

RICHARD MANDIRANGA  
versus  
SUNUNGURAI GWARADA  
and  
JESCA CHOTO  
and  
SHERIFF OF HIGH COURT  
and  
MINISTER OF LANDS, AGRICULTURE, WATER, FISHERIES AND RURAL  
RESETTLEMENT

HIGH COURT OF ZIMBABWE  
TAGU J  
HARARE, 8 & 27 July 2022

**Urgent Chamber Application**

*Professor L Madhuku with A Dracos, for the applicant  
H Tererai, for 1<sup>st</sup> and 2<sup>nd</sup> respondents*

**TAGU J:** The applicant approached this court on a certificate of urgency seeking an interim interdict and on the return date a final order.

The background facts are that the applicant has been engaged in protracted litigation with first and second respondents over Dana A Farm, Goromonzi. The dispute has been in this court, in the Supreme Court, the Lands Commission and before fourth respondent. On 30 May 2012 applicant was offered by fourth respondent sub-division 2 of Dana A Farm measuring 87.50 hectares in extent. On 10 December 2012 fourth respondent purportedly withdraw the applicant's offer letter through a notice of withdrawal which related to sub-division 3. At the material time applicant had never been offered or occupied sub-division 3. Following a query by applicant fourth respondent noted the anomaly and then proceeded to withdraw offer letter for sub-division 2 Dana Farm. The withdrawal is the subject of a challenge under HC 8907/19 principally on the basis of the failure by fourth respondent to afford applicant the right to be heard before making an adverse decision against him. The withdrawal resulted in a creation of three sub-divisions. This resulted in first and second respondents with sub-division 1 and 2 respectively and applicant with an offer

letter for sub-division 3. Sometime in December 2020 and under HC 6762/20, first and second respondents obtained in default an order for applicant's eviction from sub-division 1 and 2 and not sub-division 3. Upon learning of this order applicant filed an urgent application for stay of execution under HC 1530/21 together with an application for rescission which urgent application hearing was suspended pending the determination of an appeal under SC 409/20.

What prompted the applicant to file the present application for an interim interdict is that on 30 June 2022 the third respondent's assignees attended upon the entire Dana A Farm constituting sub-division 1, 2 and 3 and sought applicant's eviction from the whole farm on the strength of the eviction order obtained in December 2020 under HC 6762/20 in default.

The first and second respondents opposed the application and took four points *in limine*. The fourth respondent indicated that he is not opposed to the order being sought and he undertook to abide by the decision of this Honourable Court in HC 4324/22 as stated in his affidavit filed of record.

The first point *in limine* taken by the first and second respondents is that the matter is not urgent. Respondents' contention is that applicant has not set out any basis why this application should be considered on an urgent basis. According to them it can hardly be said that the matter cannot wait, more particularly the first and second respondents have never harbored any idea of carrying out eviction outside the ambit of the Court Order and writ of execution. To that extent this basically means there is no imminent irreparable harm faced by the applicant which would justify him to jump the queue.

The applicant submitted that the matter is extremely urgent. The eviction being effected by third respondent on authority of first and second respondents is being effected indiscriminately especially where the order sought to be enforced does not speak of his eviction from sub-division 3. He spoke of irreparable harm likely to be faced by himself, his family and furniture being exposed to bad weather.

The applicant submitted briefly that the first and second respondents cannot evict the applicant as they do not have an order to do so. In any case the order to evict applicant is being challenged hence the present application for a temporary interdict. He said the point *in limine* lacks merit and must be dismissed.

What prompted the applicant to approach this court on an urgent basis is the service of a notice to evict him from the whole of Dana Farm, Goromonzi. The order being used by the first and second respondents to evict applicant directs that applicant, his sundry and all claiming occupancy through him be and are hereby ordered to vacate from Plots No. 1 and 2 Dana Farm Goromonzi forthwith. Yet applicant is occupying Plot No. 3 Dana Farm, Goromonzi. I find that the first point *in limine* does not have any merit. I dismiss it.

The second point *in limine* is that the certificate of urgency is fatally defective for failure to state the basis on which this matter must be treated with urgency. It was said that the legal practitioner who certified this matter as urgent failed to apply his mind.

Applicant reiterated his position that the matter is urgent. He submitted that the certificate of urgency is to enable the Registrar to place the matter before the judge. Professor L *Madhuku* submitted that the lawyer applied his mind. Even if he applied his mind wrongly, the issue is that he applied his mind.

This point *in limine* was taken without any seriousness. A reading of the certificate of urgency reveals the basis upon which Prince Cephas Fanti, a Legal Practitioner, certified this matter as urgent. He said:

“I have read the papers in this matter and I am satisfied that the matter deserves urgent attention in that:

- a. Applicant has established that he holds an offer letter in respect of sub-division 3 of Dana A Farm, Goromonzi.
- b. Applicant has demonstrated that on the strength of the court order under HC 6762/20, on 30<sup>th</sup> June 2022, 3<sup>rd</sup> respondent on instruction of 1<sup>st</sup> and 2<sup>nd</sup> Respondent indicated of an intention to evict Applicant from the main farm house and compound which are under sub-division 3.
- c. The intention indicated is without any lawful basis since the order to be enforced is clear that it only relates to sub-division 1 and 2.
- d. In the result, Applicant stands to suffer irreparable harm and prejudice if evicted from property he lawfully occupies. The prejudice arises in that Applicant and his belongings are exposed to rains and bad weather without any lawful basis.
- e. Applicant stands to lose important documents and the property stands to be destroyed.
- f. Further, 3<sup>rd</sup> Respondent as an officer of this Honourable Court, cannot facilitate conduct that subjects a party to inhuman and degrading treatment. In all these respects, the matter is extremely urgent.”

It cannot be said that the lawyer who certified the matter as urgent did not apply his mind and failed to state the basis on which this matter can be dealt with on urgent basis. I do not think that the certificate of urgency can be said with any stretch of imagination to be fatally defective. I dismiss the second point *in limine*.

The third point *in limine* is that the applicant lacks locus standi since he has no offer letter for sub-division 3 Dana Farm Goromonzi as his offer letter was withdrawn. To put it in other words there is no applicant before this honourable court hence the application should be dismissed. This point was opposed on the basis that applicant still occupies the piece of land. The notice of withdrawal on p 15 was in respect of sub-division 3 which the applicant was not occupying then. The anomaly was then corrected and three offer letters for sub-division 1, 2 and 3 were issued. Counsel for the applicant drew the court's attention to p 18 para 2 where the respondents said:

“The Ministry of Lands later on reintroduced 3 subdivisions. The Ministry also revoked the applicant's offer letter for subdivision 2 of Dana A Farm and offered him subdivision 3 of the same farm.”

By their admissions the applicant was offered subdivision 3 of Dana A Farm by the Ministry of lands. The point that applicant has no locus standi to bring these proceedings is without merit. I dismiss it.

The fourth and last point *in limine* was that Application is not properly before the Court for failure by applicant to prove requirements for granting of an interim relief. This point was shot down by Professor L *Madhuku* who submitted that this cannot be a point *in limine* but issues to be dealt with in the merits of the application. I totally agree with Professor L *Madhuku*. I will not labour myself on this last point but to dismiss it.

This is an application for an interim interdict. The requisite for an interim interdict are trite. These are:

- (a) a *prima facie* right, even if it is open to some doubt,
- (b) a well-grounded apprehension of irreparable harm if the relief is not granted,
- (c) that the balance of convenience favours the granting of an interim interdict,
- (d) that there is no other satisfactory remedy.

*In casu*, the applicant has established more than a prima facie right open to some doubt if regard is heard to the sentiments of GIBSON G. CHIJARIRA, the Acting Permanent Secretary in the Ministry of Lands, Agriculture, Water and Rural Development who said in his affidavit:

“The Applicant is the lawful occupant of the farm in question and by virtue of that, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents have no lawful capacity to evict the Applicant from the farm in question. There was indeed an attempt to withdraw the Applicant's offer letter in respect of Subdivision 3 of Dana A sometime in December 2012 but however, a resolution was reached for the Applicant to continue occupying and utilizing the farm through a letter dated 31<sup>st</sup> of January 2014.”

The applicant was therefore given a letter by the Ministry of Lands, Agriculture, Water and Rural Development on the 31<sup>st</sup> January 2014. Not only does the applicant have *locus standi* in judicio, but also have established his rights. As regards the rest of the requisites the applicant articulated the same in his founding affidavit. Having heard the submissions from the parties I am satisfied that this is a case that deserves the granting of an interim interdict.

**IT IS ORDERED THAT:**

**TERMS OF FINAL ORDER SOUGHT**

That you show cause to this Honourable Court why a final order should not be made in the following terms:-

1. It is ordered that first, second and third respondents are hereby barred and interdicted from evicting applicant from sub-division 3 of Dana A Farm, without a court order.
2. First and second respondents jointly and severally shall pay costs of suit.

**INTERIM RELIEF GRANTED**

Pending the confirmation or discharge of this Provisional Order the applicant is granted the following interim relief:-

1. It is ordered that first, second and third respondents must hold in abeyance any eviction of applicant from sub-division 3 of Dana A Farm, Goromonzi.
2. There is no order as to costs.

TAGU J:.....

*Honey & Blanckenberg*, applicant's legal practitioners  
*Tererai Legal Practice*, first & second respondents' legal practitioners  
*Civil Division of the Attorney Generals' Office*, fourth respondent's legal practitioners