

STANLEY FARMS (PRIVATE) LIMITED
versus
MAVINGTON CHIDONGO AND 21 OTHERS

HIGH COURT OF ZIMBABWE
MANGOTA J
HARARE, 16 May, 2017 & 7 July, 2017

Opposed matter

L Mazonde, for the applicant
1st – 21st respondents in person
Ms S Chihuri, for the 22nd respondent

MANGOTA J: On 16 December, 2015 the applicant moved the court to:

- (i) evict the 1st – 21st respondents and all those who claimed occupation through them from Dorith More and Stanley [“the farms”];
- (ii) interdict the respondents and those that claimed through them from entering the farms- and
- (iii) order the 22nd respondent to assist the Sheriff in evicting the respondents and those who claimed through them from the farms.

The 1st -21st respondents opposed the application and so did the 22nd respondent. The 21st respondent was the deponent to the opposition of the 1st – 21st respondents. These filed supporting affidavits.

The affidavit of the 22nd respondent was different from those of the other respondents. His averments were to the effect that his organisation did not concern itself with enforcing court orders and judgments. He stated, correctly so, that enforcement of court orders lay with the Sheriff of this court, the latter’s deputy and his assistants.

The record showed that the applicant is the owner of the farms which are the subject of these proceedings. Dorith More is 341.9506 hectares in extent and Stanley is 563.1007 hectares. Both farms are situated in the District of Chegutu formerly Hartley.

The record showed further that only the 20th and the 21st respondents had offer letters which Government issued to them. All the other respondents did not have either a permit or

an offer letter from Government. They were, therefore, illegally occupying the applicant's farms.

The offer letter which Government issued to the 21st respondent on 4 June, 2007 was withdrawn by the same authority. Reference is made in this regard to the letter which the Secretary for Lands and Rural Resettlement addressed to the applicant's legal practitioners on 12 April, 2016. The letter reads, in part, as follows:

"RE : STANLEY FARM (PRIVATE) LIMITED v M CHIDONGO & 21 OTHERS HC 12326/15

.....

This letter serves to confirm that Livingstone Nyamadzawo's offer letter was withdrawn. The piece of land in issue is now private land wholly owned by Stanley Farms (Pvt) Ltd" [emphasis added]

It follows from the foregoing that the occupation by the 21st respondent of the applicant's farm became illegal from 12 April, 2016 to date. He occupied by virtue of the offer letter which was issued to him. The withdrawal of the letter rendered his continued stay at the farm unlawful. His eviction is, therefore, warranted.

It is the view of the court that the other respondents allowed the 21st respondent to depose to the opposing affidavit because, they believed, his case was more deserving than their own cases. He had an offer letter. They did not. Their supporting affidavits, unfortunately for them, stood on nothing as Government withdrew the offer letter it once issued to Mr Nyamadzawo.

The 20th respondent associated himself with the opposing affidavit of the 21st respondent. His opposition, therefore, suffered the same fate as that of the other respondents. His case is, however, somewhat unique. The averments which he made in addition to his association with the opposing affidavit of the 21st respondent are relevant. He stated as follows:

"..... I wish to add, however, that I was offered 46.88 hectares of land on subdivision 1 of Clifton, copy thereof is attached marked Annexure C. thus, it is clear that I am not even occupying the farms which were originally owned by applicant." (emphasis added)

The offer letter which Government issued to the 20th respondent relates to Clifton Farm. It does relate not to the applicant's farms. He, it was alleged and proved, encroached on to the applicant's farms. That encroachment was not justified at law. He illegally settled himself on that portion of the applicant's farms from which he should be lawfully evicted. He will, therefore, do well to keep to what was offered to him.

The applicant is, at law, allowed to vindicate its property from whoever is holding it against its will [see *Baden v Spiwe Posi*, HH 475/15]. *Rei vindicatio* is a common law remedy which is available to an owner of a property for its recovery from the possession of another person. Two requirements must be met. These are that the one claiming must prove ownership of the property and, secondly, that the property is in the possession of the other person [see *African Sun Zimbabwe Pvt Ltd v Sifelani Mlongoni*, HH 332/12].

The applicant *in casu* produced documentary evidence which satisfied me that it is the owner of the farms. It was also able to show that the 1st – 21st respondents were occupying its farms illegally. It moved for their eviction and their prohibition from entering same.

The 1st- 21st respondents' case stood on nothing. They could not justify their presence at the farms.

I accept that the 22nd respondent does not have a duty to enforce court orders. I state, however, that the respondent is not being requested to *enforce* the order of this court. He is being asked to *assist* the Sheriff to execute his lawful duty. He, in fact, acknowledged the magnitude of the Sheriff's work in so far as this case is concerned. He stated, in paragraph 3 of his affidavit, that:

“..... in making the police a party to the proceedings, the applicant fear (sic) that the Sheriff, his deputy and assistants may not be able to enforce the court's order (sic) against the respondents because they do not have the necessary machinery to enforce if they meet resistance.” [emphasis added]

The application was, in my view, not devoid of merit. The applicant proved its case on a balance of probabilities against the respondents. The application is, in the premise, granted as prayed.

Chihambakwe, Mutizwa & Partners, applicant's legal practitioners
Mutebere & Company, 1st – 21st respondents' legal practitioners