DAVID MUZUNGU

and

HLUPEKO NCUBE

and

KARIOT MUROGODO

and

JOSHUA NDUDZO

and

ROBERT MANGWIRO

and

ELIPHAS MBIZVO

and

TAMBUDZAI GWATIPEDZA

and

JAIROS MUKONI

and

ALFRED DUBE

and

CEPHAS MAPHOSA

and

JUSTIN NYAMBI

and

NEWMAN MPOFU

and

KEFASI MASHAYANYIKA

And

NENERO HOVE

and

SIBABI NDONGA

and

ANDERSON MATANANA

and

LENIPHAS BURAYAYI

and

CHASURA CHIRUBVA

and

CECILIA MADHUMBU

versus

THE PROVINCIAL GOVERNOR

(Midlands Province)

and

THE LANDS OFFICER – MIDLANDS

(Mr Mutemeri)

THE DISTRICT ADMINISTRATOR

(Zvishavane District)

and

THE PROVINCIAL ADMINISTRATOR

(Midlands Province)

CHIEF MASUNDA

(Zvishavane District)

HIGH COURT OF ZIMBABWE

MATHONSI J

HARARE, 18 October 2012, 25 October 2012 and 31 October 2012

*N. Mugiya*, for the applicant

*T.O. Dodo*, for the respondents

**Urgent Chamber Application**

MATHONSI J: The applicants approached this court on an urgent chamber basis seeking a provisional order in the following terms:-

“TERMS OF THE FINAL ORDER SOUGHT

1. It is hereby ordered that the respondents be and are hereby barred from interfering with the occupation, possession and use of the applicant’s land use and paece. (sic)
2. The respondents pay costs of suit on a higher scale.

INTERIM RELIEF GRANTED

Pending confirmation of the provisional order, it is ordered that;-

1. The respondents be and are hereby interdicted from displacing, evicting and or harassing the applicants at their land.
2. The land alienation and relocation of the applicants be and is hereby stayed until the matter currently pending at the High Court on Case No. HC 8451/2012 is finalised.
3. The respondents be ordered to remove all their agents, militia, equipment and accessories from the Mabhula Resettlement Scheme forthwith.
4. The sale of land, and the subdivision thereof be stopped forthwith.
5. The displaced applicants be allowed to return to their pieces of land and that the respondents be barred from interfering with the well being of the applicants and their families.”

The applicants were settled on an area adjacent to the town of Zvishavane known as Mabula resettlement area between 1983 and 1985 by the government of Zimbabwe through the then Ministry of Lands, Resettlement and Rural Development which is now the sixth respondent. They were issued with permits to cultivate setting out terms of their settlement including the right of the Minister to revoke the permit at any time and the prohibition of construction of any building or other structure on their respective pieces of land.

The applicants have remained in occupation of that land until now but recently the respondents approached them indicating that they should vacate the land as it has been earmarked for urban development as part of Zvishavane Town Council land, by virtue of the approval of a Master plan for Zvishavane which incorporates their land.

The applicants allege that the first respondent, the governor and the other respondents have started parcelling out their land and selling stands which have been advertised by a land developer, R M Construction, appointed by the governor. Surprisingly the stands are being sold in Gweru and not in Zishavane. They claim that earthmoving machines have been brought to the land as work has already commenced.

Upon realising that they were being displaced, the applicants instituted proceedings in this court under case No. HC 8451/2012 seeking to interdict the respondents from selling or reallocating their land and stopping the development allegedly taking place. The summons was issued on 30 July 2012 and that claim is contested.

Notwithstanding the commencement of that litigation, the applicants allege that on 11 October 2012, the respondents descended on Mabula resettlement area where they convened a meeting to announce to the applicants that they were required to move from their land to some other area which has been identified for their resettlement. That if they fail to do so, they would be forcibly removed and trucks would be provided to move them and their cattle to their new land.

The applicants have made a lot of sensational and indeed liberal accusations of impropriety and corruption against the respondents. However, stripped of all the fury and noise the applicants’ case boils down to simply that they were lawfully settled by the government on the land that they still occupy almost 30 years on and they are now being threatened with eviction. They never received notice of such relocation and they were never notified of the revocation of their permits.

The respondents deny the accusations made against them. Their case is that Mabula resettlement area has been incorporated in the Zvishavane Master plan for expansion of that town onto the area. All the formalities for the acquisition of that state land were complied with including the application to the Minister of Local Government who granted the application. Thereafter a proclamation was published in the Gazette calling upon interested parties to view the approved Master plan which was on display and when no objection was received, the plan was implemented thereby affecting the applicants.

While denying threatening to forcibly remove the applicants from the land, the first respondent admits having called a meeting to discuss the relocation of the applicants. While claiming that the respondents have no intention to move the applicants, he confirms that alternative land has been identified for them to move to.

The first respondent also admits in paragraph 14 of his opposing affidavit that they discussed the issue of compensating the applicants. Although stating that the applicants would be accommodated at their present plots even after urbanisation, he still insists that they discussed compensating them.

In his opposing affidavit, Joseph Munyanyi, the Acting Deputy Director of Resettlement in the Ministry of Lands and Rural Resettlement stated that alternative land was identified for the applicants in Mhondongori and Kinsale some 15 to 20m from their present location. He confirmed that “ a lorry has been made available to take the applicants to the new area and ferry their belongings including their livestock”.

Mr Dodo for the respondents, obviously stung by the patent contradictions in the respondent’s case, tried to suggest that the lorry had been made available in order to ferry the applicants to their new place merely to show them the place and not to move them permanently. I am not persuaded.

In my view, the respondents are resorting to self-help in relocating the applicants to another place when it is clear the applicants are challenging the acquisition of their homes. The respondents may be standing on very firm ground when seeking to commence development of an area which has been acquired for urban development, but they still have to follow the due process of the law. They must seek lawful means of removing the applicants and this does not mean having to wait for the action that has been instituted by the applicants.

Although the applicants may have exaggerated their claims and made liberal accusations they may not prove, I am satisfied that there is a risk of the respondents taking the law into their own hands. I am also of the view that it is unreasonable to expect the applicants to vacate the land that has been their home for almost 30 years on the stroke of a pen. The authorities are entitled to acquire the land and to change land use but whatever they do must be sensitive to those that occupy the land. It is not like they settled themselves, it is the same government that settled them and issued them with permits to till the land.

In addition, the applicants are entitled to contest the decision to change the land use. As it is, there is already litigation that has been instituted to determine their rights. It is only fair to allow that process to run its course. In any event, the process of urbanising Mabula commenced in 1999 and is certainly not an earth-shaking issue as would call for the relocation of settlers at the beginning of the planting season.

I am therefore of the view that a good case has been made for a stay of the eviction of the applicants until due process has taken place.

Accordingly I grant the provisional order in terms of the amended draft.

*Mupindu & Mugiya,* applicant’s legal practitioners

Civil Division of Attorney General’s office, respondents’ legal practitioners