

MILDRED MAKUMBE
versus
RUGARE MAKENGA

HIGH COURT OF ZIMBABWE
TSANGA & MUSITHU JJ
HARARE, 17 October 2023

Civil Appeal

Appellant in person
RH Mapondera, for the respondent

TSANGA J: This was an appeal against eviction which we dismissed on 14 of March 2023. Written reasons have been sought and these are they. The background was as follows: Summons were issued in the court below by the respondent (as plaintiff) seeking eviction of the appellant (as defendant) from Stand 3709 Gillingham Estate, Dzivarasekwa, also known as Nehanda Housing Cooperative.

The basis for the eviction was that the respondent was allocated rights in 2016 by Sungamberi Housing Cooperative under which the stand in question fell. The respondent had paid the purchase price and membership dues having joined in 2013. Sungamberi Cooperative had bought the land from Nehanda Cooperative in January 2015 and had subsequent to the purchase also attended to roads, water and electricity requirements on the acquired stands.

The appellant, on the other hand, had pleaded in the court below that she had settled on the land in 2000 during the land reform programme and that her occupation was acknowledged by the Registrar of Cooperatives whom she claimed was seized with the matter. She had therefore argued that the matter should be referred to the Registrar of Cooperative in terms of s 115 of the Cooperative Societies Act [*Chapter 24:05*]. She acknowledged, however, that at the time she said she was allocated the stand by one Simba Moyo of Nehanda Cooperative she was not yet a member of that cooperative though she became a member in June 2015. Notably this was after the land had been sold to Sungamberi

Cooperative which was said to have acquired it in January 2015. She disputed the sale between the two cooperatives.

The respondent's replication had been that s 115 applies to disputes involving members of the same cooperative and that in this case the dispute was between a member of a cooperative and a non-member. Moreover, no offer letter had been produced by the appellant. The respondent also denied that there was any matter pending before the Registrar of Cooperatives.

In the court below, the Chairperson of Nehanda Cooperative had given evidence stating that those who sold the respondent the stand were fraudsters. However, the court dismissed this evidence on the basis that the Chairperson of Nehanda had not produced proof that the allocation of stands to Sungamberi was challenged in the High Court as he claimed. The court had also highlighted that the respondent had furnished a stand list on which his name appeared whereas the appellant (defendant) had only produced an offer later. Furthermore, the respondent had furnished proof of payments made towards the stand whereas the appellant did not furnish any such evidence. The court equally ruled that the dispute was not between cooperatives. The appellant appealed on the following grounds:

1. The court *a quo* erred and misdirected itself in not finding that it had no jurisdiction to deal with the matter of eviction before it because there was a dispute of ownership of the stand in dispute between two (2) cooperatives Sungamberi Housing Cooperative which allocated the stand to the respondent and Nehanda Housing Cooperative which allocated the stand to the appellant.
2. The court erred in not finding that in such a scenario the dispute ought to be referred to the Registrar of Cooperatives in terms of s 115 of the Cooperatives Society Act.

Although these were the grounds of appeal, interestingly the appellant was not seeking referral of the matter to the Registrar of Cooperatives. What she sought was that the judgment of the court below granting the eviction, be dismissed with costs.

Analysis

Section 115 provides as follows:

“115 Settlement of disputes

(1) If any dispute concerning the business of a registered society arises—

(a) within the society, whether between the society and any member, past member or representative of a deceased member, or between members of the society or the management or any supervisory committee;

or

(b) between registered societies;

and no settlement is reached within the society or between the societies, as the case may be, the dispute shall be referred to the Registrar for decision.”

Section 115 of the Cooperatives Societies Act relates to disputes between a society and its members or between registered societies. The dispute in this case is between a person (appellant) who was not a member of any society at the time that the stand is said to have been allocated to her, and a person allocated the stand through their cooperative as a registered member. The dispute is not between registered co-operatives as appellant averred as the lower court pointed out that no evidence of any such dispute had been placed before it. Consequently, the appeal court was in agreement that the trial court’s finding could not be faulted in this regard in not finding that this was a matter for referral to the Registrar of Cooperatives. There was no basis for referring the matter to the Registrar of Cooperatives under s 115 of the Cooperatives Act as the dispute does not fall under the ambit of s 115 of the Act.

These were the reasons for dismissing that appeal.

Mapondera and Company, respondent’s legal practitioners