

FREDERICK GARTH HEATHCOTE
versus
JEAN PAMELA VANT (nee HEATHCOTE)
and
SHEPHERD MUNDENGUMA
and
EXECUTOR OF THE ESTATE LATE LEON GEOFFERY HEATHCOTE
(being represented by DAVID WYNN ROSSER in his capacity as Executor Dative)
and
TREVOR SHAW

HIGH COURT OF ZIMBABWE
WAMAMBO J
MASVINGO, 24, 27 MARCH, 16 JUNE, 2020

Urgent Chamber Application

J. Mpoperi for the applicant
W. T Davira with I. Mupfiga for the 1st respondent
No appearance for the 2nd and 3rd respondents

WAMAMBO J: This matter came by way of a Chamber Application. I dismissed the application. The applicants have written a letter requesting for full reasons. These are they.

The application is for stay of proceedings for summary judgements pending determination of an application for joinder.

The background of the matter is as follows:

Under Case number HC 379/19 the first respondent in this case is the plaintiff. The second and third respondents in this case are the first and second defendants. In the circumstances HC 379/19 is the main matter. The application thereunder according to the Plaintiff's declaration is

based on the facts that follow hereinafter. The Plaintiff is the lawful occupier of subdivision 1 of Lot 20 of the Umsungwe Block in Gweru District of Midlands Province (*hereinafter called the property*) by virtue of an offer letter and a Court order under case no HC 430/18. The offer letter which is dated 26 April 2010 reflects that S. Mundenguma was offered the property. The property is 81, 34 hectares in extent.

The Court order HC 430/18 which is dated 19 September 2019 reflects that a declaratory order was granted declaring the offer letter above as valid and further declaring plaintiff as the sole legal occupant of the said property.

The Plaintiff under HC 379/19 avers that defendants continue to be in illegal occupation of the property. The relief sought under HC 379/19 is for summary judgement and for defendants to be evicted from the property.

This application is for stay of the proceedings under HC 379/19 pending the hearing of an application for joinder.

Applicant's counsel *Mr Mpoperi* sturdily argued that he has satisfied the requirements for the relief sought.

His argument unfolds as follows:

1st and 2nd applicants are beneficiaries to the estate of their late father Leon Geoffrey Heathcote, thus anything to do with the estate is of concern to the two applicants. The applicants fear that there will be irreparable harm if they are not joined to the main matter.

In the interests of justice they seek an opportunity to apply for joinder so that the matter can be resolved once and for all. Granting the interim order will not prejudice the first respondents *Mr Mpoperi* further argued that S.I. 62 of 2020 entitles legally recognised heirs of citizens of a BIPPA country to retrieve title of the land. Applicants' father so their argument continues was a South African and thus a citizen of a BIPPA country.

Further that the Acquiring Authority was directed that land of citizens protected by BIPPA agreements and conducting viable operations should not be redistributed.

It was also argued that the 1st applicant is carrying out a thriving dairy and horticulture enterprise which generates foreign currency for the country.

Correspondence from the Provincial Crop and Livestock production officer supports 1st applicant's stance that he is now at an advanced stage to be given back title to the land in question.

Mr Davira for the first respondent also had his own submissions to make. He avers that the wording of the draft order is partly that the matter set for hearing on 26 March be stayed, however this has been overtaken by events. He further argued that to say applicants have a *prima facie* right is not correct in the circumstances as no evidence has been placed before the Court to suggest this. He averred that the subject of the dispute is the property. The question is not whether applicants are beneficiaries to the estate or not. The question is even if they are beneficiaries is that property part of the estate in terms of the first and final distribution account. He attacked a letter by Honey and Blackenberg Legal Practitioners as not very useful. The will and assets referred to in the letter are not attached or enumerated. Effectively *Mr Davira* was of the view that a proper case for the relief sought was not proven.

The immediate difficulty in this case was a matter of timing. This application was lodged at the eleventh hour. One immediately wonders why this was so considering that the summons under HC 379/19 was filed on 18 October 2019 and that on 15 November 2019 the two defendants as aforementioned filed a notice of appearance to defend. Why did the defendants not lodge an application for stay in the intervening months? The application was only lodged on 24 March 2020 when the hearing of the main matter was scheduled for 26 March 2020. This matter was set down for hearing on 27 March 2020.

The issue of the timing of this application is emphasised because of its importance in the determination of this matter. Counsel for applicants filed their application late in the day despite the fact that about four months elapsed between the issuance of the summons and the hearing date of the main matter.

By the time this application was heard the horse had bolted from the stable. ZISENGWE J who was seized with the main matter had already postponed the matter. This was after applicant in that case (HC 379/19) had challenged the applicant in this matter's *locus standi* to participate in those proceedings. The proceedings in the main matter were clearly underway. To intervene at this stage, would be intervention in proceedings which were ongoing. The postponement was granted for the applicant in this matter to seek legal representation.

My power to stay a matter at such a stage had been overtaken by events. Another Judge was not only seized with the matter but had proceeded in a manner to determine the matter on its merits.

To that end I find the application unmeritorious and order as follows:

The application is dismissed.

Saratoga Makausi Law Chambers, applicants' legal practitioners
Gundu, Dube and Pamacheche, 1st respondent's legal practitioners