JOSEPHAT HATIDIKANI KEVIN SACHIKONYE
versus
KORBS MUTANDIRO
and
VICTOR WATAMA
and
EM WIER (PVT) LTD

HIGH COURT OF ZIMBABWE
PHIRI J
HARARE, 6 July and 19 July 2017

Urgent Chamber Application

T.Z Zhuwarara, for the applicant
I.E. Musimbe, for the respondents

PHIRI J: This was an urgent chamber application in which the applicant sought an interim order that:

a) The first to third respondents restore the applicant into possession a piece of land referred to as "site Chorlotte at Godevary Farm".
b) That first to third respondents, their associates, assigns or appointees be interdicted from tiling the soil and or interrupting the supply of water or access to roads leading to the land stated in paragraph (a) herein and
c) That the first to the third respondents be ordered to return all farming implements removed from the pacing shed, storeroom and house used by the applicant at Godevary Farm, within 24 hours of the granting of the interim order, and, in addition keep the place towards the applicant.

The final order sought by the applicant is that the first to third respondents be interdicted from ……" disposing of any part of Godevary Farm described as Godevary of Arlington Estate situate in the district of Salisbury held under deed of transfer 4777/68.

After considering the applicants founding affidavit, opposing papers filed by the respondent and hearing counsel it is this courts considered view that this urgent application be held to be not urgent.

These are the reasons.

It is common cause, from the facts alluded to by both parties that the piece of land in question belongs to and, is owned by the third respondent.

It is also common cause that there is also pending litigation before this Honourable Court in case number 3308/17 wherein a declaratur on the;

a) Ownership of shares, on the property in dispute is being sought.
b) The alleged subdivision of part of Godevary Farm, now known as Lot 2 of Codevary Farm was unlawful.
c) An interdict prohibiting the defendants from subdividing and disposing of an portion of Codevary Farm without the authority of the plaintiff's herein.
d) An order that;

   The defendants therein, which include first and second respondents in this application, be ordered to pay 51% of the market value of the land allegedly disposed of them – which value is to be determined at the trial – to the plaintiffs in that pending action.

It should be apparent to all parties in the present application that all the issues raised in the present application are *lis pendens* in the aforesaid action in case no. HC 3308/17.

It is also common cause that the summons in that case were issued on the 12th April, 2017.

Accordingly, this court is of the view that the gravamen of the dispute between the parties to this present application, was already in existence even well before the 26th June, 2017. Accordingly, the need to act should have arisen well before June, 2017.

Respondents in their opposing papers and in argument relief on Annexure "C" pages 15 to 16 being minutes of a meeting at Millers Café on the 21st April, 2016. The applicant was said to be present at the meeting. At page 16 at para 4 with respect to Charlote it was stated;

"J.S said it was too late and he was going to do it at Sarah no matter what. JS the requested to the board that he needed 120 days to plant and harvest his onion crop and would leave. The board agreed to the 120 day period.

> The court accepts the submission made on behalf of the respondent that the applicant was bound by the aforesaid resolution to which he was party to. it does not make any sense, to the court, the applicant would con from that after the harvested his crop he continued to be in possession of and continued to plough the piece of land in dispute.
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> Further in paragraph 11,3 (page 10) of the respondent's opposing affidavit respondents conferred that the land in disputed was ploughed "as way back in the months of March and April 2017" in preparation of the planting of tobacco, maize and blue berries."

These averments by respondents, remained unchallenged even at the hearing of the urgent application.

Furthermore averments by respondents that applicant appears to have purported, to plough on land that had already been prepared as aforementioned, appear in the court's opinion, to be supported by Annexures F1 (page 26) on annexure "G" (page 27) and the supporting affidavit of one Stanslous Thaitangani which last as persons on the applicant having instead interfered with the farming operations on the land in dispute.

The balance of convenience appears to be in favour of the respondents and it is highly unlikely that the applicant was in peaceful and undisturbed possession of the land in dispute as alleged.

This court agrees that, in the absence of any answering affidavit dealing with the dispute of facts raised in this matter the facts raised by the respondents remain unchallenged.

In fact, it appears as if, it is the third respondent who has been despoiled of its peaceful possession of the land in dispute.

Similarly this court is also of the view that the requirements of an interdict against respondents have equally not been met.

This court is also of the view that the requirements for urgency such as have been outlined in the case of *Kuvarega* v *Registrar General and Anor* 1998 (1) ZLR 189 has not been met.

Accordingly this court agrees that the urgency in the present case appears to have been self-centered and accordingly this court holds , in the final analysis, that this application is not urgent.

It is therefore ordered that this matter is held not to be urgent and that the applicant should meet the costs of this application.

Messrs Scanlen and Holderness, applicant's legal practitioners
IEG Musimbe and Partners, respondents legal practitioners