

**MAVIS RUNZIRWAYI**  
(In her capacity as Executrix of the estate late  
Jeffrey Moses Runzirwayi)

**Versus**

**KELVIN JACKSON**

**And**

**MINISTER OF LANDS, AGRICULTURE, FISHERIES  
WATER, CLIMATE AND RURAL DEVELOPMENT**

IN THE HIGH COURT OF ZIMBABWE  
KABASA J  
BULAWAYO 27 FEBRUARY AND 13 MARCH 2025

**Opposed Application**

*A. Mhaka*, for the applicant  
*D Ochieng*, for the 1<sup>st</sup> respondent  
No appearance for the 2<sup>nd</sup> respondent

**KABASA J:** The applicant is the wife to Jeffrey Moses Runzirwayi who died on 16 January 2021. The applicant was appointed executrix to the estate and it is in that capacity that she brought this application seeking the eviction of the 1<sup>st</sup> respondent and all those claiming title through him from Lot 56 A Umsungwe Gweru.

The application is premised on the following undisputed facts:-

Lot 56 A Umsungwe was acquired by the Government of Zimbabwe making it state land. After such acquisition the land was offered to the applicant's husband under the land reform and resettlement programme (Phase 11, Model A2 Scheme). The offer letter is dated 20 August 2007 and the acceptance is dated 4 August 2008. Sometime in 2010 the applicant's husband sought to take occupation of the land and moved onto the land, apparently without following due process to have the occupier removed. The occupier took the matter to court, a provisional order was sought and granted under HC 5632/2010, the import of which was to restore peaceful possession to the previous owner, Jean Pamela Vant. In that order the land was described as Lot 55 A of Umsungwe Block measuring 274, 8139 hectares.

Lot 56 A Umsungwe, as per the offer letter, measures 102, 02 ha. Jean Pamela Vant had 56 A and 55 consolidated after she obtained 56 A from her father who donated the land to her. She later purchased Lot 1 of 55 Umsungwe Block measuring 172, 3571 hectares and had the two properties consolidated in 1999.

It is not in dispute after the acquisition of the property Lot 56 A Umsungwe measuring 102, 02 ha was offered to the applicant's husband.

As the executrix to the estate of her late husband the applicant seeks to evict the 1<sup>st</sup> respondent. The offer letter bestows succession rights to an offer letter holder's rightful heirs and she is a rightful heir being the deceased's wife. The applicant has registered the deceased's estate and the land in question is listed in the inventory as part of the estate, as required by s 38 of the Administration of Estates Act, [Chapter 6:01].

The application is opposed by the 1<sup>st</sup> respondent. The 2<sup>nd</sup> respondent did not file any papers and took no part in these proceedings, an indication that they will abide by the decision of the court.

In opposing the application, the first respondent gave a history of the matter, which history showed that a provisional order restoring undisturbed possession to his principal was granted and a subsequent application seeking the eviction of the 1<sup>st</sup> respondent was withdrawn. The 1<sup>st</sup> respondent, whose name is Calvin not Kelvin was engaged by Jean Pamela Vant to provide security and maintenance of the property. The earlier cases saw the removal of the applicant's husband from the farm and the later withdrawal of subsequent litigation was a graceful exit from the disputed land issue. The applicant's preparation of an inventory for purposes of administering her late husband's estate does not require that she evicts him from the land. In any event the application is anchored on an offer letter which was not accepted within the 30 days in which such acceptance was to be done. When the applicant's husband accepted the offer, outside the 30 days, it was tantamount to accepting nothing. Since such acceptance was an acceptance of nothing no rights can accrue to the applicant. The purported acceptance was also irregular in that there was no deletion of the appropriate words signifying the true import of such acceptance.

The applicant therefore has no right to seek the 1<sup>st</sup> respondent's eviction.

Pamela Vant, who held title to the property before its acquisition filed a supporting affidavit, detailing how she became the owner of the property before its acquisition. She then consolidated title to 56 A and 55 A Umsungwe Gweru where she operates a dairy farm in accordance with a permit issued by the Department of Livestock Production of Development (sic). She also chronicled how the applicant's husband intruded on the farm in 2010 which led to the granting of the provisional order aforementioned.

I find the following to be the issues to be determined in this case:-

1. Whether there is a valid offer letter entitling the applicant's late husband and by extension the applicant to occupy 56 A Umsungwe Gweru.
2. Whether the provisional order granted under HC 5636/2010 and the subsequent application which was withdrawn settled the dispute between the parties, allowing for no further litigation over the same issue.
3. Whether the applicant has a right to evict the occupants of 56 A Umsungwe, Gweru.

I propose to look at the arguments by the parties before applying the law in deciding whether the applicant has made a case for the relief she seeks.

*Applicant's Argument*

*Mr Mhaka*, counsel for the applicant, submitted that the offer letter of 28 August 2007 which was accepted by the applicant's husband and has not been withdrawn created a contractual relationship between the parties. A letter from the 2<sup>nd</sup> respondent confirmed the fact that this property forms part of the deceased's estate.

The provisional order which removed the applicant's husband from the property, related to 55 not 56 A Umsungwe. The correct identification of the property was the central issue in the later application which was subsequently withdrawn. The withdrawal had nothing to do with the merits of the matter but the correct identification of the property. The validity of the offer letter was not an issue ventilated and adjudicated on in the previous litigation.

Counsel relied on a number of cases for the proposition that gazetted land is vested in the state and when offered to a recipient such recipient's acceptance creates a

contract between the state and the beneficiary, which a third party cannot impugn. (*Maringa v Minister of Lands, Agriculture, Water, Climate and Rural Resettlement v Winray Estates (Pvt) Ltd & Anor* HH 550-17, *Commercial Farmers Union & Ors v Minister of Lands and Rural Resettlement* (SC 31/10), *TBIC Investments (Private) Ltd and Anor v Mangenje & 5 Ors* SC 13/18).

The applicant has therefore made a case for the eviction of those occupying the land described in the offer letter, so counsel argued.

### **1<sup>st</sup> Respondent's Argument**

*Mr Ochieng*, for the 1<sup>st</sup> respondent contended that the applicant cannot seek to evict the 1<sup>st</sup> respondent for purposes of preparing an inventory per s 38 of the Administration of Estates Act [Chapter 6:01]. The application is premised on s38 of the Act. All the applicant has to do is prepare an inventory of all the deceased's assets and that has no bearing on occupation. The inventory has already been prepared, so the preparation of such inventory creates no cause to seek eviction of the 1<sup>st</sup> respondent.

The application stands to be decided on the basis upon which it is premised (*Fuyana v Moyo* 2006 (2) ZLR 332 (S)). Section 38 of the Act does not bestow the applicant with the right to seek the relief herein nor the court the power to grant such relief.

Counsel also referred to the non-existent offer as it was accepted after the date it was supposed to be so accepted. The deceased also omitted to delete the inapplicable sections, indicating whether he was accepting or not accepting the offer.

The fact that he abandoned the property after the granting of the provisional order, a fact not disputed by the applicant, made it unnecessary to adduce evidence and so makes it a fact that the deceased abandoned the property.

The 1<sup>st</sup> respondent's principal was accorded protection from intrusion with the granting of the provisional order. The applicant cannot seek, 13 years later, to re-litigate the matter. The policy of land reform is to give land for productive not speculative purposes (*Chaeruka v Minister of Lands & Anor* 2014 (1) ZLR 179)

### **Analysis of the Arguments**

I have stated what I considered as the issues raised herein but I must say the very first issue is to determine the basis upon which the application is anchored.

The application is described thus:-

“Application for eviction in terms of s 38 as read with s 42 of the Administration of Estates Act, [Chapter 6:01]

Section 38 of the Act provides that:-

38(1)“Every executor shall, as soon as Letters of Administration have been granted to him in manner aforesaid, forthwith make an inventory showing the value of all the property, goods and effects, movable and immovable of whatever kind belonging to the estate which he has been appointed to administer, and shall in the same manner from time to time thereafter and so soon as he finds or knows of any such property, goods or effects belonging to such estate and not contained in such first-mentioned inventory, make an additional inventory or inventories, showing the value of all such last-mentioned property, goods and effects.”

42”Every person not being the executor of the estate of a deceased person duly appointed in Zimbabwe, who has or comes into possession or custody of any property or asset belonging to such estate shall forthwith either deliver such property or asset to the duly appointed executor, if any, then being in Zimbabwe or report the particulars thereof to the Master, and if such first-mentioned person fails to do so, or parts with any such property or asset to any person not authorised by the Master by letters of administration or other discretion to receive the same, he shall, apart from any other liability he may incur thereby, be liable for all dues payable to the public revenue in respect of such property or asset.”

A reading of these provisions shows that what is intended is for property belonging to an estate to be accounted for. The executor therefore secures all such property before distribution to the respective beneficiaries. Any one in possession of such property either delivers it to the executor or reports the particulars thereof to the Master.

The property Lot 56 A Umsungwe has been included in the inventory, thereby achieving what is intended by s 38 as read with s 42 of the Act.

Can the applicant therefore seek eviction anchored on s 38 of the Act? I think not. It is my considered view that once an estate has been wound up and the property distributed, the beneficiary to whom such property is awarded can seek the eviction of whoever is occupying such property but not by virtue of the provisions of s 38 of the Act.

I am therefore persuaded by counsel for the 1<sup>st</sup> respondent's argument to the effect that the provision the applicant anchors the application for eviction on does not give her the right to seek eviction nor the court the power to grant the same.

I must say it would have given a different complexion to the matter had the eviction been premised on a beneficiary seeking to receive vacant possession of the property awarded to them.

If that were so, the argument that the offer letter was not accepted within the 30 day period, would not hold water.

As BHUNU JA articulated in *TBIC Investments (Private) Ltd (supra)*

“The respondent in turn had the right to accept the offer as he did thereby concluding a valid contract with the acquiring authority. ... That conclusion of law renders both appellants strangers to the contract between the acquiring authority and the respondent. This brings us to the doctrine of privity of contract. That doctrine restricts the enforcement of contractual rights and remedies to the contracting parties, to the exclusion of third parties.”

The 2<sup>nd</sup> respondent did not oppose the application and a letter from the Resettlement Gweru District office dated 18 June 2024 confirmed that Lot 56 A Umsungwe Block is held by the applicant's husband. The fact that the offer was accepted post the 30 day period is not for a third party to raise. Equally the failure to delete the inapplicable section “accept/do not accept” is neither here nor there. The applicant's husband duly signed the offer acceptance which the 2<sup>nd</sup> respondent acknowledged. Such offer was not withdrawn nor were issues raised regarding the failure to delete the inapplicable. It is therefore not open to a third party to seek to impugn the offer and acceptance which occurred between the 2 parties.

As regards the provisional order, all it sought to do was ensure due process was done. As was held in the *Commercial Farmers Union* case (supra)

“The holders of offer letters, permits or land resettlement leases are not entitled as a matter of law to self-help. They should seek to enforce their right to occupation through the courts.”

The applicant's husband had “intruded” on the farm without following due process and that is why the occupier was restored to peaceful possession. Such restoration did not translate to a finding that the offer letter was not valid.

The later application which was withdrawn was not determined by the court. A finding was not made that the offer letter was not valid. No such pronouncement was ever made to justify conflating the issue of eviction which this matter is concerned with and the prior litigation.

An offer letter holder has rights bestowed by such offer letter and enjoys such rights until and unless such offer is revoked. (*Maringa v Winray Estate (Private) Limited (supra)*)

Unlike the *Chaeruka v Minister of Lands and Rural Resettlement & Anor* HH 75-14 case, where the offer letter was withdrawn, *in casu*, there is no evidence of such withdrawal.

Like I said earlier on, the contract is between the acquiring authority who gave the offer letter and the recipient of the offer. A third party cannot argue on behalf of the 2<sup>nd</sup> respondent, who chose not to be involved in the matter. I would therefore have not been persuaded by the argument that prior litigation, the perceived abandonment of the land following the grant of a provisional order and the failure to accept the offer within 30 days extinguished the holder of that offer letter's rights to the land, that is 56 A Umsungwe Block.

But for the provision upon which this application was anchored, I would have been persuaded by counsel for the applicant's argument and granted the application.

### **DISPOSITION**

This application was premised on the provisions of s 38 of the Administration of Estates Act [Chapter 6:01] which provision does not bestow the right to seek for the eviction of the 1<sup>st</sup> respondent.

The court cannot make a case for a litigant and anchor the application on some other provision which would justify the granting of the application.

Given the manner in which I have disposed of the matter, there is no justification for punitive costs. A case for such has not been made.

With that said, the applicant has not made a case anchored on the provision of the Administration of Estates Act.

The application is accordingly dismissed, with costs, at the ordinary scale.

*Mhaka Attorney*, applicant's legal practitioners  
*Kevin J Arnott Legal Practitioners*, respondent's legal practitioners