MAXWELL MATSVIMBO SIBANDA
versus
PARKS AND WILDLIFE MANAGEMENT AUTHORITY OF ZIMBABWE
and
THE MINISTER OF ENVIRONMENT AND TOURISM
and
MINISTER OF LANDS, LAND REFORM AND RESETTLEMENT
and
TSANGA TIMBERS (PVT) LTD
and
ALLAN JOHN SANDERS
and
RICHARD SAZIYA

HIGH COURT OF ZIMBABWE
CHAREWA J
HARARE, 5 February 2019 & 10 April 2019

Opposed Application – Declaratur

Applicant, in person
B Bhebhe, for the 1st respondent
P Charamba, for the 4th, 5th & 6th respondents

CHAREWA J: it is not the duty of courts, in civil matters, to assist self-actors who have the confidence and conviction that they have the necessary skill and ability to prosecute their cases and take the conscious decision to do so. The case is different in criminal matters where accused persons are dragged, kicking and screaming, to court by the state, in circumstances where they have no choice. However, I have, in a previous judgment, commented about the inadvisability for self-actors to prosecute claims without adequate understanding and knowledge of the basic legal requirements and principles upon which their claims are based.[1] Unfortunately, this is such a case, which has absolutely no merit whatsoever. Perhaps this is why, upon receipt of respondents' opposing papers, applicant's erstwhile legal practitioners' renounced agency. Regrettably, applicant chose to persist with his claim.

[1] Maxwell Mapfumo Sibanda v Scanlen & Holderness and 3 Others HC3060/18

Applicant prays for an order "*declaring the validity of my cutting rights in respect timber (sic) situate in certain property called the Remainder of Inyanga Block [Folio No. 6151] registered under Deed of Transfer 1813/61 in favour of William Anthony Kevin Igoe….or in the alternative my right to harvest the timber in question and a mandamus directing the 1st Respondent to allow the me (sic) to extract and mill timber from the plantation or to harvest the timber in question and to refrain from interfering with the my (sic) lawful operations in the plantation."* [2]

The facts

On 21 August 1986, one William Anthony Kevin Igoe (the seller) and the Government of Zimbabwe, represented by the Ministry of Lands, Agriculture and Rural Resettlement (which has morphed into the third respondent) (the purchaser), entered into an agreement of sale, wherein the seller transferred to the purchaser certain piece of land in the District of Inyanga called the Remaining Extent of Inyanga Block, measuring 34373.5126 acres, held by the seller under Title Deed No. 1813/61[Folio No. 6151]. As a consequence, in terms of s5 of the Rural Land Act, Chapter 155, the Registrar of Deeds duly cancelled Title Deed number 1813/61 in favour of the seller by Deed Entry No. 2182/86 on 23 May 1986.

It was a term of the sale agreement that the seller and his heirs would have the right, in consultation with the Director of National Parks and Wildlife Management (the Director) or any official designated by him, to extract pine (cutting rights) from the plantation planted by the seller for a period of 25 years from the date of transfer. In terms of the preamble to the sale agreement, the seller retained for himself a portion of land registered as Gleneagles Estate. It is not clear on the record what happened to Gleneagles Estate, as neither the applicant nor the respondents have produced the title deeds thereto. Be that as it may, there is no question of the seller having been granted cutting rights by the purchaser to this piece of land as the seller remained in control of his land and whatever was on it. In any event, the claim before me relates only to the Remainder of Inyanga Block [Folio No. 6151].

A third piece of land being Sub-Division B of Inyanga Block, and measuring 40,8512 hectares, had already, in 1973, been excised from Title Deed No. 1813/61 and transferred to one Peter Lewis Bailey under Title Deed No. 1413/73. Subsequently, and on 14 May 1987, this piece of land was acquired by the government under Title Deed number 3127/87 issued in favour of the President of Zimbabwe. There is also no question of retention of cutting rights

[2] Paragraph 5 of applicant's founding affidavit.

regarding this piece of land by the seller as it was acquired compulsorily from a third party. Moreover, applicant does not, in his application, claim any cutting rights with regard thereto.

According to first respondent, it is only the Remaining Extent of Inyanga Block, which comprises Nyanga National Park, which is under the direct management of and administered by the first respondent, and to which cutting rights relate. Further, according to uncontroverted facts placed before the court by the first respondent, on 17 October 2001, applicant represented his company, Industrial & Farming Development (Pvt) Ltd, to acquire, through cession, the cutting rights in respect of the Remaining Extent of Nyanga Block, initially granted to the seller in August 1986, from the Liquidator of Gleneagles Timber Products (Pvt) Ltd and First Merchant Bank Zimbabwe Limited, which had acquired these rights in about October 1995.[3]

And according to undisputed facts placed before the court by the applicant, on 7 May 2003, he represented his company, Industrial & Farming Development (Pvt) Ltd, to acquire, through cession, those same cutting rights in respect of the Remainder of Inyanga Block [Folio No. 6151, Title No. 1813/61 from the Liquidator of Gleneagles Timber Products (Pvt) Ltd. The very following day, applicant personally took cession of these same rights from Industrial & Farming Development (Pvt) Ltd.[4]

It is not clear, on the record, how and when rights belonging to William Anthony Kevin Igoe (the seller) were ceded to Gleneagles Timber Products (Pvt) Ltd and subsequently to First Merchant Bank. However, from the above narration, it appears that there is thus no dispute that applicant acquired cutting rights to the Remaining Extent of Inyanga Block, as claimed.

Issues

The only issue, in my view therefore, is whether those rights are still extant and enforceable.

In limine

At the hearing, the respondents applied for the expunging of the applicant's supplementary affidavit and documents attached thereto which were filed on 4 February 2019, the day before the hearing, on the grounds that the documents offended procedural rules as they were filed without leave of the court. Further, the supplementary affidavit seeks to amend the founding affidavit rather than to supplement it. And in any event, the documents sought to be introduced are a duplication of documents already in the record.

---

[3] Annexure B to 1st respondent's opposing affidavit
[4] Annexures A and C to applicant's founding affidavit

The applicant opposed the application to expunge his supplementary documents merely on the basis that he is a self-actor and that respondents will not be prejudiced.

The law is clear: supplementary affidavits and documents must be filed with leave of the court. In addition, while a court has discretion to allow amendments or supplementary evidence, sight must not be lost that an application must stand or fall by its founding papers. Therefore, it is only where the justice of the case so requires, that supplementary affidavits or amendments reasonably sought may be granted.[5]

In the instant case, while I might, in the interests of justice, have condoned the unprocedural filing of documents, I agreed with the respondents that the documents sought to be introduced by the supplementary affidavit served no useful purpose as they were already in the record. Further, they did not support the intended amendment to the founding affidavit. I therefore ordered that the supplementary affidavit and attached documents be expunged from the record.

Parties Submissions

The applicant's submissions are largely based on supposition, jumbled, illogical, contradictory and hard to follow. In one breath he asserts that the agreement of sale between seller and the purchaser might be void, illegal and or invalid in that it was a sale of what seems to be un-subdivided land which therefore could not be transferred was that would be contrary to the law. On the other hand he avers that the cession of cutting rights predicated upon that "illegal" "void" and "invalid" sale agreement is valid. He further submits that he purchased the cutting rights to the entire land originally belonging to the seller, including the portion retained by the seller and subsequently acquired by government, but only produces cession documents relating to rights to the Remaining Extent of Inyanga Block sold to the purchaser. In one breath, applicant submits that he is the "owner" of the trees on that land, and in another, he submits that he was ceded cutting rights.

Further, he submits that no transfer has been made to the purchaser, and therefore the cutting rights have not expired as they only expire 25 years from date of transfer. While correctly submitting that subdivision B of Inyanga Block was transferred to Mr Bailey under DT1413/73, he purports to question the validity of the sale agreement between the seller and

[5] See *Copper Trading Co (Pvt) Ltd v City of Bulawayo* 1997 (1) ZLR 134. See also Herbstein & Van Winsen: *The Civil Practice of the High Courts and the Supreme Courts of Appeal of South Africa* 5th Edition p 80 and p 429.

the purchaser with respect to the Remaining Extent of Inyanga Block without laying the basis as to why he believes he has the *locus standi* to do so.

For their part, respondents question applicant's *locus standi* to challenge the agreement between the seller and the purchaser. They further submit that applicant only acquired cutting rights with respect to the Remaining Extent of Inyanga Block, and that these rights expired on 30 September 2012. Therefore he has no cause of action, and even if he did, his claim is prescribed as the mere cancellation of the deed of transfer in favour of William Anthony Igoe is proof of transfer of the Remainder of Inyanga Block to the purchaser with the result that applicant's cause of action arose 25 years from that date.

The law

It is trite that a cessionary, can only acquire those rights that the cedent held and could lawfully cede, and no more. Therefore a cessionary cannot have greater rights than the cedent[6].

Further, it is trite that acquisition by, and transfer of rural land to, the state is shown by the cancellation of the existing deed of transfer[7]. The relevant provisions of the Rural Land Act provide as follows:

> S5(1) The appropriate Minister may-
> (a)…
> (b)…
> (c)….
> acquire land on behalf of the Sate.
> (2) ….the appropriate Minister may direct the Registrar of Deeds to cancel the title deeds of any land acquired in terms of subsection (1)…
> (5) Where the title deeds of any land have been cancelled in terms of subsection (2) the land shall vest in the President.

It seems to me therefore that subsequent issuance of a deed of transfer in favour of the president, while helpful and advisable, is not strictly necessary where acquisition is in terms of s5 of the Rural Land Act.

Prescription for any debt other than debts in terms of s 15 (a), (b) and (c) of the Prescription Act, [*Chapter 08:11*] occurs three years from the date the cause of action arose. It

---

[6] See Khumalo v Mandeya & Anor SC-23-08. See also Innocent Maja, *The Law of Contract in Zimbabwe* [2015] at p 142
[7] s5(2) ad (5) of the Rural Land Act, Chapter 155,

goes without saying that applicant's claim being predicated on a cession agreement to extract timber within 25 years from the date of transfer of the land upon which the timber is situated, is an ordinary debt in terms of s 15 (d) which prescription date is three years from the expiry of the cession agreement.

Further, it is trite that a party has *locus standi* to dispute the validity of an agreement that binds such party. It would be a sad day in the administration of justice if third parties were to be allowed to intercede in agreements in which they did not participate and had no interest in.

Finally, it is also trite that ownership of land imputes ownership of everything that grows on that land.[8]

Analysis

It is apparent that the transfer of the Remaining Extent of Nyanga Block from William Anthony Kevin Igoe to the Government of Zimbabwe occurred on 23 May 1986 in terms of Deed of Transfer No. 2182/86 which cancelled Deed of Transfer 1813/61 in favour of the said William Anthony Kevin Igoe. Further, it cannot be disputed that the transfer of Sub-Division B of Inyanga Block, held under Title Deed No. 1413/73 by Peter William Bailey and measuring 40,8512 hectares, to the government occurred on 14 May 1987, upon the issuance of title deed number 3127/87 in favour of the President of Zimbabwe. The government did not, therefore, buy land which it already owned, as alleged by the applicant.

The agreement of sale between the government and William Anthony Kevin Igoe was concluded more than one and a half decades before applicant came into the picture. He certainly can have no *locus standi* to challenge that agreement or the consequent transfer processes between the government and William Anthony Kevin Igoe. By the same token, the government acquired Sub-Division B of Inyanga Block, in 1987, 14 years before applicant acquired his cutting rights. The transfer documents on the record clearly show that transfer was indeed effected to the government. That applicant does not understand or appreciate the import thereof does not ground any claim to challenge their validity.

Nor is any reliance on alleged non-compliance with the Regional Town and Country Planning Act, [*Chapter 29:12*], helpful to the applicant. The fact that the Registrar of Deeds has effected the transfer presumes that the transfer was after due subdivision of the land had

[8] See *Secretary for Lands v Jerome* 1922 AD 103 at 105. See also *Gore NO v Parvates* 1992 (3) SA 363 (C)

been approved. Had that not been the case, applicant would have cited the Registrar of Deeds to resolve the matter. It appears to me that applicant is grasping at whatever straws he can in an attempt to muddy a clear situation.

The sale agreement between the seller and the purchaser granted the seller cutting rights, for 25 years from the date of transfer, over the Remaining Extent of Nyanga Block [Folio No. 6151], Transfer Deed No. 1813/61. Transfer having occurred on 23 May 1986, the rights which applicant received by way of cession were due to expire on 22 May 2011, but for the one year extension granted to him. Therefore, as properly found by BHUNU J on 9 October 2013 in *Maxwell Matsvimbo Sibanda* v *Tsanga Timbers and 4 Others*, HC7525/13 (HH334/13), his rights expired in 2012.

Further, it must be noted that applicant was alive to the fact that his cutting rights expired in 2011; hence he sought an extension which was granted up to 2012. Any further extension was declined by first respondent in October and December 2011. In fact applicant's cession agreement over the cutting rights clearly states in clause 2, that they expire in 2011.

Moreover, the title deed upon which he bases his claim was cancelled 27 years prior to his issuance of summons, and his claim, if any has long prescribed.

Note must be had that these cutting rights only related to Remaining Extent of Nyanga Block held under Deed of Transfer No. 2182/86. This is because the sale agreement between William Anthony Kevin Igoe and the government, which created these rights, was only in respect of the Remaining Extent. Sub-Division B of Inyanga Block was not subject to this agreement and was only acquired by government through the land acquisition programme. Therefore, contrary, to applicant's assertions, he did not acquire any cutting rights to the whole land as that was clearly beyond the rights due to William Anthony Kevin Igoe.

The cession documents produced by the applicant are quite clear: it is only the cutting rights in respect of the Remaining Extent of Inyanga Block which applicant acquired. This is so because the seller could not have ceded cutting rights to Gleneagles Estate as he was the owner. Nor could his heirs have ceded rights thereto as they would have been beneficial owners of Gleneagles Estate. All they could have done was to bequeath, grant or sell the cutting rights, but not cede them. By the same token, the seller and his heirs could not have ceded cutting rights to Sub-Division B of Inyanga Block because they did not own it: it belonged to Peter William Bailey. In any case, the applicant has not produced any evidence to show that Peter William Bailey ceded cutting rights to Sub-Division B to the seller or anyone else. The

respondents are therefore quite correct: the applicant could not have acquired cutting rights greater than what the seller received in terms of the agreement of sale he entered into with the government in 1986.

In addition, applicant's claim to "ownership" of trees is misguided: all he had were cutting rights over trees owned by the title holder of the land. In any event, since the cedent only had cutting rights, he could not have ceded ownership rights to the trees.

Besides a company cannot be an heir to a deceased estate, nor, can a person unrelated to the deceased be an heir in the absence of a will to that effect. In the absence of causal connection as to how applicant acquired rights personally granted to the seller from the liquidator of a company, questions are raised as to the legality of the cession of cutting rights to him by the liquidator of Glenagles Timber Products (Pvt) Ltd. I only address this point because the respondents queried the legality of applicant's cession. However, it is not germane to the resolution of this matter.

The long and the short of it is that I find this application to be ill-conceived and misguided, particularly since applicant claims an order for damages which is not supported by the founding affidavit; he claims ownership of trees when he is not the owner of the land; he unreasonably claims entitlement to timber even when he is aware that his cession agreement with regard thereto had terminated; he denies the veracity of official documents (transfer deeds) without any justification and persisted with his claims even when it was apparent that he lacked a proper appreciation of the principles of the case.

Costs

I am hard pressed not to agree with the respondents that this is clearly a frivolous, vexatious and querulous claim, filed merely to harass the respondents and for which an order for costs on the higher scale are called for to show the court's displeasure at such conduct and hopefully curb such abuse of process. Applicant is well aware that he is only entitled to cutting rights to the Remainder of Inyanga Block because his cession documents and the extension he obtained in 2011 are only for that piece of land. Applicant is also well aware that his cutting rights expired and were not renewed. He has already been to this Court whereupon he obtained an extension of his cutting rights to 30 September 2012 only to enable him to collect felled timber. He seems to think that being a self-actor is an excuse to abuse the justice system to articulate his grief, as he harps upon that aspect to dispute higher costs or to justify un-procedural filing of documents.

It is instructive to note that applicant did not attach the relevant transfer deed for the Remaining Extent of Inyanga Block to his founding affidavit despite professing to have done so as Annexure A. This raises the presumption, as submitted by the respondents, that he was well aware that transfer had occurred in 1986, and the 25 year life span of the cutting rights had expired, and he therefore wanted to withhold from the court crucial information upon which his claim could stand or fall. Further the very pleadings filed by the applicant point more to a fishing or dilatory expedition rather than a real attempt to assert any rights, as he alleges that "…there seems to be no subdivision permit…..allowing….partitioning of the land"; "it would seem" that the agreement between William Anthony Kevin Igoe and the government "might be void" and such other pleadings.

It seems to me that this whole process is aimed at either creating rights where none exist, or to frustrate the respondents by casting unfounded aspersions on agreements and processes which applicant cannot possibly have any knowledge of. In the circumstances, I can only conclude that this is an application which is truly frivolous and vexatious and which ought to be visited with an order for higher costs[9].

Disposition

Consequently, it be and is hereby ordered that

1. The application for a *declaratur* is dismissed with costs on a legal practitioner and client scale.

Messrs Chinogwenya & Zhangazha, 1st respondent's legal practitioners
Messrs Charamba & Partners, 4th, 5th, and 6th respondents' legal practitioners

[9] See Shoults v Masasa Service Centre HH18-18