

ARMSTRONG SOKO
and
BEAULER KURARE
versus
ELIZABETH TAVAZIVA
and
NORTON TOWN COUNCIL

HIGH COURT OF ZIMBABWE
MATHONSI J
HARARE, 23 July 2013

Opposed application

B. Machengete, for the applicants
Ms M. Jera, for the 1st respondent
2nd respondent in default

MATHONSI J: The 2 applicants are husband and wife who are seeking an order for the eviction of the first respondent, and all those claiming occupation through her, from stand 17405 Katanga Norton. The applicants state that they purchased a vacant stand from Winnie Patima Kandengwa and Charles Aaron Kandengwa on 4 August 2008 and have referred to a sale agreement filed in HC 12070/11 a matter in which the first applicant sued the sellers, the second respondent and the Deputy Sheriff for transfer of right, title and interest in that stand.

On 11 January 2012, an order was granted in first applicant's favour. That order remains in force and has not been set aside. In pursuance of that order, the stand has since been transferred to the 2 applicants as evidenced by the agreement signed with the second respondent on 5 June 2012 which is attached to the application.

The first respondent has however opposed the application on the basis that she also purchased the same stand on 7 September 2008. She states that the applicants unlawfully constructed a house on the stand which belongs to her but were stopped by an interdict issued by the magistrates court sitting in Norton in September 2011. She also submitted that since this is a case of a double sale, her own agreement which she says came first, must take precedence.

If the first respondent purchased the same stand on 7 September 2008, it is factually incorrect to say that her own agreement came first. This is because the applicants signed their own sale agreement before that date on 4 August 2008.

The judgment of the magistrates court which the first respondent refers to simply states that “an order is therefore granted in terms of the draft order prayed for.” The said order is not attached. I can only rely on what the first respondent says in her opposing affidavit, that what was done by that court was to interdict the applicants from continuing with construction work.

If that is the case, the magistrates court order does not help the first respondent at all. This is because subsequent to that, this court, which is superior to the magistrates court, issued an order for the transfer of the stand to the applicants. The stand having been transferred to the applicants they are entitled to vindicate against the first respondent who is in occupation without their authority. The rest of what Mrs *Jera* has submitted is not borne by the papers placed before me and amounts to evidence led from the bar. I am therefore satisfied that a good case has been made for the relief sought. Accordingly it is ordered, that:

1. The first respondent and all persons claiming occupation through her be and are hereby directed to vacate the property known as stand 17405 Katanga Norton within seven (7) days of service of this order upon them failing which the Sheriff or his lawful Deputy together with members of the Zimbabwe Republic Police, if need be, should eject them from the said property.
2. The first respondent shall bear the costs of the application on an ordinary scale.

Nyamushaya, Kasuso & Rubaya, applicant' legal practitioners