

JAMISON MANGAVA
versus
LUCIA MADANGWA

HIGH COURT OF ZIMBABWE
MAWADZE and ZISENGWE JJ
MASVINGO, 5 July, 2023
Ex tempore judgment delivered on 5 July 2023
Written reasons provided on 20 November 2023

J. Chipangura, for Appellant
D. Hwacha, for the Respondent

Civil Appeal

ZISENGWE J: On the 5th of July 2023 we delivered a brief *ex tempore* judgment which we hoped would finally put to rest the seemingly endless wrangle between the parties over rights to a piece of communal land situate in the district of Zaka. In that *ex tempore* judgment, we upheld the appeal against the decision of the Magistrates court sitting at Zaka (the court *a quo*) wherein it dismissed the appellant's claim for the eviction of the respondent from the said piece of land. The respondent has since requested for the full reasons informing our decision. These are they.

The background to this appeal is that the appellant sued out summons from the court *a quo* seeking the eviction of the respondent from the piece of land which he identified in his particulars of claim as falling under Headman Zibwowa, village Head Muzenda, Chief Nhema, Zaka ('*the piece of land*'). He further averred that he was the legitimate holder of rights over the piece of land it having been allocated to him by then village head, one Mabhunu in 1979. He further alleged that the respondent, despite having no right, claim or title over the piece of land had continued to unlawfully interfere with his enjoyment of the same.

According to the appellant, the respondent had once been temporarily resident on the piece of land by virtue of her marriage to his nephew (his brothers' son) one Hardlife Mazhambe ("Hardlife") but when that marriage ended she lost any right to continue utilizing that piece of land. He averred, however, that to the contrary, the respondent had of late invaded the piece of land with a clear intention of utilizing it. He stated that all attempts towards a pacific resolution of the impasse were in vain hence his decision to approach the court for relief.

The claim was resisted by the respondent, who in her plea challenged the appellant's claim over the disputed piece of land. She asserted that the true owner of that land was in fact the aforementioned Hardlife Mazhambe and whose marriage to her still subsisted.

Further, she insisted that the land in question fell under village Rupfidza as opposed to village Muzenda as averred by the appellant. Her version was that there was a long running dispute pitting the appellant on the one hand and Hardlife on the other and that that dispute was soon resolved by Headman Zibwowa wherein those two protagonists agreed in writing to an equitable sharing of the land. She therefore averred that not only was she still married to Hardlife but also that she enjoyed occupation of his piece of land by virtue of her marriage to him.

Finally, according to her, although the appellant's quest to have Hardlife evicted from the piece of land had initially succeeded when he obtained a decision in his favour from Chief Nhema's court, the latter decision had however been subsequently nullified by the decision of the Provincial Magistrate. According to her it was the appellant who was at fault by invading what she deemed to be her piece of land.

In his replication the appellant persisted with his claim reiterating as he did that he was the legitimate holder of rights over that piece of land it having been allocated to him in 1979 as earlier stated. He therefore denied the respondent's assertions that the piece of land had been allocated to Hardlife. He stated that he had only given Hardlife a portion of that land to till but that did not in the least confer any rights over that land to the latter. He further insisted that both Chief Nhema and the Zaka Rural District Council, under whose aegis the land falls, confirmed his entitlement to it. He further reasserted the separation of Hardlife and the respondent. Most importantly, however, he disputed that the land in question had ever been allocated to Hardlife by headman Zibwowa, who in any event was available to shed light on that particular allegation.

The matter subsequently proceeded to trial wherein the appellant together with three other witnesses testified for the plaintiffs' case and the respondent was the sole witness for the defendant's case. The following is a *precis* of each of their respective accounts.

JAMISON MANGAVA

He is the appellant and was the plaintiff in the proceedings *a quo*. In short, he testified that he inherited the disputed piece of land from his late father, which piece of land he insisted falls at Village Muzenda and that the respondent's field was in Village Rupfidza. According to him respondent was once married to his niece Hardlife but that the two had since gone separate ways. More importantly he testified that Hardlife's piece of land was separate and distinct from the one in question which he claimed the respondent had invaded.

He produced a number of documents purportedly demonstrative of his entitlement to the property. These included *inter alia* a ruling by Chief Nhema dated 18 December 2015, the District administrators' letter dated 24 July 2017, A letter by headman Zibwowa dated 7 April 2018, rates clearance certificates in his name dated 07/06/2018, Minutes by Headman Zibwowa dated 11 September 2019, a letter by village head Muzenda and a judgment rendered by Chief Nhema dated 25 July 2020.

I briefly digress here to point out that some of the documents produced in the proceedings *a quo* were in the local vernacular and therefore an official translation of each of these needed to be obtained. Section 5 of the Magistrates Court Act, Chapter 7:10 and s49 of the High Court Act, Chapter 49 Chapter 7:06 demand as much. Regrettably this was not the case Fortunately the contents of those documents were easily comprehensible and neither party took issue with the documents being in the vernacular.

The relevance of each of these documents will be dealt with in the context of their relevance for the resolution of any point in issue, suffice it to say Exhibit A was basically Chief Nhema's judgment dated 18 December 2015, captured in the official LC4, (not to be confused with the later decision dated 25 July 2020). In the 2015 decision Chief Nhema gave a default judgment against Hardlife Mazhambe and found that the land in question belonged to the appellant.

It is common cause (and the appellant conceded as much under cross examination) that that judgment was set aside by the Provincial Magistrate. He would however point out that he obtained

a reversal of that latter decision in the High Court. According to him this followed the failure of respondent to show up at court. Most importantly however, the appellant pointed out under re-examination that in the wake of the ruling by the provincial Magistrate another hearing was set down before the Chief and that the latter exercising his powers to resolve disputes over communal land reiterated that the piece of land in question legitimately belonged to him.

The District administrator's ("the DA") letter dated 24 July 2017 addressed to the Zimbabwe Republic Police (ZRP) gave the police a background to the dispute between Hardlife and the appellant and informed the police that despite the matter having been resolved by the chief, Hardlife remained intransigent and refused to allow the appellant peaceful enjoyment of the disputed piece of land. He would taken to task under cross examination of the relevance of that letter, it being suggested to him that the da lacked jurisdiction over such matters. He however expressed a contrary view.

The appellant would also dispute assertion put to him that both the DA's Office and Headman Zibwowa lacked jurisdiction to entertain disputes over communal land. Regarding the latter he would insist that the headman was the custodian of the land and is entitled to follow the relevant procedures. Counsel for respondent sparred with the appellant over the probative value of the rate payment receipts it being contended that Hardlife was likewise making similar payments to the district council and therefore that these could not possibly sway the court either way.

SARAI MUGOMERI

This witness is the incumbent Headman Zibwowa. He assumed that role in 2018, taking over from the late Jeremiah Haruperi. In short it was his evidence that the piece of land in dispute belongs to the appellant him having inherited it from his late parents who in turn had had same allocated to them in 1961 or 1962. Further he indicated the piece of land falls under village Muzenda and not Village Rupfidza where Hardlife hails from.

While confirming that he had no power to allocate land he would nevertheless indicate albeit after some initial ambivalence that he enjoyed the jurisdiction to resolve land disputes in consultation with the chief.

Under cross examination he clarified that he referred the dispute to Chief Nhema for adjudication and that his jurisdiction is subordinate to that of the chief. He would confirm that a

dispute was brought before Headman Zibwowa and a determination rendered in favour of appellant and that that determination was forwarded to the chief as part of the Headman's report

He would reiterate under cross examination, disputing the respondent's assertions to the contrary, that the piece of land falls under village Muzenda. He would further clarify that Muzenda and Rupfidza had no land dispute but that it was the respondent who was causing commotion by encroaching into Muzenda village when she ought to have confined herself to Rupfidza village. Most tellingly however, he pointed out that both Muzenda and Rupfidza were subordinate to him and that knew the village boundaries under their respective jurisdictions.

ENERGY MUZENDA

This witness is the current village head Muzenda. His evidence was primarily that the piece of land in question not only belongs to the appellant but also that it lies within village Muzenda.

He gave an impressive account, albeit whose knowledge was acquired primarily through oral tradition, of the key historical events dating back to the 1940's which culminated in the present dispute. He stressed that the piece of land undoubtedly belongs to the appellant having taken over the same from his father Mazhambe. Mazhambe had in turn been allocated that piece of land in the 1950's after having transferred from a place called Zvada. According to this witness's narration of the chronology of events, when Mazhambe further relocated to a place called Zimupuwa, appellant took over the land. The genesis of the present dispute according to him was that at some point, appellant had allowed Hardlife's brother Wilson to utilise a portion of the disputed piece of land before after we relocated to Rupfidza village and the said Wilson transferred to some resettlement area his own son Hardly took over that piece of land which had been temporarily assigned to Wilson by appellant. Things came to a head when appellant told Hardlife to vacate his field and follow his father but Hardlife refused to vacate.

Most importantly, however, he was emphatic that the piece of land at the core of this dispute is situated in Muzenda village and certainly not Rupfidza and that piece of land belongs to appellant. He further stressed that appellants father was allocated that piece of land in the 1960s, after Muzenda village had come into existence in 1948, yet Rupfidza village only come into being in 1975. He further explained that on 12 October 1996 one Mr Madzivire and the DA's team came

and decided over the matter and ruled that the piece of land was in Muzenda village. He indicated that the residents were taken into the map room and got to see first-hand that the land indeed fell under Muzenda (as opposed to Rupfidza) village.

He was quick to concede under cross examination that he learnt of the history of the land from his father who was his predecessor in title through oral tradition but also pointed out that in respect of certain events he had had first hand experience thereof.

He would be taken to task during cross examination on the past controversies, litigations and determinations and his involvement (if any) regarding the demarcation between Muzenda and Rupfidza villages in general and between appellant and Hardlife in particular. He however insisted that the piece of land in question falls under village Muzenda and that it belongs to appellant.

VENGESAI MATUBA

This witness is one of headman Zibwowa's panel or council members. His evidence was basically that in 2019, at the instruction of Headman Zibwowa, he delivered and read out the headman's determination. The determination related to the protracted dispute over the land that had been cultivated by Hardlife yet it belonged to appellant. He too testified that the land falls under Muzenda village.

The chief's judgment delivered in July 2020 after that first judgment had been set aside by the Provincial magistrate was produced in court by the appellant as an exhibit with that the appellant closed his case.

THE RESPONDENT'S CASE

For her part, the respondent, who as earlier stated was the sole witness for her case, testified that she enjoys rights over the piece of land by virtue of her customary law union with Hardlife. She insisted that the piece of land falls under village Rupfidza. She referred to the ruling of the Magistrate's court at Masvingo overturning an earlier decision by the chief ordering the eviction of Hardlife from the piece of land. She questioned the propriety of having a matter being referred back to a chief after it had been determined by the Magistrates Court.

She expressed dissatisfaction and disagreement with the 2018 determination by headman Zibwowa and the 2020 determination by Chief Nhema both of which were in favour of appellant

against Hardlife. She would insist that the land in question falls under village Rupfidza. However when it was put to her that appellants' field was in Muzenda all she could say was "*I don't know*". She indicated that Hardlife was now resident in South Africa but denied that the two of them were on separation.

In its judgment the court *a quo* found from the evidence that the piece of land is situated in Muzenda village. However, it found that such a finding was inconsequential because such a finding did not *ipso facto* determine who the lawful occupier was. Ultimately the court dismissed the claim for eviction ostensibly on the basis that a judgment against the respondent would potentially negatively affect Hardlife who was not a party to the proceedings it therefore found that the appellant had failed to establish the pre-requisites for the granting of a claim for eviction and accordingly dismissed it.

Aggrieved by that outcome the appellant mounted the present appeal the grounds of appeal were framed as follows.

1. The court *a quo* erred and misdirected itself in dismissing the appellant's claim on the basis that the Appellant herein approached the wrong court for the relief he sought more particularly in that:-
 - i) The court wrongly reasoned that the local court had no jurisdiction to determine right in respect of land or other immovable property in circumstances where the local court did not in any way determine the land rights but resolved a dispute pertaining to land as the custodian of the land in its area of jurisdiction.
 - ii) The court failed to take note of the fact that the local court is allowed to resolve disputes pertaining to land in their areas of jurisdiction based on the information from the village head and the Headman of the area;
 - iii) The court failed to take note of the fact that the ruling which referred the Appellant and Hardlife Mazhambe to a court of competent jurisdiction did not mention the court where the Appellant ought to have gone for the resolution of the dispute between him and his nephew.
2. The court *a quo* erred and misdirected itself in concluding that the letter from the District Administrator's office was not useful in resolving the dispute between the

- parties in a clear show of misunderstanding of the role of the District Administrator in customary law issues.
3. The court *a quo* erred and misdirected itself in concluding dismissing the Appellant's claim on the basis that documents from the Zaka rural district council were not clear as to which field either of the parties was paying for in circumstances where the expectation of the court *a quo* amounts to utopia especially given the fact that in rural areas there are no stand numbers and the fact that the receipts are showing that the parties were paying for fields in different villages and not necessarily the field in question. The issue of double allocation therefore does not come into play.
 4. The court *a quo* erred and misdirected itself in concluding that the Appellant did not meet the requirements of *rei vindicatio* in circumstances where there was evidence from the village head, ruling from the Headman Zibwowa, the ruling from the Chief Nhema and District Administrator's letter, all of which supported the fact the Appellant herein is the rightful occupier of the land in dispute which is situate in Muzenda Village. The court blew hot and cold when it admitted that the land in dispute was situate in Muzenda village and not in Rupfidza village.

WHEREFORE, the Appellant prays that the court a quo's judgment be set aside and be substituted with the following;

- i) The plaintiff's claim hereby succeeds with the resultant effect that the Defendant and all those claiming occupation through her be and are hereby ordered to vacate the Plaintiff's land which is situate in Muzenda village.
- ii) The Defendant to pay costs of suit on a legal practitioner and client scale.

When the matter was set down for hearing the respondent initially took a point *in limine* contending that the respondent had failed to serve him with the notice of appeal on time and that he had only done so at the 11th hour, so to speak, rendering the appeal defective. That preliminary point was soon abandoned and the matter was heard on the merits.

Shortly I will demonstrate that the first three grounds of appeal all fed into the fourth ground of appeal whose overall question was whether or not the court *a quo* erred in ruling that

the appellant had failed to satisfy the requirements of eviction it being based on the *actio rei vindicatio*.

In a word, the first three grounds of appeal were merely on attack on the court *a quo*'s exclusion or disregard of the discrete pieces of evidence of documentary evidence produced by the appellant or their relegation to being of little or no probative force in the determination of the matter it was seized with. These documents are Chief Nhema's determination of 25 July 2020 (ground 1), the DA's letter dated 24 July 2017 (ground 2) and the appellant's rate and tax payment receipts with the Zaka Rural District Council (ground 3)

As regards the first ground of appeal, whereas it was submitted on behalf of the appellant in this appeal that it was well within Chief Nhema to adjudicate over land disputes over communal land in his area of jurisdiction, a contrary view was articulated on behalf of the respondent. As will be demonstrated shortly, this issue merely an adjunct to the question of the evidential value of the Chief Nhema's determination to the cause of action in the court *a quo*.

In ground 1 the chief rallying points by the respondent was that the local court in the form of Chief Nhema purported, in the proceedings of the 25th of July 2020 to adjudicate over a dispute whose subject matter he lacked jurisdiction. Reliance was placed *inter alia* on Section 16 (1) (g) of the Customary Law and local courts Act. [*Chapter 7:05*]. The said provision reads:

“16 Limits of Jurisdiction of Local Courts

- (1) A local court shall have no jurisdiction in any case.....
 - a)
 - b) To determine rights in respect of land or other immovable property.

Per contra, the appellant argued that the chief did not determine rights *per se* but merely resolved a dispute between the parties and it was well within a local courts purview to adjudicate disputes over communal land. Reference was placed in Section 5(1) (n) of the Traditional Leaders Act, [*Chapter 29:17*] The said provision reads:

5. Duties of Chiefs

- (1) A chief shall be responsible within his area for.....

- a)
- b) Adjudicating in and resolving disputes relating to land in his area.

We however pointed out in our *ex tempore* judgment, as we reiterate now, that in the context of this dispute, whether a local court had jurisdiction was not the real question given that the decision that was being impugned was not that of chief Nhema but that of the court *a quo*. It was the Magistrates court sitting at Zaka to which the matter was brought and which resolved the dispute and against which this appeal lay. The respondent sought to beguile the court by directing our focus from the court *a quo*'s decision to primarily Chief Nhema's decision, yet the matter was brought to the court *a quo* as a court of first instance as ably demonstrated by the summons commencing action.

The documents produced by the appellant in the court *a quo* relating to proceedings in the local courts were not the basis of the claim, they were merely evidential. Through those documents the appellant sought to establish that he enjoyed rights over the disputed piece of land. The appellant could as well have simply proceeded with his claim for eviction without making reference to the traditional leaders who at some point were seized with the matter. Put yet differently the court *a quo* could have resolved the dispute by merely referring to the *viva voce* evidence of the witnesses who testified in the proceedings *a quo*. By dwelling on the chief's court proceedings of 25th of July 2020 at the expense or to the exclusion of the totality of the evidence adduced in the proceedings *a quo*, the respondent merely sought to lead everyone along the garden path.

The fact that the ruling which the respondent sought to impugn was merely evidential is further evidenced by the fact that same pitted Appellant on the one hand and Taruvinga and Pfanyangurai Rupfiga other, yet in the proceedings *a quo* the parties were appellant and the Respondent.

Be that as it may, we pointed out however that traditional leaders in general and chiefs in particular do enjoy jurisdiction to settle disputes over communal land. This much is borne out by the constitution and the Traditional leaders Act referred to earlier. By so doing, they will not be determining rights as such but merely resolving disputes over the enjoyment of rights (which rights they might or might not already have) over the land in question.

The determination of rights versus adjudication over disputes dichotomy

Section 5(1) (n) of the Traditional Leaders Act should be interpreted in the context of Section 282 (2) of the Constitution of Zimbabwe which provides as follows:

“282. *Functions of traditional leaders*

(1).....

(2) *Except as provided in an Act of parliament, traditional leaders have authority, jurisdiction and control over the communal land or other areas for which they have been appointed, and over persons within those communal lands or areas.*” (emphasis added)

In our view the term ‘*jurisdiction*’ in the context of the noun ‘*land*’ appearing in the text of the provision refers *inter alia* to the authority given by the Constitution to adjudicate over land disputes in their respective geographical areas. The term “authority” on the other hand should be construed to refer to administrative authority and finally the term “control” logically refers leadership over their subjects. Therefore, in that single sentence the Constitution bestowed administrative authority, judicial jurisdiction and leadership control over communal land and persons resident in their defined areas. It is inconceivable in our view that the Constitution having bestowed such onerous responsibilities on traditional leaders as custodians of communal land, would divest them the right to adjudicate over even the most mundane and trivial of all land disputes.

There is a word of difference between the resolution of disputes over occupation of land and the conferment of rights over the land. In our view Section 16 of customary law and local courts Act ousts the jurisdiction of the Traditional leaders to determine the Conferment, or revocation or alienation of rights over communal land. The legislature in employing contrasting terminology in the in the text of the two provisions sought to draw a distinction between them. In s16 of the Customary Law and Local Courts Act, Chapter Chapter 7:05 the phrase used is “determine rights in respect of land” and in section 5(1)(n) the phrase used is “adjudicate in and resolve disputes relating to land”. Determining rights would, by necessary implication, involve the granting of declaratory orders over land which is what the legislature sought to oust from the overall jurisdiction of local courts.

Although in *Chihoro v Murombo and Anor* HH 07/2011 the court grappled with a different kind of dichotomy namely “determination of rights” versus “allocation of land dichotomy”, the sentiments expressed therein are nonetheless instructive, KWARI J said the following:

“It is my considered view that the Chief only entertained a dispute relating to land and did not allocate land ... Allocation of land and resolving of a dispute are totally different things. Allocation of land in my considered view involves the granting of rights, interest and title to land to an individual, whereas the resolving of a land dispute involves the entertainment of a dispute between or amongst individuals’ ore as already allocated piece of land. The appellant brought a dispute before the chief for resolution not a request for allocation of land.”

The above remarks are pertinent to buttress the fact that traditional leaders have the jurisdiction to adjudicate over land disputes. In *casu* it is self-evident that what was before the Chief was a dispute over a piece of land. This much is clear from the nature of the dispute before him and the ruling thereafter rendered. To conclude this segment, therefore, the chief did have jurisdiction to entertain the dispute between Appellant and the aforementioned parties. It was on that basis that we found that the court *a quo* erred in disregarding (for its evidential value) Chief Nhema’s ruling of the 25th of July 2020. The loose translation of that ruling is as follows:

“The Chief’s court after careful consideration finds that this person (referring to Hardlife) thoroughly ungrateful. He must vacate this place and I do not want to hear again that he is tilling this piece of land which belongs to Jamison”

The value of the letter from the District Administrators

In this regard the court *a quo* ruled that the letter of the District Administrator was of no moment. This was supposedly on the basis that the District administrator did not hold an independent inquiry into the matter but included the chief who also happened to be member of the local court which according to him had no jurisdiction.

We found the logic employed by the court *a quo* hard to follow. It was not clear whether the evidence of the letter by the District Administrator dated 24 June 2017 was disregarded on account of the latter’s failure hold an independent inquiry or that his determination involved the local chief or both. If it was ostensibly on account of the absence of jurisdiction of the chief, then

this amounted to a *non sequitur*. The fact that the chief apparently lacked jurisdiction to adjudicate over communal land disputes (which position for reasons outlined above was undoubtedly wrong) could not conceivably have taken away all powers, including administrative powers over communal land land. More importantly however, the DA did not carry out any inquiry over the issue nor was he called up to do so. A proper reading of the letter in question simply shows that the said office chiefly deferred to the first Chief's ruling which had resolved the dispute between appellant and Hardlife in the former's favour. It was merely a letter directed to the Zimbabwe Republic Police the latter which was evidently seized with a complaint most probably by appellant over the denial by Hardlife to access the piece of land despite him (i.e., appellant) having at that stage obtained judgment against Hardlife. There is no indication that the DA was called upon to carry out a determination or render a determination.

It was in that context that the court *a quo* should have considered that letter and accorded it the probative weight due to it. The court *a quo* clearly erred in outrightly disregarding it as it did.

The third ground of appeal equally related to the probative value of the evidence of rate payment receipts by the appellant to the local authority. What was clear was that the appellant sought, by means of receipts of payment of rates and taxes to Zaka Rural District Council to show that he was the legitimate occupier of the piece of land in issue. The respondent produced receipts of payments to Zaka Rural District Council. The point of departure was of course that whereas the appellant's receipts were in respect of village Muzenda, (see Annexure B) yet those of the respondent related to Rupfidza village (see Annexure K).

This therefore brought into sharp focus the overarching question which the court *a quo* needed to determine namely whether the piece of land falls under village Muzenda (as contended by appellant) or it falls under village Rupfidza (as argued by respondent)

If the court *a quo* had properly applied its mind to the evidence by all the witnesses including the documentary evidence availed to it as well as to the standard of proof in a civil suit, it would no doubt have arrived at a different conclusion.

The plaintiff's version that the piece of land in dispute falls under village Muzenda was ably corroborated by the evidence of persons closely connected to the dispute. Headman Zibwowa, village head Muzenda and Headman Zibwowa's aide Vengesai Matuba all testified not

only that the piece of land which is the subject matter of the dispute falls under village Muzenda, but also that it “*belongs*” to the appellant. I use the word ‘*belong*’ loosely to denote the fact that he enjoys rights over the same as envisaged under section 8 the Communal Land Act, Chapter 20:04.

Further, the documentary evidence in the form *inter alia* of Chief Nhema’s determination of the 25th of July 2020, the receipts from Rural district Council and to a lesser extent the letter addressed to the police by the District Administrator’s office all point to the appellant being the holder of rights over that piece of land. Who better than the village Head, Headman, Chief and the Local authority to inform anyone as to the true holder of rights in respect of communal Land?

The corresponding contention by the Respondent that the piece of land was incapable of exact identification could not be sustained. Throughout the proceedings *a quo* and the history of litigation and conciliation efforts pitting the appellant and Hardlife as the main protagonists there was never an issue of the identity of the piece of land in question. The parties have always been in *ad idem* as to the location and identity of that piece of land, they only parted ways when it came to who had rights over it. The latter’s claim over the property rested almost entirely on her professed marriage to Hardlife, yet she was unable to secure the evidence of the said Hardlife. Tellingly, she was unable to secure the evidence of village head Rupfidza under whose village she claimed the disputed piece of land falls. Further, Headman Zibwowa whom the respondent claimed to have ordered an equitable sharing of the disputed piece of land as between appellant and Hardlife was categorical that the land falls under Village Muzenda and belongs to the appellant.

Ultimately, we found that the weight of evidence, as summarised earlier, overwhelmingly tilted in favour of the appellant and showed that the piece of land belongs to the appellant. He therefore had the right to seek the eviction of the respondent therefrom.

It was from the foregoing that we upheld the appeal and gave the following order.

IT IS HEREBY ORDERED THAT:

1. The appeal be and is hereby upheld and the decision of the Court *a quo* is set aside and substituted with the following;

- (1) The plaintiff's (i.e. appellant herein) claim hereby succeeds and the defendant (respondent herein) and all those claiming occupation through her be and are hereby ordered to vacate the land in question situate in Muzenda, village Zaka.
- (2) There shall be no order as to costs for this appeal.

ZISENGWE J.....

MAWADZE J agreed.....

*Muzenda and Chitsama Attorneys; Appellants Legal Practitioners
Ndlovu & Hwacha; Respondents Legal Practitioners.*