SHANE RAYMOND WARTH
versus
THE STATE

HIGH COURT OF ZIMBABWE
CHATUKUTA, CHINAMORA JJ
HARARE, 22 March 2021 & 23 March 2022

Criminal Appeal

Mr *D. Drury*, for 1st appellant
Mr *K. Mufute*, for the respondent

CHATUKUTA J: The appellant was convicted, after contest, by the Magistrate, Chiredzi of contravening s 3 of the Gazetted Land (Consequential Provisions) Act [*Chapter 20:28*]. He was sentenced to pay a fine of RTGS $250.00 or in default of payment, 30 days imprisonment. He was further ordered to vacate the gazetted land within 90 days of the date of sentence. The appellant appealed against both conviction and sentence.

The following facts giving rise to the conviction are common cause. The appellant is in occupation of Subdivision 1 of lot 12 of lot 15 Nuanetsi Ranch A Mwenezi. On 29 September 2017, lot 12 of lot 15 Nuanetsi Ranch A Mwenezi (the farm) was gazetted in terms of the Land Acquisition Act [*Chapter* 20:10]. On 31 December 2017, the appellant was served with a notice in terms of s 3 of the Gazetted Land (Consequential Provisions) Act to vacate the farm within 45 days of the notice. The appellant remained on the farm. The appellant was not in possession of an offer letter, a permit or land settlement lease. A report was made to the police on 22 January 2018 to the effect that the appellant was in contravention of s 3(2)(a) of the Gazetted Land (Consequential Provisions) Act in that he occupied gazetted land without lawful authority.

The appellant's defence in the court *a quo* was that he had been advised by officials at the Ministry of Lands that he could remain on the farm pending investigations by the Land Commission. The Resident Minister of Masvingo, Honourable Hungwe and the Mwenezi member of Parliament, Mr. Omar, had also told him that he could remain on the farm. He had also filed an application in the High Court challenging the gazetting of the

farm. His defence was also that the property was protected under a bilateral protection of property agreement and therefore acquisition of the land was unconstitutional

The court *a quo* held that the assurances that the appellant got from the persons referred to in his defence case did not amount to lawful authority to remain on the farm. It further held that the application filed with the High Court did not entitle him to remain on the farm.

As against conviction, the appellant set out five grounds of appeal which all speak to the question whether or not the appellant had lawful authority to remain on the farm. The grounds of appeal relating to whether the appellant had the intention to defy the law are all premised on the question whether the basis upon which the appellant remained on the farm amounted to lawful authority. The appeal against sentence is that the order that the appellant vacate the farm is premised on a wrong conviction. Once this court upholds the conviction, the appeal against sentence falls away.

Mr *Drury, f*or the appellant conceded that the grounds of appeal all relate to the same question: that the appellant did not have the intention to defy the law because of the assurances he was given by various government officers and politicians. He conceded that as at the time of acquisition of the farm, there was no law that protected the farms protected under bilateral protection of property agreements. He however submitted that he had gathered from the press in 2020 that the government was implementing a new policy to protect farms falling under the bilateral protection of property agreements. He conceded that there was no policy or law that protected such property at the time the property was acquired.

Mr *Mufute*, for the respondent submitted that the issue that was before the court *a quo* was whether the appellant had lawful authority to remain on the farm. He submitted that the term "Lawful Authority" is defined in s 2(1)(a) of the Gazetted Land (Consequential Provisions) Act to mean an offer letter, a permit or a land settlement lease. He further submitted that the appellant did not have such authority. He contended that the court *a quo* therefore did not misdirect itself in convicting the appellant.

The issue for determination in this appeal is very simple. It is whether the cour*t a quo* erred in holding that the appellant did not have lawful authority to remain on the farm.

The law on what is lawful authority has been traversed in a plethora of authorities and is now trite. In *Taylor-Freeme* v *Senior Magistrate, Chinhoyi* & Anor 2014 () ZLR 498 (C) at 511C-E the Constitutional Court considered what constitute "lawful authority where it was remarked that:

> ""Lawful authority" means an offer letter, a permit and a land settlement lease. The documents attached to the defence outline are not offer letters, permits or land settlement leases issued by the acquiring authority. They do not constitute "lawful authority" providing a defence to the charge the applicant is facing.
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> The applicant did not have an offer letter, a permit or a land settlement lease. Accordingly, he had no lawful authority to occupy or continue to occupy the farm. The letters from the late Vice President Msika and those of the Ministry of Lands, Land Reform and Resettlement do not constitute "lawful authority". "Lawful authority" in terms of the Act begins and ends with an offer letter, a permit and a land settlement lease. A telephone call or a letter, even from the Minister of Lands, Land Reform and Resettlement is not "lawful authority"."
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> See *CFU & Ors v Minister of Lands and Rural Resettlement & Ors* 2010 (1) ZLR 576 (S) (cited in the *Taylor-Freeme* case).

In the *Taylor-Freeme* case, *supra,* the trial magistrate had been faced with a similar case where the accused person had also relied on assurances by officials in the Ministry of Lands and political figures as a defence for remaining on gazetted land. It being common cause that the farm had been gazetted, that the appellant was served with a notice to vacate the farm, that he was not in possession of an offer letter, permit or land settlement lease but remained in occupation of the farm, the appellant in the present matter would therefore suffer the same fate as the applicant in the Taylor- *Freeman* case. The fact that the Lands Commission was investigating the matter was inconsequential. All that was required for the appellant to remain in occupation was the lawful authority set out in s 2 (1)(a) of the Gazetted Lands (Consequential Provisions) Act.

The trial magistrate cannot therefore be faulted in holding that the appellant did not have lawful authority to remain on the farm and consequently convicting the appellant and issuing an order for him to vacate the farm. The appeal accordingly lacks merit.

In the result, the appeal is dismissed.

Chinamora J agrees…….

Kwirira & Magwaliba, 1st appellant's legal practitioners
Prosecutor-General's Office, respondent's legal practitioners