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Judgment No S.C. 75\2001
Civil Appeal No 325\2000

NDIITIRA MUZERENGWA CHUMA v (1) BUHERA RURAL DISTRICT COUNCIL (2) MUNGOFA GOTORA

SUPREME COURT OF ZIMBABWE
CHIDYAUSIKU ACJ, McNALLY JA & MUCHECHETERE JA
HARARE JULY 19 & SEPTEMBER 26, 2001

T. Chinyoka, for the appellant

T. Gunje, for the first respondent

G. Mamvura, for the second respondent

CHIDYAUSIKU ACJ: At the conclusion of submissions in this case counsel for the appellant virtually conceded that this appeal had no merit. This is not surprising because the appeal was argued by the appellant on a completely wrong basis. The appeal was argued on the basis that the first respondent's so called determination made at its meeting of 19 August 1998 was made in terms of section 32 of the Regional, Town and Country Planning Act [Chapter 29:12]. The Regional, Town and Country Planning Act has nothing to do with what transpired in this case. The relevant Act, in this case, is the Communal Land Act [Chapter 20:04].

The facts of the matter in this case are these. The appellant is kraal head who appears to be bringing these proceedings on his own behalf and on behalf of the people of his kraal. It would appear that the second respondent is also a kraal head and was being sued as such in the court *a quo*.

The issue between the parties centres around which of the two parties and their followers is entitled to the occupation of a certain piece of land under the jurisdiction of the first respondent. The history of occupation of the land in dispute and its exact location is hotly contested. The factual dispute in that regard could not possibly be resolved without hearing evidence. However, this matter could or can be resolved without the need to resolve the factual dispute.

The parties to this case took their land dispute to the first respondent. It is common cause that the first respondent has jurisdiction to determine land disputes in terms of the Communal Land Act.

The first respondent, on 19 August 1998, convened a Council meeting to determine the land dispute between the appellant and the respondent. Both parties and their supporters were invited to this meeting and presented their cases to the Council meeting of the first respondent. At the conclusion of the meeting it was decided that the Council would adjourn to analyze the facts presented to it. It was also resolved at the same meeting to send a Council delegation to inspect the land in dispute. The delegation was also instructed to hold a meeting there, at which meeting the concerned parties were to be present. Thereafter all the facts would then be presented to the full Council for a final decision. Both the appellant and the

respondents would be invited to this resumed meeting of Council at which meeting this dispute would finally be resolved. The attempt to have an inspection and meeting *in loco* floundered because the appellant refused to co-operate with the Council delegation. On 6 November 1998 the Council met and received a report from the delegation and heard further evidence on the dispute. The minutes of that meeting on p 66 of the record read as follows:-

> "LAND DISPUTE MUZERENGWA Vs GOTORA KRAALS WARD 22:
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> Reports of three meetings held over a Land Dispute between Nyararai and Muzerengwa Kraals of Ward 22 was presented to the Council. The first meeting was held on 19 August 1998 in which both parties presented their evidence which included sketch maps. In the 19 August 1998 meeting it was recommended that the disputed land should be physically inspected. On 4 September 1998 a Council Land Dispute Task Force visited the area to do the physical inspection. However, Muzerengwa Kraal declined to have the land inspected.
>
> The local Chief and Headman also presented their views over the case. Basing on the facts collected from the traditional leaders, the two conflicting parties and sketch maps, the Council proceeded to make a resolution. The Council also pointed out that by declining to have the land inspected, Muzerengwa defied a legal order made by the Council."

According to the same minutes the Council, following the above report, resolved as follows:-

> "RESOLVED
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> (a) That as evidenced by the facts presented by the local leaders, Muzerengwa, and Gotora and drawn sketch maps held by Gotora and Muzerengwa the land under dispute belongs to Nyararai Kraal.
>
> (b) That members of Muzerengwa Kraal who have presently built homes in Gotora's land or are cultivating the land should move out immediately.
>
> (c) That Gotora proceed with obtaining court (sic) order to evict members of Muzerengwa family illegal (sic) settling in his area."

It is very clear from the minutes that the first respondent passed a resolution, after hearing both parties, that the second respondent was the rightful occupier of the disputed land and recommended that the second respondent should seek a court order evicting the appellant. It was open to the respondent to proceed as recommended and for the appellant to oppose the application for eviction if he so wished. There is no legal basis for seeking to set aside the first respondent's resolution in this case. Section 8(1) of the Communal Land Act vests in the first respondent the power to control the occupation and use of the communal land in question. A party aggrieved by a decision of the first respondent made in terms of section 8(1) of the Act can appeal against that decision to the President in terms of section 8(4) of the same Act. The appellant's application in the court *a quo* to have the decision of the first respondent set aside on review on the basis of non-compliance with the provisions of the Regional, Town and Country Planning Act was therefore misconceived. The court *a quo* was quite correct in dismissing it. This appeal cannot succeed. The appeal is accordingly dismissed with costs.

McNALLY JA: I agree

MUCHECHETERE JA: I agree

T. Chinyoka & Co, appellant's legal practitioners

Gonese Takaidza & Co, first respondent's legal practitioners

Scanlen & Holderness, second respondent's legal practitioners