

CLAUDIUS JONGA KAMANGIRA
versus
JUSTIN GWESHE
and
BRIAN GUTA
and
EDWARD JAHWI
and
MRS MDARA
and
MR ZANGA
and
MRS GUDO
and
THE SHERIFF N.O.

HIGH COURT OF ZIMBABWE
TAGUJ
HARARE 19 & 27 May 2015

Urgent chamber application

M Ndebele, for applicant
J Zuze, for respondents

TAGU J: This case demonstrates how some people are misguided. They think that because they belong to a particular political party they are above the law, and can act as they please, not knowing that they are not only abusing their positions, but also tarnishing the image of a reputable party. To make matters worse, the local police too, felt that they are powerless to act and hide under the mistaken impression that they have no mandate to intervene in a political issue.

The sad events that led to this case being brought to this court are that the applicant is a holder of a lease agreement between himself and Chitungwiza Municipality constituting lawful authority for the occupation of Stand Number 15395, situate in Zengeza Township in the District of Goromonzi measuring 6.5 hectares. The applicant has been in peaceful and undisturbed occupation of afore mentioned property since 1 January 2004 as it more fully appears on paragraph 1 of the lease agreement. He has fully paid for the property.

The respondents are Ward 9 (ZANU PF) youths leadership and supporters. On the 8 May 2015, first and sixth respondents, together with many other unidentified individuals,

besieged the applicant's property, chanting slogans, singing party militant songs and made their resolution to distribute, allocate and demarcate the applicant's property to members of their group.

On 9 May 2015 the same leaders comprising of respondents one to six together with many other people proceeded to enter the applicant's property and without the authority of the applicant and or consent or the authority of Chitungwiza Municipality allocated themselves stands at random. Some of the occupants, according to the applicant's founding affidavit, have since dug foundations on the property and some have delivered sand and quarry stones being building materials. Some have cut down trees and destroyed vegetation on the property which was specifically grown and maintained for recreational purposes for which the property was meant for.

The applicant reacted by reporting the respondents at the local police station at St Mary's Police Station but an Assistant Inspector Makuyahundi and Sergeant George were of no assistance since they advised the applicant that this was a 'political issue' and that it was difficult for them to intervene.

Having failed to get assistance from the Police, the applicant filed this Urgent Chamber Application for spoliation seeking the following relief-

“A. FINAL ORDER GRANTED

- 1.1. That the 1st, 2nd, 3rd, 4th, 5th and 6th respondents together with all who act through them and on their behalf, be ordered to forthwith vacate occupation of Stand Number 15395, Zengeza Township, Goromonzi, District, Chitungwiza to the Applicant and that they be interdicted from being within 100 metre radius of the property.
2. That 1st, 2nd, 3rd, 4th, 5th and 6th respondents be ordered not to enter Stand Number 15395, Zengeza Township, Goromonzi District, Chitungwiza without the consent or authority of the applicant.
3. The order shall be a warrant requiring any member of the Zimbabwe Republic Police to assist the Sheriff or his lawful deputy in enforcing it and to arrest anyone who acts in a manner which interferes with applicant's occupation of Stand Number 15395, Zengeza Township, Goromonzi District, Chitungwiza.
4. That 1st, 2nd, 3rd, 4th, 5th and 6th Respondents jointly and severally and in solidium pay costs on the scale of legal practitioners and client the one paying the other(s) to be absolved.

B. INTERIM ORDER GRANTED

1. That the 1st, 2nd, 3rd, 4th, 5th and 6th respondents with immediately effect vacate the property of the applicant, Stand Number 15395, Zengeza Township, Goromonzi, District, Chitungwiza to the Applicant pending the final determination of this matter.
2. That 1st, 2nd, 3rd, 4th, 5th and 6th respondents jointly and severally and in solidium pay costs on the scale of legal practitioner and client the one paying the other(s) to be absolved.

C. SERVICE OF THE PROVISIONAL ORDER

That the Applicant's Legal Practitioners be and hereby given leave to serve this Provisional Order on the Respondents."

At the hearing of the matter Mr *Ndebele* for the applicant reiterated that the applicant had established that the first and sixth respondents have taken the law into their own hands. He further submitted that this application is to preserve law and order and to discourage persons from putting the law into their own hands. He urged the court to restore the *status quo ante*.

On the other hand Mr *Zuze* who appeared on behalf of all the six respondents took only two issues with the application. The first issue being that all the six respondents are not part of the dispossession. He argued that the six respondents are actually not on the land in question. He was however, not able to demonstrate who is actually on the land save to state that the applicant is suing wrong people. The second issue was on the question of costs which he said should be borne by the applicant because the applicant's counsel was adamant that the respondents are responsible for despoiling the applicant when the respondents are not on the premises in question.

I am in respectful concurrence with the counsel for the applicant that the respondents are making a bare denial when in fact the respondents who are in leadership positions and other supporters invaded the applicant's piece of land. They did so without any authority.

It is needless to state that our law frowns upon illegal self- help to dispossess another. When that happens, the courts have a legal duty to restore the *status quo ante*.

The first to the sixth respondents' conduct is reprehensible and can only bring the due administration of justice into disrepute. That being the case, costs at the higher scale are called for.

For the foregoing reasons the application can only succeed. The application is granted with costs at the scale of legal practitioner and client, the one paying the other(s) to be absolved.

Zvinavakobvu Law Chambers, applicant's legal practitioners
Zuze Law Chambers, respondents' legal practitioners.