THOMAS MASANGO
versus
PITIEL MUGARI

HIGH COURT OF ZIMBABWE
UCHENA AND MWAYERA JJ
HARARE, 27 May 2014

Civil Appeal

M Mavhiringidze, for the Appellant
Respondent in default

UCHENA J: The appellant and respondent had a dispute over Plot No 5 East Dale Farm in Gutu. The respondent issued summons to evict the applicant who was in occupation of the plot. A magistrate sitting at Gutu Magistrate's Court granted an eviction order against the appellant. The appellant appealed to this court. His main ground of appeal was that the Magistrate's Court did not have jurisdiction to hear the case because the value to the occupier exceeded the Magistrate's monetary jurisdiction of US$10 000-00.

The respondent did not attend court on the date set for the hearing of the appeal. He had been served through edictal citation for that date in terms of a court order. Proof of service through the Herald was tendered. In view of the respondent's default the appellant prayed for the upholding of his appeal. We after hearing the appellant delivered an ex tempo judgment up holding his appeal.

By letter dated 9 September 2014 Legal Aid Directorate requested for the Court's reasons for judgment. The following are the reasons for our judgment.

We considered the issue of jurisdiction and concluded that the Magistrate's Court did not have jurisdiction to hear the case for eviction because the appellant had built structures on the 294 hectares farm. He had crops growing on the farm and 200 herds of cattle. Section 11 (1) (b) (iii) of the Magistrate's Court Act [*Cap* 7:01], which provides for the court's jurisdiction in ejectment/eviction matters provides as follows;

"11 (1) Every court shall have in all civil cases, whether determinable by the general law of Zimbabwe or by customary law, the following jurisdiction—

(b) (iii) in actions of ejectment against the occupier of any house, land or premises situate within the province:

Provided that, where the right of occupation of any such house, land or premises is in dispute between the parties, such right does not exceed such amount as may be prescribed in rules in clear value to the occupier;".

The critical words in s 11 (1) (b) (iii) are "clear value to the occupier." The occupier in this case is the appellant. The value of the land in dispute to him includes the plot of 294 hectares, the structures he built on it, the crops growing on the land and the 200 herds of cattle he is keeping on that land. That clearly exceeds the magistrate's jurisdiction of US$10 000-00. The magistrate had no jurisdiction to hear this case. In the case of *Greenice (Pvt) Ltd* v *Khan* 2000 (2) ZLR 55 (HC) at pp 60 F-G and 61 A-F CHINHENGO J commented on s 11 (b) (iii) as follows;

"In s 11(1) (b) (iii), the legislature has required that a clear right of occupation must be shown to exist. By "clear" is meant "over and above the rent payable".

See Erasmus op cit at p 64 where the learned author lists a number of principles from decided cases on this topic. Some of these principles are germane to a consideration of the present appeal. Among these are:

"(ii) What must be shown is the clear value of the right to the occupier. This is not necessarily the same thing as the value to the defendant (respondent in casu), for they need not be the same persona.

(iii) **the value to the occupier of a right of occupation of immovable property is the economic advantage (my emphasis) which he enjoys from the exercise of that right** ...

(iv) ...

(v) Though the approach in assessing the value of the right of occupation to the occupier is an objective one, **there are matters personal to the occupier which must be taken into account.**

(vi) **The rental of the premises is not necessarily the correct measure for the computation of the value of occupation, for the rent is a measure of value to the landlord, not necessarily to the occupier. A tenant who occupies a flat which is subject to rent control may find that he cannot rent comparable premises elsewhere except at double his present rent; to his**

landlord the value of the right of occupation is the rental which he receives, but to the tenant it is at least double that figure."

These principles reduce the argument to saying that the rentals payable cannot be an indication of the value of the right of occupation to the occupier. With those principles I am in complete agreement. Applying them to the present case the following factors are relevant:

(a) that respondent was an occupier in the strictest sense of the word - she was prima facie not the owner of the farm. She was not a tenant;

(b) the value of $8 000 was a thump-suck figure, which she conceded was only an estimate;

(c) she had lived on the farm for many years and would be homeless if evicted. The value of her occupation, even accepting $8 000 as the correct rental, would exceed that figure;

(d) **she had 20 hectares under crop further increasing the value of her occupation to at least well beyond $10 000 (the limit of jurisdiction of the court at that time).**

The value of the right of occupation to the appellant was, in my view, clearly greater than $10 000 and therefore far exceeded the jurisdictional limit of the court. I am satisfied, therefore, that the court below was wrong in its approach to the assessment of the value of occupation to the appellant. It was wrong in accepting the figure of $8 000 as representing that value. It was therefore, wrong in finding that it had jurisdiction to deal with the matter." (emphasis added).

I agree with CHINHENGO J's interpretation of s 11 (1) (b) (iii) of the Magistrate's Court Act. See also the case of *Pondoro* v *Taylor* HH 18/08.

The appellant's appeal is up held.

The order granted by the court *a quo* is therefore set aside.

The respondent shall pay the appellant's costs.

MWAYERA J agrees_____

Messers Madanhi, Mugadza & Co Attorneys, appellant's legal practitioners.