

ENERST BESETI
and
MANDLA MASANGO
and
GODWELL CHIFAMBA
and
SHEPHERD TARUVINGA
and
INNOCENT NCUBE

Versus

ALISTER MICHAEL FLETCHER
And
TROY ROBERT MAIDWELL
And
THE MINISTER OF LANDS, AGRICULTURE
& RURAL RESETTLEMENT N.O.

IN THE HIGH COURT OF ZIMBABWE
MOYO J
BULAWAYO 24 JUNE & 23 SEPTEMBER 2021

Opposed Application

M. Mahaso for the applicants
B. Masamvu for 1st and 2nd respondents

MOYO J: At the hearing of this matter the 1st and 2nd respondents' counsel raised points *in limine* the first of which was that applicants have no *locus standi*.

The applicants are seeking an order for the rescission of the judgment of this court in HC 2291/08 wherein this court declared that the land being the subject matter of this dispute is not subject to any acquisition. Applicants are settlers on the said piece of land. The 1st and 2nd respondents raised points *in limine* the first of which was challenging the *locus standi* of the applicants.

2nd to 5th applicants clearly have not attached any offer letters to the land being the subject matter of this dispute. Consequently, 2nd to 5th applicants clearly have no *locus standi* in this matter.

I thus have to determine if 1st applicant has *locus standi*. 1st applicant has attached a form titled Resettlement Confirmation Form at page 12 of the court application. It is dated 17 November 2008.

The respondents challenged 1st applicant's *locus standi* based on the fact that the Magistrates' Court in case number 2113/17 issued an eviction order of all the occupants of the land being the subject matter of this dispute namely Umvutshwa farm Lots 1 – 17. The eviction order is still extant. It has not been set aside by a competent court. The Minister of Lands, Agriculture and Rural Settlement (3rd respondent herein) confirms that the beneficiaries were made aware of the judgment of the High Court but did not move out and that the Ministry was requesting on behalf of the settlers that they be given until end of July 2017 so that they could harvest their crops. That is the judgment that the applicant herein seek to rescind.

Clearly, the 1st applicant being one of the settlers declared to be illegal and liable for eviction by the Magistrates' Court and that order remaining extant without it having been set aside, 1st applicant's *locus standi* is tainted by that order for, one who has been declared an illegal settler and who is liable for eviction cannot have *locus standi* on a matter relating to that piece of land which the order of the Magistrates' Court which remains extant, was never appealed nor rescinded and thereafter remains a bar to his standing *vis-à-vis* that piece of land.

It would not make sense that one who has been declared an illegal settler on a piece of land by the Magistrates' Court, however has an interest in the rescission of a judgment relating to that piece of land where one court has found him to be an illegal settler. I hold the view that on this basis, 1st applicant also has no *locus standi* in this matter. I accordingly uphold this point *in limine*.

As for the point *in limine* with regard to the land being urban land and being governed by SI 212/99 respondents have not clearly demonstrated that point. I will thus not uphold this point as I am not satisfied that respondents have clearly proven these allegations.

Having found that all applicants have no *locus standi*, I accordingly dismiss the application with costs.

Mathonsi Ncuube Law Chambers applicants' legal practitioners

Mutatu, Masamvu & Da Silva-Gustavo Law Chambers, 1st and 2nd respondent's
legal practitioners