

CHIMAMGA LEWIS CHIKUMBINDI
versus
BRIGHTON CHIVAURA
and
EPWORTH LOCAL BOARD

HIGH COURT OF ZIMBABWE
MANZUNZU J
HARARE, 2 July & 6 October 2021

Court Application

Applicant in person
1st respondent in person
D Muzawazi, for the 2nd respondent

MANZUNZU J: This is a court application in which after hearing oral arguments by the parties I gave *extempore* reasons for the decision and granted the following order:

“IT IS ORDERED THAT:

1. The 1st respondent and all those claiming occupation through him be and are hereby ejected from stand 13219 Zvidozvevanhu, Ward 7, Epworth.
2. The applicant be and is hereby declared the sole and exclusive owner of stand 13219 Zvidozvevanhu, Ward 7, Epworth.
3. The Sheriff of the High Court be and is hereby ordered to demolish any and all illegal structures erected by the 1st respondent at stand 13219 Zvidozvevanhu, Ward 7, Epworth.
4. The 1st respondent to pay the costs of suit.”

The registrar of this court has on 23 September 2021 asked for written reasons for the judgment because the respondent has filed an appeal with the Supreme Court. The following are my reasons:

This is an *actio rei vindicatio*. It is the applicant’s case that he was allocated a residential stand being stand 13219 Zvidozvevanhu, Ward 7, Epworth by the second respondent being the local authority in charge of that area. In support of this averment he attached a confirmation letter of ownership from the second respondent dated 17 October 2017. The letter under the authorship of the Administration Officer of Epworth Local Board reads in part;

“This letter serves to confirm that Chimanga L Chikumbindi national registration number 34-95443N-34 is a registered legal owner of stand number 13219 Zvidozvevanhu.”

The applicant alleged that the first respondent has illegally settled himself and his family on his stand and has erected some illegal structures. On that basis he prays for the eviction of the first respondent and all those claiming occupation through him from stand 13219 Zvidozvevanhu, Ward 7, Epworth. This was the applicant’s very simple story.

The secretary of the second respondent deposed to an affidavit and clarified first that the parties erroneously referred to numbers Z0561 and Z4362 as stand numbers. He said these were not stand numbers but rather numbers created then to take stock of illegal settlers commonly referred to as squatters. The local board only started allocation of stands after the enumeration exercise was complete and this was after approval of the layout plan for ward 7 on 19 June 2013. The secretary then confirmed that the applicant was allocated stand number 13219 and the first respondent was allocated stand number 13220. He said he was aware that the first respondent had started constructing an illegal 3 roomed structure on stand 13219 leaving his stand number 13220. The layout plan was attached to the deponent’s affidavit which clearly shows stands 13219 and 13220 as they seat adjacent to each other.

The first respondent in opposing this application claims was not in occupation of the applicant’s stand. He said he occupies the place where he has been since 1993. He referred to the enumeration number which he also confirmed does not exist as a stand number. In another breathe he said he occupied stand 561 as per a letter from the local board which he attached. The first respondent brought in other issues which were not relevant to the application seeking his eviction.

A litigant who brings a *res vindicatio* is required to satisfy the following requirements,

- (1) that he is the owner of the property
- (2) that the property is possessed by the possessor
- (3) he is being deprived of the property without his consent.

Once an owner has proved that he is the owner of the property held by a respondent, the onus shifts onto the possessor to show an entitlement to continue holding onto the property.

In *Chetty v Naidoo* 1974 (3) SA 13, where the court remarked as follows regarding ownership:

“The owner may claim his property wherever found, from who-so ever is holding it. It is inherent in the nature of ownership that possession of the *rei* should normally be with the owner and it follows that no other person may withhold it from the owner unless he is vested with some right enforceable against the owner (e.g. a right of retention or a contractual right). The owner, in instituting a *rei vindicatio*, need, therefore, do no more than allege and prove that he is the owner and that the defendant is holding the *res*, the onus being on the defendant to allege and establish any right to continue to hold against the owner” See also *Stanbic Finance Zimbabwe v Chivhunga* 1999 (1) ZLR 262 (HC). *Hwange Colliery Company v Tendai Savanhu*, HH 395-13.

In *casu*, the applicant has proved on a balance of probabilities that he was allocated stand number 13219 by the responsible authority, the Epworth Local Board. He has further shown that the first respondent is in occupation of the stand against his will. The same position was confirmed by the second respondent. The first respondent has failed to discharge the onus upon him to establish any right to continue occupation of the stand against the owner.

For these reasons I granted the order for the eviction of the first respondent.

Mtombeni, Mukwasha, Muzawazi and Associates, 2nd respondent’s legal practitioners