

MILTON JUMA
and
ANGELINE MARIKO
and
MARKINGTON MUPAZI
and
TINASHE MUSHAMAENZA
versus
MAKONI RURAL DISTRICT COUNCIL

HIGH COURT OF ZIMBABWE
MUZENDA J
MUTARE, 5 August 2021 and 20 August 2021

URGENT CHAMBER APPLICATION

Ms T Dhavagadza, for the applicants
L Chigadza, for the respondent

MUZENDA J: This is an urgent application where the five applicants are seeking the following relief:

“TERMS OF FINAL ORDER SOUGHT

That Respondent show cause why a final order should not be made in the following terms:

- a) Respondents be and are hereby prohibited from evicting applicants and demolishing their homes without a valid court order.
- b) Respondents be and are hereby ordered to pay costs of suit.

INTERIM RELIEF GRANTED

Pending determination of this matter applicants are granted the following relief.

- a) Respondents are hereby interdicted from erecting a boundary fence around applicant’s homes and demolishing their homes in Nemaire Village.
- b) Respondents are hereby interdicted from threatening or harassing applicants.”

Facts

The background facts are contained in the affidavit of the applicants. All five applicants are erstwhile Workers of Bingaguru Farm in Makoni District, in Manicaland Province. Bingaguru Farm became a subject of land resettlement directly affecting the applicants, their families and livestock. Sometime in 2011 traditional leaders integrated them and allocated them plots of land for resettlement. Respondent then entered into a partnership agreement with Sports Leaders Institute of Zimbabwe wherein the local authority provided land to the organisation on 5 February 2020 and the Sports Institute took occupation and started to put structures at the site. Among other activities by the Sports Institute was a fireguard which irritated the applicants. Applicants contend that the Sports Institute had since informed all of them that a fence will soon be erected blocking all 5 applicants from accessing the perimeters of their homestead's. The information about the imminent erection of the fence was brought to the attention of the applicants on 25 July 2021. Applicants then decided to file the application for an interdict. The application is opposed by the local authority, the respondent.

In its opposing papers, respondents contend that the matter is not urgent. On the other hand, respondent avers that applicants were supposed to cite the Sports Institute of Zimbabwe as a party as well. Respondent adds that the applicants are not lawfully occupying the land because traditional leaders do not have the power to allocate land. In any case, respondent adds, applicants were aware of the developments going on at the site and yet no one opposed and respondent admits that Sports Institute is indeed creating a fireguard but denies erection of fences and it denies intending to unlawfully remove the applicants from where they are staying. Respondent also contends that applicants' fear of eviction is misplaced because to the respondent building fireguards is no indication of illegal evictions. In respondent's view the applicants have failed to lay a foundation for the relief they are seeking for and the application should be dismissed with costs on a higher scale.

The Law

The requirements of a final interdict are now issues of common cause and the applicable law is now a well clarified route and these are:

- (i) a clear right which must be established on a balance of improbabilities;
- (ii) irreparable harm actually committed or reasonably apprehended.
- (iii) that the balance of convenience favours the granting if an interdict, and,

(iv) that the applicant has no other satisfactory remedy¹

On the issue of urgency there are a plethora of cases that guide courts and there is no need to repeat the basis upon which the courts have to analyse whether the application is urgent².

Application of law to the facts

The cause of action in this case is the creation of the fireguard near or adjacent to a place where the five applicant are residing. Further the respondent admits this fact and I will take it as common cause. The partner of respondent had in addition intimated to the applicants that it intends to erect a barrier blocking access of applicants to the perimeters of the fence. This is the threat which drove applicants to approach the court. The threat of the construction of a boundary fence was given to the applicants on 25 July 2021 and the application was issued by the assistant Registrar on 2 August 2021 eight days later. I am satisfied that the matter is urgent for it deals with the universal right of shelter and the fundamental rule of law. The respondent unreservedly admits to the construction of a fireguard at the place in dispute. Respondent did not deny contemplating establishment of a security fence along the fireguard thereby inhibiting free access of applicant into and out of their yards. Respondent did not get an affidavit from its partner denying this serious allegation such a failure to do so obviously confirms the fear of the applicants.

The respondent impugns non-joinder of the Sports Institute of Zimbabwe by applicants. In my view that is not fatal to the application. Respondent admits that it owns a percentage share in the project and it is the local authority. What the applicants are submitting is to the effect that whatever is intended to be done by respondent that affects the applicants should be done within the confinement of the law. By opposing the application for that cause is tantamount to arguing that the local authority and its partner can do whatever they want without sanction of the law. That is not acceptable at law at all. assuming the applicants are illegal settlers as argued by the respondent, the law must take its course. As a result both preliminary points have no footing in this case and are dismissed.

Looking at all facts in this application, I am satisfied that all the four requirements of a final interdict were satisfactorily met by the applicants. Respondents admit and acknowledge the current settlement of the applicant's at a place adjacent to Sports Institute of

¹ Sanachem (Pvt) Ltd v Farmers Agricare (Pvt) Ltd 1995 (2) SA 78 (A) at 789 and also ZESA Staff Pension Fund v Musjambadzi SC 57/2002.

² See Kuvarega v Registrar General and Anor 1988 (1) ZLR 188 (H)

Zimbabwe, it also acknowledges the existence of a fireguard and further confirms that there is serious developments going on at the site. Respondent further reiterates in its papers that the applicants illegally settled at the earmarked site. If they are illegal settlers one can safely conclude that the activities of the respondent point to the subsequent removal of the applicants. What is however critical is that the respondent should be law abiding and obtain a court order to interfere with applicant's settlement or otherwise. In my view applicants' request is not too much and they ought to succeed.

As a result the following order is granted.

- (a) Respondents be and are hereby prohibited from evicting applicant's and all those claiming occupation through them and from demolishing their respective homes without a valid court order.
- (b) Respondents be and are hereby ordered to pay costs of suit.

Zimbabwe Lawyers for Human Rights, applicants' legal practitioners
Chigadza & Associates, respondent's legal practitioners