

ANNE BRADIED

v

BWB CHIKURA

and

FARAINESU MUTAMBA

and

THE MINISTER OF LANDS, AGRICULTURE
AND RESETTLEMENT

and

TRIANGLE LIMITED

HIGH COURT OF ZIMBABWE
WAMAMBO J
MASVINGO 16, 21 SEPTEMBER & 7 OCTOBER 2020

Urgent Chamber Application

E. Chibudu, for the applicants
S. Mutumbwa, for the 1st respondent
T. Undenge, for the 3rd respondent
No appearance for the 2nd and 4th respondents

WAMAMBO J: In this urgent chamber application the applicant seeks the following relief: -

"TERMS OF THE FINAL ORDER SOUGHT

1. That you should show cause to this Honourable court why a final order shall not be made in the following terms: -

- a) That the applicant is the rightful holder of rights in plot and the 1st and 2nd respondent do not have authority to be at that piece of land
- b) That the 3rd respondents' bequeathing of the applicant's field be suspended until a disposition has been given by the court in case number HC 208/18 and until the completion of the process of obtaining title by the respondent
- c) That the 1st respondent interdicted from entering into the applicant's farm applying fertilisers and employing people to work on applicant's farm
- d) That the 1st respondent shall pay costs of this application on legal practitioner client scale

INTERIM RELIEF GRANTED

- a) That pending the hearing of the declaratur summons filed by the applicant and 3 others under case number, HC 208/18 and 4th Respondent's completion of the process of acquiring title for the applicants field the 1st respondent shall not enter the applicants field instruct the 2nd respondent or any other person to carry on any trashing, applying fertilisers or watering applicants cane crop.
- b) That the 1st respondent and all those claiming occupation through him vacate the applicant's farm upon service of this order.

SERVICE OF THE PROVISIONAL ORDER

Service of this order shall be effected by the Deputy Sheriff of the High Court on the applicant's legal practitioners on the respondents'

BACKGROUND

Under HC 202/18 applicant is the third plaintiff wherein the 3rd respondent is the 1st defendant and Webster Cuthbert Muzara and Mutirikwi Sugar Company Ltd are 2nd and 3rd defendants respectively.

The relief sought thereunder as appears on the summons is as follows: -

- “a) An order declaring the compulsory acquisition by the 1st defendants of the lot 16 Nuansetsi Ranch situated in the district of Nuansetsi (sic) measuring forty-four thousand and nine comma zero, two one declared unconstitutional.
- b) Cancellation of an offer letter issued by the 1st defendant in favour of the 2nd defendant on the 10th of October 2017

- c) An order for the eviction of the 2nd defendant from subdivision 2 of Lot 12 of Lot 15 of NRA in Mwenezi district of Masvingo Province
- d) Costs of suit at attorney and client scale"

The relief sought under HC 202/18 is quoted in full as it is directly relevant to the instant case because HC 202/18 is expressly cited in the draft order.

The applicant lays claim to the farm at the centre of the dispute. Notably the farm name extent location are not mentioned in either the founding affidavit or the draft order. She avers that her husband who is now late was an employee of the 4th respondent and when he left employment he and 17 others were offered to buy land which 4th respondent had acquired from Mutirikwi Sugar Company. According to applicant she and her husband farmed from 1989 to 2017 when one B. Vurayayi a District Lands Officer apparently bent on malice sought to acquire the said farms on racial grounds.

Mr Vurayayi's efforts apparently reaped results as 1st respondent was offered land by 3rd respondent. Applicant engaged 4th respondent for title of the farm she acquired through her late husband.

1st respondent's cronies set camp on her farmhouse veranda on 12 September 2020. She is anxious that 1st respondent and his employees will take over her cane crop. She is about to finish harvesting her cane crop and is afraid 2nd respondent who has received fertilizer will apply it onto her cane crop.

Notably applicant's founding affidavit is rather vague. The farm at the centre of the dispute is not expressly mentioned. The chain of events leading to this application is not chronologically narrated. There seems to be an emphasis on what will happen to the sugar cane yet the draft order lays emphasis elsewhere.

1st and 3rd respondents filed notices of opposition while 2nd and 4th respondents did not.

The 1st respondent raised 3 points *in limine* as follows: -

Urgency, *locus standi* and competency of draft order

Urgency

1st respondent is of the view that applicant knew the land at the centre of the dispute was compulsorily acquired in 2017 by 3rd respondent yet she did nothing about it. The need to act

arose in 2017, the argument continued. Applicant thus knew from 2017 that the land's title was in danger of being transferred to someone else.

Applicant counters that the need to act only arose on 6 September 2020. She avers that she did not fail to act for she filed an application for a declaratur under HC 202/18. I note here that the said application was filed on 15 May 2018. She further avers that for 3 years 1st respondent did not do anything in furtherance of the authority granted to him to farm the land. She says 1st respondent's employees set up camp upon her home on 12 September 2020 and on 15 September 2020 she filed this application.

3rd respondent's notice of opposition contains 1st respondent's offer letter which is dated 12 April 2019.

Prior to the offer letter however is the Government Gazette of 29 September 2017 which reflects that Lot 12 of Lot 15, Lot 9 of Lot 15 and Lot 12 of Lot 16 all registered in the name of Mutirikwi Sugar Company Limited were compulsorily acquired by the Government.

Among the supporting documents are letters by the District Lands Officer dated 19 February 2020 and a document titled "acknowledgement of receipt". This document was received by one Joram Muvazhi of Lot 12 of Lot 16 of NR 1" and its basically an undertaking to vacate the said farm. Joram Muvazhi is reflected on the said document as the supervisor of the former owner who refused to sign the acknowledgement note.

The question is when did the need to act arise? Sight should not be lost of the relief sought by the applicant in this case.

Urgency has been defined in a number of cases.

In *Solta Group (Private Limited) and Solta Trading (Private) Limited versus BP Zimbabwe (Private) Limited and The Sheriff* HH 802-15 ZHOU J at page 2 said: -

"A matter is urgent if it cannot wait to be resolved through a court application. The case of Dilwin Investments (Pvt) Ltd t/a Formscaff v Jopa Engineering (Pvt) Ltd HH 116-98 at page 1 emphasises the point as follows: -

"A party who brings proceedings urgently gains a considerable advantage over persons whose disputes are being dealt with in the normal cause of events. This preferential treatment is only extended where good cause can be shown for treating one litigant differently from most litigants. For instance if it is not afforded, the eventual relief will be hollow because of the delay in obtaining it."

The Learned Judge also provided to cite the off quoted *Kuvarega v Registrar General and Another* 1998 (1) ZLR 188 (H) at 193 F - G where *CHATIKOBO J* said

"What constitutes urgency is not only the imminent arrival of the day of reckoning, a matter is urgent if at the time the need to act arises, the matter cannot wait. Urgency which stems from a deliberate or careless abstention from action until the dead line draws near is not the type of urgency contemplated by the rules.

In this case the applicant was aware that the land she occupied was compulsorily acquired by the Government in 2017. The only step she avers she took is the filing of a summons in HC 202/18 on 15 May 2018. The plaintiff's declaration in that case is disposed to by Chinyama and Partners. None of the Plaintiff's in that case filed any document in support thereof. Although the Plaintiff's declaration refers to 3 plaintiffs throughout the document reference is made to "the plaintiff". It should also be noted that HC 202/18 has as its major defendant one Webster Cuthbert Mazara (the second defendant).

There was an attempt at linking HC 202/18 to the instant case by applicant's counsel in oral argument. I am not convinced the link was proven for the reasons aforementioned.

The applicant thus failed to act since the gazetting of the land in question. She now acts because the 1st respondent has now chosen to act on the offer letter he was granted. She clearly did not act when the need to act arose. Her farm supervisor was served with a notice to vacate which she also did not pay heed to.

I find in the circumstances that urgency has not been proven. With that finding I find it unnecessary to consider the remaining points *in limine*.

To that end I make the following order: -

The matter is removed from the roll of urgent matters.

Kwirira and Magwaliba, appellant's legal practitioners
Mutumbwa Mugabe & Partners, 1st respondent's legal practitioners
Civil Division of the Attorney General's office, 3rd respondent's legal practitioners