JIMMY CHAMBOKO
versus
PRECIOUS PRINCE LLOYD PAISON

HIGH COURT OF ZIMBABWE
MATHONSI J
HARARE, 2 April 2019 and 10 April 2019

Opposed Application

Ms *T. C. Duma*, for the applicant
L Mauwa, for the respondent

MATHONSI J: The applicant is a beneficiary of the government's land reform programme having been issued with an offer letter written by the Minister of Lands and Rural Settlement on 10 November 2017 in terms of which he was allocated Subdivision 1 of Sublime in the Zvimba District of Mashonaland West Province measuring 51.763 hectares (the farm). In HC 5930/18 he instituted a vindicatory action against the respondent, who occupies the farm by virtue of a caretakership given to him by letter dated 27 May 2005 signed by himself and the Lands Officer for the area, seeking the respondent's eviction together with all those claiming occupation through him from the farm.

When the respondent entered appearance to defend and filed a plea in which he averred that he is also entitled to the farm in question because he also applied for the usage of the farm and put in issue how the applicant obtained the offer letter, the applicant made this application for summary judgment. Riding on his offer letter which I have made reference to the applicant stated that the respondent occupies the farm without his authority and has remained in such occupation despite demand that he vacates. The fact that the respondent has challenged the allocation of the farm to the applicant in court is of no moment at all and is not a basis for resisting eviction in the circumstances.

The application has been opposed by the respondent who states in his opposing affidavit that he is disputing the allocation of the farm to the applicant and has done so in an application he filed in this court against the Minister and others who include the present applicant. The application is HC 8269/18 filed on 11 September 2018 well after the present application for

summary judgment was filed on 30 August 2018 as a sequel to the summons action in HC 5930/18 which was filed on 27 June 2018. According to the respondent, the applicant should await the determination of his own suit, even though it was instituted well after the present proceedings were initiated.

The respondent further stated that he was appointed caretaker of the farm on 27 May 2005 and was entitled to be given notice by the Ministry of Lands to vacate the farm and only in the event of the 3 circumstances set out in the appointment letter. Those circumstances never occurred and he was never given the notice. Following his appointment he constructed a 3 bedroomed house at the farm and should have been allocated the farm and not the applicant. Those are the issues the respondent would like referred to trial as they constitute triable issues.

The letter of caretakership which the respondent relies upon to shield himself from the applicant's vindicatory claim is, as I have said, signed by himself and the Acting Chief Lands Officer for Chinhoyi. It reads:

> "APPOINTMENT OF CARETAKERS
> This is to certify that P Piason 15-109758 Z 15 has been appointed as a caretaker at Sublime Farm on 27 May 2005 for a period of -indefinite. This property is for the Ministry of Lands, Agriculture and Rural Resettlement. The service can be terminated at anytime within a month notice in the event of the following conditions:
> (a) If the property is not properly looked after;
> (b) If the property is needed for any other development for the benefit of the Ministry;
> (d) If the property is needed for any developments for the benefit of the community.
> Note if the caretaker have (sic) placed any developments on this property he/she will not be compensated and you are not allowed to remove the development on the property as you will be causing damage to the property. The surroundings should be developed and maintained in good condition."

I agree with Ms *Duma* for the applicant that the eventualities for the giving of notice set out in the caretaker letter have no application to the present case. In fact that letter only regulated the relationship between the respondent and the Ministry of Lands *viz-a-viz* looking after the farm and taking care of it on behalf of the government of Zimbabwe. It is a document which did not confer any right of ownership over the farm neither did it give rise to any legitimate expectation of the allocation of the farm to the respondent.

Yet the question for determination in this summary judgment application is whether the holder of an offer letter issued by the acquiring authority has a vindicatory right exercisable against a caretaker of a farm in occupation on the strength of a letter of caretakership issued by a Lands Officer. Put in another way, can a caretaker appointed by a Lands Officer resist a vindicatory action by the holder of a valid offer letter on the basis of appointment as such

caretaker? The issue for determination of course has to be resolved having regard to the considerations of a summary judgment application in our law.

What the court has regards to in deciding such an application can be regarded as settled now. Although summary judgment is an extraordinary remedy in the sense that it deprives a litigant who has exhibited an inclination to defend an action the opportunity to do so without regard to the *audi alteram partem* rule, it is a remedy which the courts have always granted to an applicant possessing an unassailable case who should not be delayed by resort to a trial whose outcome is a foregone conclusion. In order to defeat an application for summary judgment the respondent must set out a *bona fide* defence, with sufficient clarity and completeness to enable the court to decide whether the opposing affidavit discloses a *bona fide* defence. The facts set out by the respondent must be such that if proved at the trial they would entitle the respondent to succeed. See *Kingston Ltd* v *LD Inesons (Pvt) Ltd* 2006 (1) ZLR 45 (S) at 458 F-459 A; *Chrisma* v *Stutchbury & Anor* 1973 (1) RLR 277 (SR) at 279; *Hales* v *Doverick Investments (Pvt) Ltd* 1998 (2) ZLR 235 (H) at 238 G-239A.

By the same token, the rights of the holder of an offer letter in this jurisdiction were settled completely in the landmark case of *CFU & Ors* v *Minister of Lands & Ors* 2010 (2) ZLR 576 (S). They are that the holder of an offer letter, just like the holder of a permit and a land settlement lease, has the legal right to occupy and use the land allocated to him or her in terms thereof. In that case the Supreme Court also made the crucial pronouncement that the Minister, as the acquiring authority, has power to redistribute acquired land by way, *inter alia*, of an offer letter, and has an unfettered choice as to the method to be used. On the legal effect of an offer letter the court remarked at 592 F-G:

> "An offer letter issued in terms of the Act is a clear expression by the acquiring authority of the decision as to who should possess or occupy its land and exercise the rights of possession or occupation on it. The holders of the offer letters, permits or land settlement leases have the right of occupation and should be assisted by the courts, the police and other public officials to assert their rights."

What we have in this case is a holder of an offer letter which was issued to him by the acquiring authority in the exercise of his unfettered power to decide who should occupy acquired state land, who is being challenged by the holder of a caretakership letter issued by a Lands Officer. A letter of caretakership does not bestow rights of ownership but only the right to occupy the land while looking after it on behalf of its owner and nothing more. There can be no doubt that such letter of caretakership cannot override an offer letter issued by the acquiring

authority because it is issued by someone else other than the acquiring authority and does not pass real rights in the land in question.

In my view there is no legal basis for refusing the summary judgment application in a matter such as the present. I do not agree with Mr *Mauwa* for the respondent that the existence of a caretakership arrangement precluded the Minister from allocating the farm to the applicant and that the respondent had a right of first refusal in the event of the Minister electing to allocate the farm to a landless person. If the respondent failed to persuade the Minister to allocate the farm to him, that is really his problem. His state of bother does not equate to a legal right as may be protected by a court of law.

I conclude that the applicant has made out a good case for the relief sought.

In the result it is ordered that:

1. Summary judgment be and is hereby entered in favour of the applicant.
2. The respondent and all those claiming occupation through him shall vacate Lot 1 of Sublime Farm, in the District of Zvimba, Mashonaland West within 48 hours of service of this order upon them failing which the Sheriff of the High Court is directed to evict them.
3. The respondent shall bear the costs of suit.

Kwenda & Chagwiza, applicant's legal practitioners
Mauwa & Associates, respondent's legal practitioners