

MARCUS BRONSON

Versus

LAWRENCE A. BRONSON

IN THE HIGH COURT OF ZIMBABWE
TAKUVA J
BULAWAYO 11 JUNE 2019 AND 20 FEBRUARY 2020

Opposed Application

V Majoko, for the applicant
V.J Mpfu, for the respondent

TAKUVA J: This is a Court application for summary judgment in terms of Order 10 Rule 64 (1) of the High Court Rules 1971. The rule permits an application for summary judgment for what is claimed in the summons and costs. Such an application can be made at any time before a Pre-Trial Conference is held.

Background Facts

The respondent is the applicant's father. Pursuant to an ownership dispute of several mines, the applicant issued out summons against the respondent under case No. HC 1066/18 seeking respondent's eviction and all those claiming occupation through him from nine (9) mines in Gwanda known as Abe, Abe A, Abe B, Abe C, Scallywag, Dikkop B, Dikkop, Mambo King 2 and Mambo King.

Applicant acquired ownership of all the mines after they were forfeited from the respondent by the Ministry of Mines in October 2017. Prior to the forfeiture, they were all owned by the respondent. Currently, all the mines are registered in applicant's name. The statutory period in which the respondent should have vacated the mines following forfeiture lapsed but respondent remained in occupation.

Upon being served with the summons, respondent entered appearance to defend and filed his plea. Under cover of case No. HC 2358/18, the applicant filed this application for

summary judgment which application was opposed by the respondent. The opposition is restricted to only 3 claims or mines. The reason for this according to the respondent is that he is only in occupation of these 3 claims. He does not occupy the remaining 6. As regards the 3 gold mines namely, Abe, Abe A and Abe B, the respondent alleges that there was an agreement between applicant and respondent whereby the applicant would peg the claims and have them registered in his name but the respondent would have the right to work the claims. Respondent then paid for the 3 claims' licences after which applicant pegged them and immediately attempted to evict him. Respondent is convinced that this defence is *bona fide*.

THE LAW

In *Majoni v Ministry of Local Government And National Housing* 2001 (1) ZLR 148 (S), the Court stated that;

“The principles applicable in a summary judgment application have been well documented. The quintessence of this drastic remedy is that the plaintiff whose belief it is that the defence is not *bona fide* and entered solely for dilatory purposes should be granted immediate relief without the expenses and delay of trial ...” see also *Pitchford Investments (Pvt) Ltd v Muzariri* 2005 (1) ZLR (H).

In order for the respondent to defeat an application for summary judgment, he must aver facts on the merits which would enable him to succeed in the main matter or at the very least, raise a *prima facie* defence. In *Hales v Daverick Investments (Pvt) Ltd* 1998 (2) ZLR 234 (H), it was held that;

“Where a plaintiff applies for summary judgment against the defendant and the defendant raises a defence, the onus is on the defendant to satisfy the court that he has a good *prima facie* defence. He must allege facts which if proved at the trial would entitle him to succeed in his defence at the trial. He does not have to set out the facts exhaustively but he must set out the material facts upon which he bases his defence with sufficient clarity and in-sufficient detail to allow the court to decide whether, if these facts are proved at the trial, this will constitute a valid defence to the plaintiff's claim. It is not sufficient for the defendant to make vague generalizations or to provide bald and sketchy facts.” (my emphasis)

APPLICATION OF THE LAW TO THE FACTS

The applicant's claim as detailed in the summons relates to 9 mines but respondent has only set out a defence in respect to only 3 mines. What this means is that essentially, respondent has no defence and no reason to continue occupying the six mines. Applicant should therefore not be prejudiced of a speedy remedy where the respondent has no defence at all.

As regards the three mines, the test to be applied to respondent's opposing affidavit is whether the facts alleged therein, if established at trial, would entitle him to succeed in his defence. Respondent makes repeated reference to "the agreement" between himself and the applicant. Surprisingly, he does not give any material detail as to what constitutes the said agreement, neither does he disclose when and where this agreement was made, under what circumstances it was made, whether it was oral or written or the essential terms of the agreement. These material facts should have been divulged to allow for a proper assessment into his defence. Clearly, the mere reference to some 'agreement' and some vague terms thereof does not suffice, making the defence doubtful.

Respondent should have been candid with the court, but unfortunately he was not. He denied any knowledge of the forfeiture notification, yet his conduct pursuant the notification by the Ministry of Mines in October 2017 suggests otherwise. Certainly, he would not have made some arrangements of sorts, as he suggests, securing his continued mining on the claims unless he had knowledge that he had lost the mines. In my view the respondent was aware that he had lost the claims through forfeiture.

The respondent does not have a *bona fide* defence in that he failed to provide sufficient detail to enable this court to assess his defence. Instead, he contended himself with vague generalities which are weightless. The applicant, as the registered owner of the mines has an unassailable case against the respondent. Therefore, he should not be put through the unnecessary delay and expense of a trial.

In the circumstances, it is ordered that:

1. Summary judgment be and is hereby granted in favour of the applicant as against the respondent on the following terms:-

- (a) An order for the eviction of the respondent and all those claiming occupation through him from their occupation of Abe, Abe A, Abe B, Abe C, Scallywag, Dikkop B, Dikkop, Mambo King 2 and Mambo King mining claims which are situated in the District of Gwanda within five (5) days of service of this order.
- (b) The Deputy Sheriff Gwanda be and is hereby directed to evict the respondent and all those claiming occupation through him from their occupation of Abe, Abe A, Abe B, Abe C, Scallywag, Dikkop B, Dikkop, Mambo King 2 and Mambo King mining claims which are situated in the district of Gwanda should respondent fail to comply with paragraph (a) above.
- (c) Each party to pay its own costs.

T.J Mabhikwa And Partners, applicant's legal practitioners
Messrs V.J Mpofu And Associates, respondent's legal practitioners