

GOLDBERG CHIMONYO
versus
EVELYN CHIPO CHIKOORE
and
MINISTER OF LANDS AND RURAL RESETTLEMENT

HIGH COURT OF ZIMBABWE
WAMAMBO AND MUCHAWA JJ
HARARE, 27 January 2022 and 21 March 2022

Civil Appeal

M. Muvhundusi, for appellant
M. Mazani, for 1st respondent
T. Tembo, for 2nd respondent

WAMAMBO J: This is a Civil Appeal we heard on 27 January 2022. We thereafter rendered *an ex tempore* judgment dismissing the appeal with costs. The appellant has since requested the reasons for judgment for the purposes of an appeal. Our reasons appear hereunder.

Before the Court *a quo* summons were issued on behalf of the respondent seeking eviction of the appellant from Plot 16 Rushfontein Seke, Marondera (hereinafter called the Plot). A trial ensued and the court *a quo* found for the respondent and ordered the eviction of appellant from the plot.

Respondent along with Cover Katsidzire gave evidence in the respondent's case. In appellant's case the witnesses who testified were appellant himself, Stanley Nyaruwe and Josphat Matibiri. The appellant dissatisfied with the outcome of the matter launched an appeal wherein he raises five grounds of appeal. I will deal with the said grounds presently.

The first ground of appeal is to the effect that the Trial Court misdirected itself by evicting the appellant who had occupying rights to the Plot. It also speaks to documentary evidence that supported appellant's case. To deal with this ground of appeal it is necessary to first lay out the respective parties' positions *vis a vis* the Plot in question.

First respondent claims the plot on the basis that she is the surviving spouse of the late Joseph Chikoore. To buttress this first respondent produced documentary evidence. At page 91 of the record is a letter penned by the Executive Officer Finance for Manyame Rural District Council

confirming that Joseph Chikoore is the owner of the Plot according to the District Council's records. The letter is dated 9 February 2015.

At page 92 of the record is a letter from the Provincial Administrator Mashonaland East Province. The letter also confirms that Joseph Chikoore was officially allocated the Plot. On the face of the same letter the District Land Officer-Seke appended the following inscription in long hand-:

"To whom it may concern.

Re: Re-affirmation of Plot ownership.

Please note that this office recognises that this document represents an offer letter permit/confirmation letter. The widow to the late holder of this document is C.P Chikoore I.D No 48-031384 A 47. We request your good office to assist her as much as possible."

In terms of documentation appellant bases his case on an affidavit deposed to by Stanley Nyaruwe (appearing at page 101 of the record) and a letter from the District Land Officer (appearing at page 103 of the record). The affidavit by Stanley Nyaruwe is dated 16 July 2015. It reads as follows-:

"Mr Chikoore the village chairman Mr Kyanise and Mr Chimonyo came to the office with typed letter. Mr Chikoore was surrendering the Plot 16 willingly handing it to Mr Chimonyo. Please note that Mr Chikoore was not evicted. He surrendered the Plot 16. As the resettlement officer I filed both the two letters one from the village chairman and the second from one Mr Chikoore. I filed the two letter (sic) in the Rushfontein file. We then went to the Provincial Senior Resettlement Officer Mr Gwenzi to change and register Mr Chimonyo as the owner of Plot 16 and asked him to resign. It's now after eighteen years now after the Chikoore family left Rushfontein. I ...the knowing Mr Chimonyo as the registered farmer for Plot 16 Rushfontein."

The author of the above letter testified. Dealing with his evidence the Trial Court at page 16 of the record said-:

"The first defendant told this Honourable Court that after the late Joseph Chikoore surrendered this plot to him all the necessary paper work was done at Seke District Development fund offices to change ownership. He then went further and told this court that an offer letter was issued to him after he was given this offer letter by Stanley Nyaruwe whom he said took the offer letter back. Surprisingly the first defendant did not produce a copy of the offer letter in Court. Even if it was taken back by Mr Nyaruwe the first defendant could have just gone to the Ministry of Lands to retrieve a copy of it. One wonders what will be the reason of taking back the offer letter if at all it was issued.

The first defendant told the court that he didn't know why that offer letter was taken back by Mr Nyaruwe. To show that the first defendant and Mr Nyaruwe were lying before this Court Mr Nyaruwe denied ever issuing an offer letter to the first defendant".

The Trial Court clearly disbelieved the appellant and Mr Nyaruwe for the reasons given above. As an appeal court we are slow to overturn findings of credibility. The Trial Court apart

from trying the matter at the first instance also had direct contact and could assess the body language of the witnesses.

The above circumstances reflect that whatever movements or intentions were exhibited by appellant he did not succeed to obtain an official document giving him rights of occupation to the Plot. One does not forget that Joseph Chikoore is now deceased. A lot could be attributable to him that he cannot defend.

There was no documentary evidence tendered of the following documents referred to in the affidavit by Stanley Nyaruwe appearing at page 103:-

A typed letter brought by Mr Chikoore, Chimonyo and Kanganise

Letters from the village chairman and Mr Chikoore

Document reflecting the registration of appellant as the new owner of the Plot.

The first respondent on the other hand tendered documents already referred to. To illuminate how appellant became linked to the Plot in the first place first respondent gave a believable explanation. Her explanation was that the appellant requested to use 3 hectares of the plot while he looked for his own farm and that the Plot was never permanently surrendered to the appellant by her husband or herself.

We find that the Trial Court in its analysis of the spectrum of evidence made correct findings. We find that the first ground of the appeal has no merit.

The second ground of appeal questions first respondent's legal capacity to sue for eviction over State land.

This ground is clearly unmeritorious. First respondent instituted her claim on the basis that she is the surviving spouse of the registered owner of the Plot. She is also the executrix dative to her husband's estate.

The holder of an offer letter, permit or land settlement lease has *locus standi* to sue for eviction of any illegal occupier of land allocated to him or her.

See: Commercial Farmers Union and Others v Minister of Lands and Rural Resettlement and Others SC31/10

Thus the perception taken by second respondent that first respondent had no *locus standi* to evict appellant is untenable.

The third ground of appeal questions first respondent bringing the proceedings in her personal capacity. The ground misses two fundamental points. The first is that first respondent was appointed the executrix dative of her husband's estate (see page 51 of the record.) The

second point is that first respondent fitted into the shoes of her husband by virtue of her being the surviving spouse.

The case of *Chombo v Chombo SC41/18* among other issues deals with the rights of a wife *vis a vis* a farm registered in the name of the husband. Notwithstanding that the matter is a divorce matter, fundamental principles are enunciated therein.

At page 6 UCHENA JA in *Chombo v Chombo* (supra) said:-

“What is important to note is the effect of a registered long lease. The effect of registering a long lease is to give the lessee limited rights which are capable of enforcement against the whole world. *W.E. Cooper, Landlord and Tenant, Second Edition at pages 276-277 commented on the nature of the lessee's rights in a long lease as follows:*

A lessee is also entitled to have the lease registered against the title deeds of the property. When he is given occupation or the lease is registered the lessee acquires a real right. Once his real right is so constituted the lessee can enforce it against the whole world. Consequently upon being in occupation or the lease being registered the lessee should be entitled to effect a trespasser.”

In the instant case first respondent's husband was granted a 99 year lease over the Plot with an option to buy the plot after 10 years of leasing it.

We find in the circumstances that the third ground of appeal is also unmeritorious.

The fourth ground of appeal is equally unmeritorious. The evidence of first respondent reads very clearly and lucidly. She was not materially inconsistent at all. The gist of her evidence was that appellant was sublet a number of hectares on the plot. Whether or not he started off farming at an adjacent plot and later protruded onto the Plot or that an agreement was reached for him to use a piece of the Plot temporarily makes little difference. The long and short of it is that appellant took advantage of his use of the Plot to now seek to remain on the plot permanently.

The fifth ground of appeal attacks the jurisdiction of the Trial Court. It avers that all land disputes should be determined by the Zimbabwe Land Commission in terms of section 297 of the Constitution. Section 297 of the Constitution provides for the functions of the said Commission and provides as follows under section 297(1) (d) thereof:-

“To investigate and determine complaints and disputes regarding the supervision, administration and allocation of agricultural land.”

The first respondent may well have approached the Zimbabwe Land Commission as per section 297(1) (d) of the Constitution. That does not oust the jurisdiction of the Magistrates Court. The Magistrates Court Act (*Chapter 7:10*) encapsulates in section 11 thereof its

jurisdiction which includes as per section 11(1) (b) (iii) "in actions of ejection against the occupier of any house, land or premises situate within the province."

The Magistrates Court thus had jurisdiction to deal with this matter which involves ejection from land within the province. Notably during the trial no issue was raised of the lack of jurisdiction of the Magistrates Court to try this matter. Thus the issue of the value as prescribed in the rules could not and was not determined in the Court *a quo*.

We find that section 297 of the Constitution does not oust the jurisdiction of the Magistrate Court in deserving cases. We find the findings by the Magistrate as adverted to earlier unassailable.

The first respondent has strong legal rights to the Plot while appellant only lays a claim to the Plot through some efforts to gain control of the Plot which efforts did not amount to any real rights.

The widow of the registered owner of the Plot who is also the executor proved before the Trial Court her right to evict appellant before the Trial Court.

It is for the above reasons that we ordered as follows:-

"The appeal be and is hereby dismissed with costs."

MUCHAWA J agrees.....

Chivore Dzingirai Group of Lawyers, appellant's legal practitioners

Mazani & Associates, 1st respondent's legal practitioners

Civil Division of the Attorney General's Office, 2nd respondent's legal practitioners