

DISTRIBUTABLE (32)

LOVEMORE MAKUNUN'UNU
v
(1) FORRESTER ESTATES PRIVATE LIMITED (2) MINISTER OF
LANDS & RURAL RESETTLEMENT

SUPREME COURT OF ZIMBABWE
MALABA DCJ, GARWE JA & GUVAVA JA
HARARE, JUNE 2, 2014

T Dzvettero, for the appellant

L Uriri, for the first respondent

GARWE JA: In submissions before this Court the first respondent has conceded that the court *a quo* misdirected itself in failing to address the only issue referred to it for determination. That question was whether the appellant was entitled to the occupation of subdivision 2 of Frogmore Estate, Mvurwi, on the basis of the offer letter issued to him by the acquiring authority on 24 November 2006.

At a pre-trial conference held before a judge of the High Court, the parties agreed that spoliation was no longer an issue and that the sole issue for determination was whether or not the appellant was entitled to occupation of the property by virtue of the offer letter issued to him.

During the trial, the appellant's argument was that the property had been compulsorily acquired and a valid offer letter issued, entitling him to occupation of the property.

The first respondent's position on the other hand was that there had been no compulsory acquisition of the property by the State.

The effect of the first respondent's argument was that the document on which the appellant was relying to justify occupation was invalid in view of the fact that there had been no compulsory acquisition.

It is clear that the court *a quo* accepted the claim by the respondent that there had been no proper acquisition of the property in question. It is common cause that the property in question had been compulsorily acquired by the State for settlement for agricultural purposes. The fact that it was a property subject to a bilateral agreement between the government of Zimbabwe and a foreign government did not mean that it could not be compulsorily acquired by the State in terms of the relevant law of compulsory acquisition of agricultural land for public purposes. As a consequence of this misdirection, the court found that the appellant had no right to be on the property and by extension that the appellant had despoiled the first respondent.

The court *a quo* was clearly wrong in coming to the above conclusion, regard being had to the specific agreement during the pre-trial conference that spoliation was no longer an issue for determination by the court.

Mr *Uriri* conceded that the court *a quo* did not address the issue placed before it. In the circumstances he suggested that the matter be remitted to the court *a quo* for determination of that issue.

Mr *Dzvetero*, on the other hand, argued that the court *a quo* was aware of the sole issue before it and made a determination on the basis of the facts argued before it by the parties.

We are inclined to agree with Mr *Dzvetero* in this regard.

Both parties placed facts before the court on the question whether the appellant was entitled to occupation.

It is clear from the record of the proceedings that the court erroneously chose to rely on the submissions by the first respondent. In the circumstances the matter does not warrant a remittal. This Court is therefore at large on the issue in view of the misdirection.

It being common cause that the appellant was the holder of a valid offer letter, it must follow that he was entitled to occupation of the property in question. In short the court *a quo* should have answered the question referred to it in the affirmative.

Accordingly the appeal succeeds with costs.

The judgment of the court *a quo* is set aside and substituted with the following:

“The claim is dismissed with costs.”

MALABA DCJ: I agree

GUVAVA JA: I agree

Antonio & Dzvetero, appellant's legal practitioners

Wintertons, 1st respondent's legal practitioners

Attorney-General's Office, 2nd respondent's legal practitioners