at the Supreme Court against all such of the judgments as have been given against them.

[2] In these proceedings, the applicants have approached the court on an urgent basis for temporary relief. They seek the restoration of their possession and occupation of the disputed property. Part of the factual background is this. The third respondent, the Sheriff, armed with a writ of ejectment duly issued by the Registrar of this court, evicted the applicants from the property on 2 September 2020. That writ was issued on the strength of an order of this court dated 8 November 2018. The order was granted in default of appearance by the applicants. Soon after that default judgment the applicants applied for rescission. Their application was dismissed on 27 November 2019. On 4 December 2019 they appealed, or purported to appeal. Since then it has been a charade. The applicants, or more precisely, the applicants' lawyers, have just not been able to get their act together. The "appeal" has still not been determined by the Supreme Court. The applicants have been shunting back and forth between this court and the Supreme Court. The "appeal" would either be withdrawn or struck off the roll for one reason or other. It was the same state of affairs when the applicants were evicted on 2 September 2020. They were still seeking to have their "appeal" reinstated.

[3] A little detail will illustrate why I call it a charade. It goes back to the trial stage:

- 14 November 2017: the first respondent issues a summons for the eviction of the applicants from the property. The applicants contest the claim. They raise certain technical objections by way of exceptions. The exceptions are not set down for determination ahead of the trial. So, they are to be heard at the trial. The trial is set down for 8 October 2019. Judgment on the preliminary points is reserved.
- 17 October 2018: the applicants' preliminary objections are dismissed. The trial proper is scheduled to begin on 8 November 2018. The parties are duly advised. But come the date of trial, the applicants are in default. Only their lawyer is present. The default judgment aforesaid is entered against them. They apply for rescission.
- 27 November 2019: the applicants' application for rescission of judgment is dismissed.
- 4 December 2019: the applicants purport to appeal to the Supreme Court, challenging the dismissal of their application for rescission.

- 9 January 2020: the putative appeal lapses by reason of the applicants' failure to pay the costs of preparation of the record of appeal.
- 20 January 2020: the applicants seek reinstatement of the appeal. They apply to the Supreme Court. But the application has procedural flaws. Counsel advises that it be withdrawn.
- 20 February 2020: the applicants' application (for reinstatement) is removed from the appeals roll at the Supreme Court.
- 19 March 2020: the applicants file another application for reinstatement of the appeal. It still suffers from some procedural improprieties.
- 22 July 2020: the application for reinstatement is also withdrawn.
- 12 August 2020: the applicants seek yet another reinstatement of appeal. This one is still pending determination by the Supreme Court. It was pending at the time of the eviction. It is still pending at the time of this hearing.

[4] I dismissed the present application soon after argument for lack of merit. The applicants had been lawfully evicted through a lawful process issued by this court and at a time when there was no appeal pending against the eviction judgment. They have no colour of right for the remedy they seek. It is an incompetent remedy. It is couched as an order to stay execution. A stay of execution is a species of an interdict. The remedy is incompetent because the eviction has already taken place. An act that has already happened cannot be interdicted. An eviction that has already been carried out cannot be stayed. Nor can the remedy being sought be called spoliation, as Mr *Mandinde*, for the applicants seems to argue. With spoliation, one has to show that they were in peaceful and undisturbed possession of the thing and that the deprivation of that possession was illicit or illegal. But in this case, the deprivation of possession, carried out by the Sheriff, at the instance of the first respondent, in lawful execution of a lawful order of this court, was not illicit or illegal.

[5] The first respondent has been eagerly waiting to get onto the property to enjoy the benefits of the land reform programme since 2003. As shown above, the eviction judgment was granted on 8 November 2018. But she could not execute immediately. The applicants first applied for rescission. She had to wait. When rescission failed the applicants then appealed. The appeal automatically suspended the execution of the eviction judgment. The first respondent had no choice but to wait again. Eventually she applied to this court for leave

to execute the eviction judgment pending the appeal. That application was dismissed on 20 December 2018. She now had to wait until the applicants' appeal had been determined. Meanwhile, as shown above, the applicants have fumbling with the appeal procedure. They have botched the process. When the appeal was removed from the roll in February 2020, the first respondent issued the writ of ejection in March 2020. But the Sheriff did not immediately execute. He has filed a report. He says he did not immediately execute because he realised that the eviction judgment had been appealed against. It was only in September 2020 that he did act, after he had been advised of the lapsing of the appeal in August 2020.

[6] Justice knows no colour or race or gender. It is not one-sided. The applicants have had their time. They have been given more than sufficient time to assert their rights. Whether through incompetence, negligence, lack of diligence, impunity, inadvertence, or whatever, they have held justice to ransom. They have abused the first respondent. She has an offer letter for the property. That is a legal instrument entitling her to the possession of the property. They have none. They rely on some schedule that they say lists them as amongst the beneficiaries of the property in question. But that is not the kind of document recognised by law for entitlement to possession of a land acquired and redistributed by Government in terms of the Gazetted Land (Consequential Provisions) Act. The three instruments recognised under this Act are an offer letter, a permit and a land resettlement lease. So, the applicants' prospects of success should they finally land in the Supreme Court, are tenuous.

[7] Therefore, given that there is no appeal pending at the Supreme Court; that the applicants were properly evicted; that the dispute between the parties, and the several facets to it, have been determined on several occasions by both this court and the Magistrate Court, always with the same outcome, save the one judgment against the first respondent in respect of leave to execute, I have considered that it is time this matter was laid to rest. I have also considered that the applicants are now abusing the court process. That explains my order of costs on the higher scale.

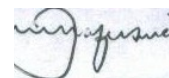
[8] So, the order that I gave at the end of argument was:

“The application be and is hereby dismissed with costs on a legal practitioner and client scale.”

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A handwritten signature in blue ink, appearing to read 'Mugiyana', is written over a horizontal line.

Mugiya & Muvhami Law Chambers, applicant's legal practitioners
Attorney-General's Office, second respondent's legal practitioners