

R.A.N. MINES (PRIVATE) LIMITED
and
G & P INDUSTRIES (PRIVATE) LIMITED
versus
DAVID PHIRI
and
SAUSO CHECHEPA
and
MARKO BANDA
and
NELSON MANWERE
and
ANDERSON KANYEMBA
and
PEZURANI MADONDORO
and
YEPULANI CHIMUTANDA
and
ABISHA MUTERANDUWA
and
COLLINS MAZIMA
and
DWATO ALUFAYI
and
WONDER CHIPUPURURU
and
FARAI KARIMA
and
BONUS JOSIAH
and
CRISPEN DHAUDHA
and
COSMOS CHIPARA
and
ELIJAH NGUMBI
and
WILLIAM GUMBO
and
SIXFORD PICK

HIGH COURT OF ZIMBABWE
MANZUNZU J
HARARE, 22, 23 February and 7 March 2022

Civil Trial

D Drury with A Dracos, for the plaintiff
O Shava, for the defendant

MANZUNZU J: The plaintiffs sued the eighteen (18) defendants for eviction from their different housing units situate in RAN Mine compound. The defendants entered appearance to defend the action.

PLAINTIFFS' CASE

The plaintiffs' case is that they own certain housing units situate in RAN mine compound. The 18 defendants were among other employees who were employed by RAN mine. They were given accommodation as part of their employment benefits. In 1999 the mine workers, including the defendants, were retrenched from work and paid their retrenchment package which included a relocation allowance of \$5000. The plaintiffs said the retrenchment was approved by the Ministry of Labour in line with labour laws and that the retrenchment package was one agreed to by the Works Council and Management. Despite demand, it is alleged the 18 defendants refused to vacate the mine houses.

DEFENDANTS' CASE

The defendants' case is that they are in occupation of the houses by virtue of their employment contracts which were not terminated by the plaintiffs. They deny that they are former employees of the plaintiffs. They said they are not privy to any retrenchment proceedings and packages as alleged by the plaintiffs.

ISSUES FOR DETERMINATION

At the pre-trial conference the parties agreed on two issues being:

- a) Whether or not the defendants are still employed by the plaintiffs and concomitantly whether defendants' employment contracts were terminated?
- b) Whether or not defendants have any right to occupy the plaintiffs' properties and concomitantly whether or not plaintiffs are entitled to evict the defendants?

THE LAW

This is an action for *rei vindicatio*. A party who brings a *res vindicatio* is required to satisfy the following requirements,

- (1) that he/she is the owner of the property

- (2) that the property is possessed by the possessor
- (3) he/she is being deprived of the property without his/her consent.

Once an owner has proved that he/she is the owner of the property held by a possessor, the onus shifts onto the possessor to show an entitlement to continue holding onto the property.

In *Chetty v Naidoo* 1974 (3) SA 13, the court remarked as follows regarding ownership:

“The owner may claim his property wherever found, from who-so ever is holding it. It is inherent in the nature of ownership that possession of the *rei* should normally be with the owner and it follows that no other person may withhold it from the owner unless he is vested with some right enforceable against the owner (e.g. a right of retention or a contractual right). The owner, in instituting a *rei vindicatio*, need, therefore, do no more than allege and prove that he is the owner and that the defendant is holding the res, the onus being on the defendant to allege and establish any right to continue to hold against the owner” See also *Stanbic Finance Zimbabwe v Chivhunga* 1999 (1) ZLR 262 (HC). *Hwange Colliery Company v Tendai Savanhu*, HH 395/13.”

It is now settled that a former employee, who occupied the former employer’s house by virtue of his/her employment, cannot continue to do so without the consent of the owner. The rights to occupation terminates with the termination of the employment contract.

In *Zimbabwe Broadcasting Corp v Gomo* 2010 (1) ZLR 8 (H) at 9G-H and 10A, the court dealt with a matter involving an employee who refused to hand over company property after his dismissal and remarked as follows,

“Our law is to the effect that once an employee has been suspended or dismissed from employment, any benefits extended to such employee from that relationship cease. In *Chisipite Schools Trust (Pvt) Ltd v Clark* 1992 (2) ZLR 324 (S) GUBBAY CJ, as he then was, stated;-“Pending the removal of suspension, the Respondent was not entitled, to the continued enjoyment of the benefits comprising the free occupation of the Headmistress’s house and the continued use of the motor vehicle.” See also *Surface Investments Pvt Ltd v Chinyani* HH 295-14, *Zimasco Private Limited v Farai Maynard Marikano* SC181-10.”

ANALYSIS OF EVIDENCE.

The plaintiffs led evidence from two witnesses. The defendants relied on the evidence of the first defendant whose evidence was said to materially represent all the defendants. At the time of hearing the 9th and 18th defendants were reported deceased. The 4th defendant was indisposed.

The plaintiffs called the evidence of their Human Resources Manager, Johannes Makurumidze. While he admitted that due to passage of time the plaintiffs were unable to avail all the relevant documents to this case, his evidence was systematically based on the discovered documents. He said RAN mine closed in 1999. There were 85 employees (defendants

inclusive) who were retrenched. A letter by G & P Industries (Pvt) Ltd (G & P) of 18 November 1999 to Ministry of Labour which sought for the approval of the retrenchment was produced as exhibit 'P1'. The witness explained the relationship between G & P and R.A.N. Mines (Private) Limited (RAN mine). It became clear that G & P is the mother company with the investment drive while RAN mine is more of a subsidiary company. It is clear from form LRR 1 which was marked as exhibit P2 that the retrenchment of the employees (defendants included) was approved by the relevant Ministry. It is also clear from exhibit P4 that the retrenchment package was agreed to by the Works Council and Management on 5 November 1999. David Phiri who gave evidence on behalf of all the defendants admitted that the defendants were represented in the Workers Committee and Trade Union which formed part of the Works Council. The defendants do not deny that a retrenchment package was agreed to. All they say is that they were not paid any package.

Nipper Hamadziripi was the second witness for the plaintiffs. He too was an employee who was retrenched and received his package. He denied any of the retrenched employees remained unpaid as claimed by the defendants.

Despite the long cross examination the plaintiffs' witnesses were subjected to I found them credible. The same cannot be said of David Phiri's evidence. He proved to be economic with the truth. He was evasive in his answers in many respects. He started by saying he was not aware of any retrenchment. Later in his evidence he acknowledges that there were retrenchment negotiations in which the defendants were represented. Despite this representation during negotiations for the retrenchment package he was not keen to be drawn into the details of the outcome. He kept on saying their representatives referred to some notes during their feedback to them. This is where he even became more evasive because when he was asked to divulge the package agreed upon he kept saying the representative's notes had that which was agreed upon.

Despite the defendants' claim that they are still employees of RAN mine, they accept that they have not reported for work since December 1999 and that they have not been paid any wage since then. They then want the court to believe that they have lived with that situation for the past 22 years and yet have done nothing about it. These are the workers with a Workers Committee and are members of a Trade Union. It is highly probable that the defendants were retrenched and paid their retrenchment package like the rest of the employees.

The defendants admit the houses are owned by the plaintiffs. Their only pleaded defence was that they are still employees of the plaintiff. This they claimed to be a recognizable

right at law to remain in occupation. In an about turn during re-examination of the evidence the witness was asked, “What was discussed about accommodation when the company closed?” and the response was, “When the company closed they told us that the houses were ours.”

It emerged during the evidence of Hamadziripi that some of the reasons why some defendants cling on to the houses is because they do not have any alternative place to go. In some instances some of the houses are rented out by the occupiers. Hamadziripi confirmed was one of those who receives rent from a tenant. There is nothing which still points out that the defendants are employees of the plaintiffs. There is no cogent reason to suggest that the defendants are employees of the plaintiffs. There was no explanation as to why they were treated differently from others. The defendants could not put the court into their confidence that there exist an employer/employee relationship.

The plaintiffs proved their case on a balance of probabilities in showing that the defendants are no longer employees of RAN mine. Realizing the shortcomings in their case David Phiri shifted to then say they were given the houses when the company closed. That cannot possibly be true when such is brought at the evening of the case. The defendants failed to discharge the onus upon them to show an entitlement to continue holding on to the houses. The plaintiffs intend to do open cast mining which involves blasting. It is also in the defendants’ interest and safety that they vacate the houses which plaintiffs say are destined for destruction to give way to mine operations.

COSTS

While the plaintiffs asked for costs on a higher scale in the summons such was not pursued in the oral arguments.

DISPOSITION:

IT IS ORDERED THAT:

1. The defendants and all persons claiming occupation through them and/or of all other persons in use, possession and control of any part of the RAN Mine Compound without the consent of the Plaintiffs shall forthwith vacate the RAN Mine Compound, Bindura.
2. Failing vacation, the Sheriff, with the assistance of the Zimbabwe Republic Police if necessary, is authorized to eject the defendants and all persons claiming occupation through them and/or of all other persons in use, possession and control of any part of the RAN Mine Compound without the consent of the Plaintiffs from RAN Mine Compound, Bindura.

3. The defendants shall pay costs of suit jointly and severally the one paying the other to be absolved.

Honey and Blankenberg, first and second plaintiffs 'legal practitioners
Shava Law Chambers, the defendants' legal practitioners