

KUNGANDA FARM (PRIVATE) LIMITED
(Under liquidation, represented herein by
Cecil Madondo N.O)
versus
MWAMI MULIZI SIAMSIPA (N.O)
Representing ESTATE LATE FRANCIS SIAMSIPA)

HIGH COURT OF ZIMBABWE
ZHOU J
HARARE, 29 March 2017 & 13 September 2017

Opposed Application

S.M Hashiti, with him *L Kafesi*, for the applicant
P. Kawonde, for the respondent

ZHOU J: The applicant, a company under liquidation which is represented herein by the liquidator, instituted the instant application seeking the eviction of the respondent and all persons claiming occupation through the respondent from Goodwill Extension of Woodlands of Railway Farm 20 and Remainder of Goodwill of Railway Farm 20. The two pieces of land are owned by the applicants. The respondent is the Executor in the Estate of the late Francis Siamsipa. The application is opposed by the respondent.

The facts upon which the application is founded can be summarised as follows:

The now deceased Francis Siamsipa who is now represented in this application by the respondent was a shareholder in the applicant company. The other shareholder is one Owen Maswela. On 22 October 2003 this court placed the applicant under liquidation pursuant to an application instituted by Owen Maswela. Cecil Madondo was appointed liquidator of the applicant pursuant to the liquidation order. It is common ground that the company's only asset is the farm to which the order of ejection relate. The farm is registered under one Deed of Transfer 7367/81 but is made up of two pieces of land. The deceased Francis Siamsipa always lived on the farm carrying on farming activities while the parties were looking for another piece of land.

Following the placement under liquidation of the company, the liquidator proposed two options to the shareholders to resolve the dispute between them. The first option was for the land to be subdivided so that each of the shareholders could get a share from the subdivision. The second option was for the farm to be sold with each of the two shareholders being entitled to their share from the net proceeds of the sale. The shareholders failed to raise money to pay for the subdivision costs which had already been incurred. The liquidator thus decided to sell the whole piece of land as per the second option referred to earlier on. A purchaser has already been found. However, the deceased Francis Siamsipa whose Estate is now represented by the respondent herein refused to vacate the farm, hence the instant application for the ejectment of the respondent and all persons claiming occupation through him.

The authority of the liquidator to recover the assets of the company under liquidation is firmly entrenched in s 276 (2) of the Companies Act [*Chapter 24:03*] which provides as follows:

“the liquidator shall proceed forthwith to recover and reduce into possession all the assets and property of the company, movable and immovable.”

Mr *Kawonde* for the respondent submitted that the above provisions do not apply to a recovery of possession for the purposes of giving effect to a sale of the property by the liquidator. I do not agree. The powers of a liquidator in relation to a company under liquidation have been settled in judicial decisions. In the case of *AMS Marketing Co. (Pty) Ltd v Holzman* 1983 (3) SA 263 (W) at 269-70, LEVESON AJ said:

“... the liquidator enjoys a dual capacity. In one sense he is a primary organ of the company in whom the powers formerly residing in the directors are vested. In the other his position is similar to that of a trustee of an insolvent estate, having the power to recover assets, realise them and distribute the proceeds to the person entitled thereto.”

See also Visser *et al*, *Gibson South African Merchantile & Company Law* 8th ed, p 404 where the learned authors reiterate that:

“It is the essential function of a liquidator immediately to recover and reduce into possession all the assets and property, whether movable or immovable, of the company, to apply them to satisfy the costs of the claims of creditors, and to distribute the balance among those who are entitled to it.”

See also J. T. Pretorius *et al*, *Hahlo’s South African Company Law* through the cases 6th ed p. 587.

There is no legal basis for a shareholder, such as the respondent, to contest the liquidator’s entitlement to recover possession of the property from him where the liquidator is

exercising his powers in terms of the law. The fact that a portion of the land which the liquidator seeks to recover from the respondent has been sold or is being sold is irrelevant and does not clothe the respondent with a right to occupy the land. The applicant is therefore entitled to the relief sought. It is accordingly ordered that:

1. The respondent and all persons claiming occupation through him are hereby evicted from the farm called Goodwill Extension of Woodlands of Railway Farm 20 and the Remainder of Goodwill of Railway Farm 20, measuring 323, 7427 hectares and 533,4286 hectares respectively, held under Deed of Transfer No. 7367/81.
2. If the respondent and all persons claiming occupation through him fail to vacate the said farm within 10 days of this order the Sheriff is hereby directed to take all steps necessary to evict them.
3. The respondent shall pay the costs

Henning Lock C/c Coghlan, Welsh & Guest applicant's legal practitioners
Kawonde Legal Services, respondent's legal practitioners