

FAITH MINISTRIES CHURCH.  
versus  
MR. F NHAU  
and  
JOSEPH MSIKA HOUSING CO-OPERATIVE  
and  
THE MINISTER OF LOCAL GOVERNMENT PUBLIC WORKS  
AND NATIONAL HOUSING

HIGH COURT OF ZIMBABWE  
KATIYO J  
HARARE, 8 March and 18 March 2022

**Opposed application – eviction**

*Ms G Makina with Mr T.B Muvhami*, for the plaintiff  
*Mr. F Nyamayaro*, for the respondent

KATIYO J: The Applicant approached this court for an eviction order. The terms of the order sought are as follows:-

**IT IS ORDERED THAT**

1. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents and all those claiming occupation through them be and are hereby ordered to vacate stand number no16549 Hatcliffe Harare within seven (7) days from the date of this order
2. Should the 1<sup>st</sup> and 2<sup>nd</sup> Respondents and all those claiming occupation through them fail to comply with paragraph 1 above, the Sheriff of High Court be and is hereby ordered to evict them forthwith and demolish any structures erected at no 16549 Hatcliffe Harare.
3. The 1st Respondent be and is hereby ordered to pay costs of suit on a client-attorney scale.

**Brief facts**

On 25 April 2014 , Applicant made an application to the 3<sup>rd</sup> Respondent for a site for church stand as per attached copy to the application labeled annexure B .Upon the

acceptance of the application a lease agreement was entered into between the applicant and the 3<sup>rd</sup> Respondent on 15 April 2019 for stand number 16549 Hatcliffe Harare (see annexure C attached to the application). Sometime in 2020 the 1<sup>st</sup> Respondent through the 2<sup>nd</sup> Respondent took occupation of the same stand site and erected some structures without consent of the applicant. Effort to engage the two Respondents was in vain prompting the applicant to approach this court for relief. There was an application launched under case number HC 7668/20 which has since been withdrawn and is attached as annexure D. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents (hereinafter referred to as the two (2) Respondents) have been barring the applicant from accessing the stand thereby preventing him from any meaningful development.

The Respondent avers that he is in occupation by virtue of being a member of the second Respondent. The second Respondent is a Housing Co-operative known as Joseph Msika Housing Co-operative. The second Respondent, on 15 March 2012 made an application for state-land to 3<sup>rd</sup> Respondent for use as residential stands. There was an acknowledgment of receipt of the said letter on 22 August 2012 and that due attention was being given to the letter. On 14 September 2017 there was another correspondence from 3<sup>rd</sup> Respondent requesting the two (2) Respondents to submit a properly drawn diagram showing the existing development, also to regularize through a tarchy.

The 3<sup>rd</sup> Respondent did not file any papers in this case as its receptionist refused to accept service from the Sheriff of High Court insisting that it be directed to another address.

**Points *in limine***

There were points *in limine* raised by the two Respondents

1. That there is another matter pending on the same issue under case no HC 7469/20 and that there was no withdrawal of that matter.
2. That there are material disputes which cannot be resolved on paper but by way

of action.

3. That the applicant has no *locus standi* as he just a leasee and not the owner of the property in question.

The three points *in limine* were dismissed after the court made a finding that the application in question was withdrawn and the second Respondent was not a party to it thus no need for notice to him. The second point has no merit for this is a clear application with no issues around but just to show by way of papers each party's entitlement to the property in question. The third point on the basis that the applicant holds lease to the property thereby deriving substantial interest.

### **Submissions**

**The applicant's** legal counsel cited various authorities to deal with what the two Respondents raised in their opposing papers , in **Zimbabwe Teachers Association And Others V Minister Of Education and Culture 1990(2) ZLR 48** it was held that a person must have an interest in the matter whether direct or indirect to institute proceedings.

There is no doubt that in the current case the applicant has substantial interest as the lease holder to the disputed property. There is nothing put forward by the Respondents to meaningfully rebut this position.

The issue to do with material dispute of fact was well articulated in the case of **Supa Plant Investment (Pvt) LTD V Edgar Chidavaenzi HH 92-09** where the learned judge MAKARAU J defines when does a material dispute of fact arise:-

*“A material dispute of fact arises when such material facts put by the applicant are disputed and transversed by the respondent in such a manner as to leave the court with no ready answer to the dispute between the parties in the absence of further evidence”.*

Further held that *“For the respondents to allege that there was a material dispute of fact he must establish a real issue of fact which cannot be satisfactorily determined without the aid of oral evidence. He must not make a bare denial or allege a dispute.”*

This was well stated in the case of **Room Hires co v Jesper Street Mansion 1949 (3) SA.**

As again quoted in the heads of arguments by the applicant “*it is necessary to make a robust common approach to a dispute on motion as otherwise the effective functioning of the court can be harm strung and circumvented by the most simple blatant strategy. The court must not hesitate to decide on an issue of facts merely because it might be difficult to do so .Justice can be defeated or seriously impeded and delayed by an over fastidious approach to a dispute raised in an affidavit*”. See case of **Sofflantini v Mould 1956 (4) SA 150 at 154.**

I tend to be persuaded by this argument in this case. I don’t see any material dispute of fact given that the applicant is a holder of a valid lease agreement. There is nothing to the contrary put by the two Respondents to that effect. There is a bold assertion to the effect that the lease agreement is potentially fraudulent and yet there is nothing to support such averment. The presumption that any document originating from public office shall be *prima facie* presumed to be the correct position unless proved to the contrary cannot be rebutted by mere bold allegation.

On the merits the applicant insist that he has the authority to institute these proceedings. The quoted learned authors **Silbergbeg and Schoeman in their book, The Law of Property, 5th Edition, Lexis Butterworths at page 653 had this to say:**

**“Eviction proceedings may be instituted as soon as the owner or person in charge of property realizes that illegal occupation is taking place or as soon as it comes to his attention that persons are occupying his or her property”.**

The law is quite clear as to who can institute eviction proceedings. The two Respondents in their heads of arguments quoted more or less similar authorities as of those of the applicant. There is nothing to show that the two Respondents have right of occupation. A mere application cannot on its own be taken to transfer rights to an individual or individuals but an anticipation of a response either in the positive or negative. It is in other words a future uncertain response. The two Respondents have nothing in support of their opposition to this application. They have not demonstrated to this court any revocation of the **lease agreement** produced as annexure C. Courts are courts of record and not mere and bold allegations. The issue of regularization as per Annexures **A, B and C attached by the two Respondents** do not prove anything rather a process meant to acquire a stand. There is nowhere in the record which shows the

Respondents were ever given any right of occupation by the 3<sup>rd</sup> Respondent. This Court wonders why the two Respondents decided to oppose this application. They were simply supposed to pursue their application to the 3<sup>rd</sup> Respondent to its logical conclusion than interfering with the applicant's undisturbed peaceful possession of the said property. Furthermore there is no specific land which the two respondents can clearly demonstrate to this court as the land they were allocated. This is a clear case of self-help by the two respondents in total disregard of the law. In my view the applicant has clearly demonstrated that he is entitled to occupy the said property to the exclusion of any other party. The non-responsive stance taken by the 3<sup>rd</sup> Respondent in this case is also a clear demonstration of his commitment to the lease agreement between Him and the applicant. In the result the court orders as follows;

**IT IS ORDERED THAT:**

- 1. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents and all those claiming occupation through them be and are hereby ordered to vacate stand number no16549 Hatcliffe Harare within seven (7) days from the date of this order**
- 2. Should the 1<sup>st</sup> and 2<sup>nd</sup> Respondents and all those claiming occupation through them fail to comply with paragraph 1 above, the Sheriff of High Court be and is hereby ordered to evict them forthwith and demolish any structures erected at no 16549 Hatcliffe Harare.**
- 3. The 1<sup>st</sup> Respondent be and is hereby ordered to pay costs of suit on an ordinary scale.**

*Mugiya & Muvhami Law Chambers, applicant's legal practitioners*  
*Farai Nyamayaro Law Chambers, respondent's legal practitioners*