

EVE KURIDA
vs
WINTERTON CHIROVE

HIGH COURT OF ZIMBABWE
MAWADZE J.
MASVINGO, 14 May & 27 June, 2024

URGENT CHAMBER APPLICATION

ZT Mtsamai, for the Applicant
Respondent in Person

MAWADZE DJP: On 14 May 2024 after a brief hearing of the matter I granted the following order,

“It is ordered that,

- 1. Applicant do and hereby concedes to the point in limine.*
- 2. The urgent application be and is hereby dismissed.*
- 3. Applicant is to pay the respondent’s wasted costs.”*

I was therefore pleasantly surprised to be advised that counsel for the applicant had uploaded a letter on 8 June 2024 to the Registrar advising that they had not only appealed against “*My whole judgment*” and that I furnish them with the reasons for “*the judgment*”. All this is being requested after counsel for the applicant did concede that the point in limine taken by the respondent is meritorious and that the urgent chamber application cannot succeed.

All I can do is to provide the basis upon which I found the concession by applicant’s counsel to be in order and thus ordered applicant to pay the wasted costs.

In this Urgent Chamber Application the applicant sought the following order,

- “1. The Respondent and all persons claiming occupation, rights, title and interests through him shall remove or cause the removal of themselves and all such persons occupying the portion of Plot 13 of Sale Camp Farm purportedly identified as Stand 13 B of Sale Camp Farm.*
- 2. Failing such removal the Sheriff of High Court be and is hereby authorised and directed to evict the Respondent and all persons claiming occupation, right; title and interests through him.*
- 3. The Respondent and all persons claiming occupation right, title and interests through him are barred from accessing that portion of Plot 13 Sale Camp Farm purportedly identified as Stand 13 B Sale Camp Farm.*
- 4. Respondent shall pay the costs”.*

The relief being sought by the Applicant is also difficult to follow. This is so because the Applicant purportedly seeks a spoliation order, but goes on to claim other issues instead of simply to be restored in peaceful and undisturbed possession of the contested piece of land.

Be that as it may, a reading of the papers filed of record reveal the following;

The applicant on 30 January 2004 as per Annexure ‘A’ a permit was allocated a piece of land identified Stand 13 Sale Camp in Masvingo District, Masvingo. Annexure A has applicant’s particulars, the permit number, the name of the piece of land and was issued by the then District Administrator and the Chief Executive officer. Unfortunately the hectarage of the allocated piece of that land described as Stand 13 Sale Camp Farm is not stated in that permit Annexure ‘A’. On the other hand the respondent produced an A1 Land offer in the name of one Michael M (Midzi) whom he claims to be his nephew and was at the material time not in Zimbabwe. This land offer letter is dated 12 August 2020 and relates to a piece of land described as Plot 13 B Sale Camp measuring 5 hectares in Masvingo District, Masvingo. It was issued by an Agriculture land officer one C.T.Mumera. That offer letter directs the beneficiary to take occupation within 30 days of acceptance of the offer and contains other conditions.

The applicant in her founding affidavit concedes that when she was advised on 7 May 2024 that there were persons interfering with her workers who were clearing some piece of land she purports to be allocated to her, she established that one of those persons was Michael Midzi's uncle, the Respondent. The applicant further states that on 8 May 2024 she met the respondent at the offices of the Ministry of Lands in Masvingo to resolve the dispute. She was made aware of the existence of the Land offer letter relating to Stand Number 13 B Sale Camp Farm, Masvingo. The applicant concedes that the officials from the Ministry of Lands confirmed this position and further told her that Plot 13 Sale Camp Farm has been divided into two portions being 13A (to which applicant has undisputed claim) and 13B which applicant also lays claim to together with Michael Midzi.

The applicant further concedes in her founding affidavit that her complaint is that the subdivision done by the Ministry of Lands officials is unlawful in that she was supposed to be consulted. In fact the applicant alleges that she is challenging it.

The mind boggles therefore how the applicant alleges that the beneficiary of stand 13 B Sale Camp farm is acting unlawfully and resorting to self-help. It stands reason that the beneficiary of Plot 13 B Sale camp farm was also allocated that piece of land lawfully by the allocating authority and is or was enjoined to take occupation as is required. One cannot comprehend how this can be described as despoiling the applicant.

I however I digress.

The respondent *in casu* took a point *in limine* that he was wrongly cited and that there is a fatal misjoinder of the Ministry of Lands which has purportedly issued both the permit to the applicant and the Land offer letter to the respondent and have alluded to a Subdivision of Plot 13 Sale Camp Farm as per the attached map.

It is clear that in the absence of the said Ministry of Lands the lawful authority in land allocation and authors of the two documents, the applicant cannot allege that she was in peaceful and undisturbed possession of the disputed piece of land being Plot 13B of Sale Camp Farm. In the result one cannot even start to interrogate if the applicant has been despoiled. What will be the basis of this court's intervention?

It is within applicant's rights to challenge the said subdivision of Plot 13 Sale Camp Farm on whatever basis she so perceives. What she cannot do as at now is approach this court through the Urgent Chamber Book for a spoliation order.

Applicant's counsel Mr Mtsamai conceded to this fatal non joinder. I am therefore now not sure the basis upon which he now purports to appeal against his own concession, unless the appeal relates to an order for costs only. I simply accepted this concession as I believed it is well made and proceeded to grant the order in issue. Further my view is that the respondent is entitled to costs as applicant, before embarking on this application was aware of the indispensable role of the Ministry of Lands in this purported dispute.

MAWADZE DJP.....

Mangwana and Partners, counsel for the Applicant