

PATRICK CHEZA  
versus  
MINISTER OF LANDS, AGRICULTURE, FISHERIES  
WATER & RURAL DEVELOPMENT N.O  
and  
MINISTER FOR PROVINCIAL AFFAIRS & DEVOLUTION N.O  
and  
PROVINCIAL LANDS OFFICER N.O  
and  
CHIRUMANZU RURAL DISTRICT COUNCIL

HIGH COURT OF ZIMBABWE  
MAWADZE J  
MASVINGO, 20 & 26 February 2024

### **Urgent Chamber Application**

*L Mudisi and E Mandipa*, for the applicant

*Ms A Zikiti*, for all the respondents

MAWADZE J: The land disputes in our country have remained a vexing and at times a very emotive subject. This case is no exception. Again, this is so despite the clear and unambiguous provisions of section 72 and Chapter 16 (sections 288 to 297) of our Constitution.

In this urgent chamber application, the applicant seeks interim relief in the following terms;

#### **"Interim Relief Granted**

*That pending the determination of this matter, the applicant is granted the following relief;*

- 1. That the 1<sup>st</sup> respondent and his lawful agents be and are hereby interdicted from visiting, entering into, or evicting the applicant and or his lawful agents from stand S/D 43 Mahara Farm, Ward 16 Mvuma.*

Service of this urgent chamber application

*Service of this Provisional Order shall be done by the Sheriff of Zimbabwe, the Legal Practitioner of the Applicant or any person in the employ of applicant's Legal Practitioner. "*

*The terms of the final order are outlined as follows*

**"TERMS OF THE FINAL ORDER SOUGHT**

*That you show cause to this Honourable Court why a final order should not be confirmed in the following terms:*

- 1. The provisional order granted on the ..... day of ..... be and is hereby confirmed as final (sic).*
- 2. The Applicant be and is hereby declared the lawful occupier of Stand Number S/D 43 Mahara Farm, Ward 16 Mvuma.*
- 3. The conduct of the 1<sup>st</sup> Respondent and his agents of evicting and or interfering with Applicant's farm be and is hereby declared illegal.*
- 4. The 1<sup>st</sup> Respondent be and is hereby ordered to issue an Offer Letter to the Applicant in respect of S/D 43 Mahara Farm, Ward 16 Mvuma within 30 days of granting of this order.*
- 5. The 1<sup>st</sup> Respondent be and is hereby ordered to pay costs at an attorney-client scale. "*

Background Facts

The Applicant is currently in occupation of an A2 Farm measuring 125 hectares which farm is identified as S/D 43 Mahara Farm, Ward 16, Mvuma [the farm].

The 1<sup>st</sup> to the 4<sup>th</sup> Respondents are all cited in their official capacities.

The 1<sup>st</sup> Respondent is the Minister of Lands, Agriculture, Fisheries, Water and Rural Development. He deals *inter alia* with issues pertaining to agricultural land. [the Minister]

The 2<sup>nd</sup> Respondent is the Minister of State for Provincial Affairs and Devolution for the Midlands Province. I presume he is cited because the said farm is situated in the Midlands Province among other things.

The 3<sup>rd</sup> respondent is the Provincial Lands officer for the Midlands Province. He or she works under the Minister being the 1<sup>st</sup> Respondent.

The 4<sup>th</sup> Respondent is Chirumanzi Rural District Council. I am not sure why it is cited except probably because the said farm is situated in that district.

At the commencement of the hearing *Ms Zikiti* who had raised points in *limine* as per the opposing affidavit filed on behalf of the 1<sup>st</sup> and 3<sup>rd</sup> Respondents indicated that she was no longer pursuing these preliminary points but was going to consider them as part of her arguments or submissions on the merits.

The averments by the Applicant on legal matters as per the founding affidavit are, with all due respect difficult to follow and appreciate. Legal terms like "*lawful acquisition*", "*my farm*" are used without regard to their legal import.

Reduced to its bare bones the Applicant's story giving rise to this urgent chamber application is as follows;

The Applicant said he applied for land like any other Zimbabwean citizen to the 1<sup>st</sup> Respondent on 14 May 2018. He does not go further to say what the 1<sup>st</sup> Respondent said or the fate of that application. However, the Applicant said he was offered S/D 43 Mahara Farm, Ward 16, Mvuma. [the farm] measuring 125 hectares. Again, it is not clear as to whom he said offered him that farm.

As regards how he was offered the farm the Applicant says he was issued with some document called "*A confirmation of Land Occupation*" authored by the District Lands officer for Mvuma and is attached as *Annexure 'A'*.

It may be useful to quote the contents of *Annexure 'A'*, described by Ms Zikiti as a mere internal memorandum to the Ministry of Land's accounts department. However, to the Applicant *Annexure 'A'* is like the oxygen which breathes life into this urgent chamber application. It reads as follows;

*Ministry of Lands, Agriculture and Rural Resettlement*  
*Date: 14/05/2018*  
*To: Accounts office*  
*RE: Confirmation of Land Occupation*  
*This note serves to confirm that CHEZA PATRICK I.D 77-040590W 77 has been allocated stand/plot/farm number S/D 43 Mahamara measuring 125 hectares in ward 16 Mvuma district and his name is in our Lands Register.*  
*A Kutadzavushe*  
*District Lands officer, Mvuma"*

The Applicant said armed with *Annexure 'A'* quoted above he proceeded to pay statutory obligations through the 4<sup>th</sup> Respondent being "the Farm Levy", "the Land Development Levy" as well as "Farm Rentals". To buttress this Applicant attached four receipts being,

B1 for the land development levy dated 26 January 2022 for \$150

B2 for the land development levy dated 13 October 2022 for \$100 000

B3 for land rentals dated 15 or 19 October 2022 for \$247 049.38

C dated 15 May 2023 for US\$200 again presumably for the land development levy.

As per the founding affidavit the Applicant said he injected working capital amounting to US\$ 200 000 for production purposes on the farm. He said he is engaged in various and diverse activities at the farm which include cattle ranching [comprising of 105 herd and he attached a picture of part of that herd which I should confess looks very good], goats and sheep.

At the farm the Applicant says he employs 50 workers. He said he has also put an infrastructure comprising of staff quarters for workers, sunk two boreholes to provide all water needs of the farm [he attached pictures of a Jojo tank] and erected a solar system and panels.

The Applicant says as a result he is a very productive farmer and has two tractors. Currently he said he has 11 hectares of maize crop almost due for harvesting and 3 hectares under horticulture. According to the Applicant the farm has become the source of his family's livelihood and that of his 50 strong work force.

What jolted the Applicant to rush to this court to bring this application through the Urgent Chamber Book are events he said happened at the farm on 13 February 2024.

The Applicant said agents of the 1<sup>st</sup> Respondent [the Minister] visited the farm. They menacingly started to repeg the farm and subdividing the 125 hectares. Upon inquiry Applicant said the agents told him that they were doing all this in order to allocate the various subdivisions of the 125 hectares to members of the Joint Operation Command [JOC].

The Applicant said this exercise entails evicting him totally from the farm. It is Applicant's contention that the 1<sup>st</sup> Respondent, the Minister, for unexplained reasons wants to "*repossess*" the farm. According to the Applicant his rights are being trampled upon. Due process has been consigned to the dustbin as he has been denied his right to administrative justice, the right to be heard before an adverse decision is made. The Applicant says all his constitutionally guaranteed rights have been tossed out through the window.

The Applicant alleges that he is being treated in a discriminatory manner as his 61 neighbours' farms duly acquired in the same manner as his are not being "*invaded*" and "*subdivided*". The Applicant said he is at loss as he has paid all the statutory obligations.

According to the Applicant the 1<sup>st</sup> Respondent, the Minister's conduct it is arbitrary. It ignores the clear productivity at the farm. It ignores that the farm does not only sustain the Applicant but his 50 workers and the nation as he said he supplies the produce national markets.

This is the basis upon which the Applicant seeks the protection of this court through an interim interdict or relief.

The Applicant's view is that this matter is extremely urgent. He said the 1<sup>st</sup> Respondent, the Minister's agents chillingly told him that they intend to bring new occupants to the farm by 16 February 2024 or soon thereafter. The Applicant is saying he was not even dignified with due notice. If this happens the Applicant's view is that the consequences are dire not only for him but also his 50 workers, the crops and livestock which he has nowhere to put them.

In paragraph 25 of the founding affidavit the applicant alleges that he has a *prima facie* right over the farm as per *Annexure 'A'*, and also because he has been paying the requisite fees and levies for the farm. The Applicant also regurgitates the irreparable harm he says he will suffer if the interim relief is not granted. His view is that he has no other solution except to seek protection of the law through this application as JOC members would soon be new occupiers of the farm.

The Applicant said as the current occupant of the farm the balance of convenience favours him rather than the 1<sup>st</sup> Respondent who is clearly failing to protect the Applicant's alleged constitutional rights and ignoring due process. The Applicants said he had a legitimate expectation to at least be consulted before such a drastic and adverse decision is made by the 1<sup>st</sup> Respondent, the Minister.

The Applicant attached a supporting affidavit from one EDWARD MUFANDAEDZA his farm manager. The manager stated that currently at the farm there are 105 cattle, 136 goats, 56 sheep and chickens in addition to the production of crops for the local markets. The farm manager confirmed the visit and the said activities attributed to the 1<sup>st</sup> respondent, the Minister's agents on 13 February 2024.

This application is opposed especially by the 1<sup>st</sup> and 3<sup>rd</sup> Respondents. An opposing affidavit to that effect was filed by one OBERT JIRI, the Permanent Secretary in the Ministry of Lands under the 1<sup>st</sup> Respondent.

The Respondents argue that the Applicant was never offered the farm in issue as prescribed by the law. They submitted that it is the 1<sup>st</sup> Respondent, the Minister and not the 4<sup>th</sup> Respondent who is vested with authority to allocate A2 farms.

The 1<sup>st</sup> Respondent contends that as per the Ministry's records this farm in question is yet to be allocated. Accordingly, it was within the 1<sup>st</sup> Respondent, the Minister's rights to dispatch his agents to survey the farm and pave way for its allocation to new beneficiaries.

In fact, the 1<sup>st</sup> Respondent said the Applicant is not in lawful occupation of that farm hence the alleged harm or loss he may suffer is self-inflicted.

The 1<sup>st</sup> Respondent, the Minister contends that the Applicant does not even have the *locus standi* to drag all the Respondents to court in these proceedings as he seeks to sanitize his unlawful conduct.

All the 1<sup>st</sup> Respondent said is that the Applicant may get is to be allowed to harvest his crops.

The 1<sup>st</sup> Respondent, the Minister disagrees that the Applicant has no other remedy as he is at liberty to approach the Zimbabwe Land Commission if he has any grievances regarding this issue.

The 1<sup>st</sup> Respondent urged this court to dismiss this application.

### **THE LAW**

The requirements for granting an interdict is now akin to the national anthem. It is a well beaten path and the law is settled.

I shall therefore repeat it simply for completeness and clarity. Needless to say I am restating the law in that regard.

Now what are the requirements?

- a) An applicant has to show that he/she has a *prima facie* right which has been infringed upon or is about to be infringed even if such a *prima facie* right is open to doubt. This is in relation to an interim interdict and not a final interdict where the threshold is much higher.
- b) An applicant has to demonstrate that there is a well grounded or founded apprehension of irreparable harm if the interdict is not granted.
- c) An applicant has to show that the balance of convenience favours the granting of the interdict sought and
- d) An applicant has to show that there is no other available or satisfactory remedy to deal with the transgression complained of (absence of any other remedy).

See *Setlogelo v Setlogelo* 1914 AD 221; *Flame Lily Investment Co (Pvt) Ltd v Zimbabwe Salvage (Pvt) Ltd & Anor* 1980 ZLR 378; *Universal Merchant Bank Zimbabwe Ltd v Zimbabwe Independent & Anor* 2000 (1) ZLR 234 (H).

I should point out that the four requirements [(a) to (d)] outlined above should be construed as conjunctive and not disjunctive. Put differently, an applicant seeking an interdict is enjoined to prove all the four requirements and not one or some them. The point is therefore made that if one of the requirements is not proved the interim interdict cannot be granted.

### **APPLYING THE LAW TO FACTS**

Both the certificate of urgency and founding affidavit are drafted or construed in a manner which clouds the dispute at hand in this matter. This explains why both *Mr Mudisi* and *Mr Mandipa* for the applicant ended up confusing themselves as to what is the cause of action in this matter and or the relief being sought. In the process the proverbial kitchen sink was thrown at the court and a lot of heat generated without the requisite light. The submissions made appeared as if what was being sought is a review of whatever decision may have or may not have been made by the 1<sup>st</sup> respondent, the Minister. In that regard submissions were made to failure to adhere to administrative justice, non-observance of constitutional right to land, the doctrine of legitimate expectation and other alleged transgressions not directly relevant to the relief being sought.

This matter simply relates to an application for an interim interdict whose requirements I have already outlined. It is those requirements which should be ventilated and nothing else for purposes of this application.

I now proceed to do so.

The first hurdle the Applicant has to overcome is whether he has a *prima facie* right which was infringed upon or is about to be infringed even if such right is open to doubt. This should not be construed to mean absence of the right at all. A *prima facie* right should exist.

As already pointed out section 72 of the Constitution deals in broad terms to rights to agricultural land and other ancillary issues. It also incorporates the provisions of the former Constitution especially section 16B (2) (a) (ii) or (iii). Again, as already said Chapter 16 the Constitution [section 288 to section 297] deals specifically with agricultural land in relation to policy guidelines, rights to land, security of tenure, alienation of such land, compensation and

grievance resolution through the Land Commission etc. These are broad provisions for which the Legislature is enjoined to enact specific Acts to deal with some of these issues.

In terms of section 3 of the Gazetted Land [Consequential Provisions] Act [Chapter 20:28] no person may, use or occupy gazetted land without a permit, offer letter or a land settlement lease. Further to that section 72 (6) of the Constitution makes it clear that it is within the power of Parliament to enact an Act which criminalises such conduct.

As was lucidly stated in *Commercial Farmers Union & Ors v The Minister of Lands & Resettlement & Ors* 2010 (1) ZLR 576 (S) the Minister of lands, in *casu* the 1<sup>st</sup> respondent is the lawful authority reposed with the duty to allocate state land, gazetted land or agricultural land for purposes of agriculture. This is done by issuing permits, or offer letter or land settlement leases to the beneficiaries.

The choice of what document to issue lies with the Minister. It logically follows that it is only the holders of such permits, offer letters or land settlement leases who can claim to have legal authority or right to occupy and use State Land allocated to them by the Minister. *See Commercial Farmers Union case supra.*

The law is therefore as clear as daylight. This simply means that anyone occupying Gazetted Land or acquired land without a permit, offer letter or land settlement lease is doing so without lawful authority and can not claim to have any rights over that land *prima facie* or otherwise. At law the consequences for such conduct are self-evident.

The Applicant in *casu* dismally fails to address this simple issue whether one considers the certificate of urgency authored by a legal practitioner who should know better or in his founding affidavit.

A proper and sober assessment of all the evidence put before the court is that the Applicant was not lawfully allocated the said A2 farm. He may have made an application for such a farm but that application on the basis of the documents before me has not been approved by the lawful authority being the 1<sup>st</sup> Respondent, the Minister. Both *Mr Mudisi* and *Mr Mandipa* huffed endlessly on this issue without addressing it or conceding to it.

Whatever ingenuity one may possess *Annexure 'A'* cannot be any stretch of imagination be construed to be an offer letter, a permit or a land settlement lease. *Ex facie* it does not even purport to be such.



The payments the Applicant may have made wisely or unwisely cannot be interpreted to mean the granting of a permit or an offer letter or a land settlement lease by the 1<sup>st</sup> Respondent to him by the Minister. It can not legalise his occupation of the farm in the absence of those stated documents.

I am fortified in making this finding that the Applicant is not in lawful occupation of the farm when I peep into paragraph (4) of the final order the Applicant seeks when he wants this court to grant the order that he be issued with an offer for the said farm by the 1<sup>st</sup> Respondent within 30 days of the granting of such an order. Why would he seek such an order if *Annexure 'A'* which he already possesses is the same as an offer letter, permit or land settlement lease

To make matters worse for the Applicant he repeats this request in a letter tendered by his counsel during the hearing written to the Permanent Secretary of the 1<sup>st</sup> Respondent, the Minister and also copied to the Minister dated 7 December 2023. In that letter for the Applicant is literally on his knees begging the 1<sup>st</sup> Respondent, the Minister to issue him with an offer letter for the said farm. Again, if all was in order as the Applicant now alleges why would he on 7 December 2023 author a letter in which he passionately seeks the 1<sup>st</sup> Respondent, the Minister to regularise his current occupation of the said farm. It simply reinforces the fact that *Annexure 'A'* which he now clutches on to does not cloth him with any lawful rights over that farm.

The Applicant's case fails on the first hurdle. Without a permit, an offer letter or a land settlement lease the Applicant cannot claim to have any *prima facie* right over the that farm. It can not be the intention of the law giver (Parliament) that people are left to decide as it suits them what constitutes a permit, an offer letter or a land settlement lease and as to who issues whatever documents they many possess.

In the absence of a *prima facie* right one can not even begin to interrogate if any irreparable harm has been occasioned to the Applicant let alone to suggest that the balance of convenience favours the Applicant and therefore for him to be granted the interim interdict.

I am not oblivious to the undisputed farming prowess the Applicant may have achieved on the farm. Morally he may have a good argument. His case may cry for mercy. However, the law is clear. He is not is lawful occupation of that farm. It is only the 1<sup>st</sup> Respondent who may entertain his pleas for compassion and mercy. It cannot be this court.

**DISPOSITION**

My finding is that the applicant is in an unlawful occupation of the said farm. As a result, he cannot claim to protect any rights, *prima facie* or otherwise. All the Applicant can do in the circumstances is to persuade the 1<sup>st</sup> Respondent, the Minister, to regularise his current unlawful occupation of the said farm. This court can not perform such a function which is ultra vires its powers, patently incompetent and unlawful.

The interim relief the Applicant seeks cannot be granted.

Accordingly, it is ordered that this application be and is hereby dismissed with costs.

*Mutendi, Mudisi & Shumba*, counsel for the applicant

*Attorney General's Office*, counsel for the 1<sup>st</sup> to 4<sup>th</sup> respondent