LYSIAS CHITURUMANI
and
WELLINGTON MARAIRE
versus
ANDERSON PHIRI

HIGH COURT OF ZIMBABWE
MATHONSI J
HARARE, 15 August and 20 August 2014

Urgent Chamber Application

N. Mugiya, for the applicant
1st Respondent: In person

MATHONSI J: The applicant and the first respondent have been involved in a land dispute involving a farm known as subdivision 31 of Umzururu in the Zvimba District of Mashonaland West ("the farm"). In HC 9894/13, the first respondent filed an application in this court seeking an order for the eviction of the applicant from the farm alleging that it had been allocated to him by the acquiring authority in terms of an offer letter dated 28 September 2010 and that the applicant was in illegal occupation of the farm.

The first respondent's application was supported by the Minister of Lands and Rural Settlement whose representative, the Director of Resettlement, Elias Ziro, submitted an affidavit confirming that indeed he was the holder of a valid offer letter who had the right to seek the eviction of the applicant. The matter was decided in the first respondent's favour, per NDEWERE J, who handed down judgment on 4 June 2014.

The applicant has now made this application seeking the following relief:-

"TERMS OF THE FINAL ORDER SOUGHT

1. The respondents are barred from interfering with the applicant's occupation and peace at subdivision 31 of Umzururu farm, Zvimba District, Mashonaland West until the notice of appeal on SC 272/14 is finalised.

2. The respondents are ordered to pay costs of suit on a client – attorney scale.

INTERIM RELIEF GRANTED

Pending the confirmation of the provisional order;

IT IS ORDERED THAT

1. The respondents are ordered to vacate subdivision 31 of Umzururu farm, Zvimba District Mashonaland West, forthwith or at least not later than 48 hours from the date of this order.

2. The first and second respondents are ordered to remove any one acting in common purpose with them from subdivision 31 of Umzururu farm, Zvimba District, Mashonaland West".

In his founding affidavit the applicant states that on 11 June 2014 he noted an appeal against the whole judgment of this court in the Supreme Court. Notwithstanding that, the first respondent and the second respondent who is the former's partner and builder started harassing him and his family seeking to force him off the land. He does not elaborate what form the harassment took.

He goes on to say that on 4 August 2014, the respondents came to the farm where he lives with his family and started constructing structures on the land claiming they derived the right to do so from the eviction order issued by this court. On 6 August 2014 they took the law into their own hands by evicting the applicant's family from their houses and throwing their property outside. As it is, the family is living in make-shift accommodation which he does not define. On 7 August 2014 the respondents demolished a cattle pen and chicken shelter. It is these self-help measures which have propelled the applicant to bring this application.

Mr *Mugiya* who appeared for the applicant belatedly produced the original and a copy of the applicant's offer letter dated 14 November 2013 in terms of which the Minister of Lands and Rural Settlement offered the applicant the same piece of land. He also produced a copy of the Minister's letter dated 1 November 2013 addressed to the first respondent in which he withdrew the first respondent's offer letter cited as having been issued on 26 April 2011 and an affidavit sworn to by Elias Ziro on 24 July 2014 for the benefit of the Supreme Court.

It would be remembered that Ziro is the same Director of Resettlement who deposed to an affidavit on 28 November 2013 supporting the first respondent's application in this court for the eviction of the applicant. This time he states that the rightful holder of the farm

is the applicant who has been given an offer letter following the cancellation of the first respondent's offer letter. It is not difficult to see where the confusion in all this resides.

The first respondent has submitted an opposing affidavit in which he admits having taken occupation of the land but denies vehemently having evicted the applicant from his homestead. He has challenged everyone to visit the farm and see for themselves that the applicant is still firmly in occupation of his homestead. He says instead it is the applicant who has been harassing his workers at the farm. If that is the case it means that the parties are co-existing against their will.

Regarding the offer letters, the first respondent insists that his own offer letter was granted on 28 September 2010 and that, although the applicant has never produced his own offer letter, only claiming that it was issued on 14 November 2013, whatever offer letter the applicant has could not supersede his own and is fake. A ruling on these conflicting claims has already been made by this court and I cannot revisit that area which in any event is the subject of an appeal.

What I have to decide though is whether the first respondent has resorted to self-help which would entitle the applicant to spoliatory relief in the circumstances of this matter. There is a dispute of fact on that score as the applicant alleges that his property was thrown out of the house while the first respondent insists that he has not been disturbed and remains at his homestead.

Whatever the case, that dispute pales if one has regards to the law on the subject. What is clear from the papers is that both the applicant and the first respondent were issued with offer letters which at some stage where supported by the acquiring authority, the applicant being the last to receive such support. Indeed the acquiring authority is entitled to withdraw an offer letter: *Chaeruka* v *Minister of Lands & Rural Resettlement & Anor* HH 75/14.

For purposes of this application it is common cause that the first respondent only moved onto the farm and started constructing structures following the eviction order of this court issued against the applicant, an eviction order that has now been suspended by the noting of an appeal. He did so, as he says, under the mistaken belief that "the grounds raised on appeal are a nullity". It is not for the first respondent to decide the propriety or otherwise of an appeal.

What is clear is that an appeal suspends the judgment appealed against and the first respondent cannot therefore purport to enforce the judgment so suspended. In any event, it is not for the first respondent to enforce court orders.

What the first respondent has done amounts to self-help and leads to anarchy. He cannot be allowed to do that as by so doing he has committed an act of spoliation entitling the applicant to spoliatory relief, namely the return to the *status quo ante.*

I am satisfied that the applicant has made out a case for the relief that he seeks.

Accordingly, the provisional order is granted in terms of the draft order as amended.

Mugiya & Machraga Law Chambers, applicant legal practitioners