

ESTATE LATE GODFREY HAVATITYE SIGOBODHLA  
and  
TERTTU ELISABET SIGOBODHLA  
versus  
TAKAWIRA CHAWONZA  
and  
MINISTER OF LANDS AGRICULTURE FISHERIES WATER AND RURAL  
RESETTLEMENT

HIGH COURT OF ZIMBABWE  
MUCHAWA J  
HARARE, 15 September 2021 and 21 September 2021

### **URGENT CHAMBER APPLICATION**

*Z Chidyausiku*, for the applicants  
*K. T Mukanganwi*, for the 1<sup>st</sup> respondent  
*N Chiro*, for the 2<sup>nd</sup> respondent

MUCHAWA J: This is an urgent chamber application for a spoliation order made by the second applicant in her capacity as the surviving spouse and executrix dative of her late husband, Godfrey Havatitye Sigobodhla and in her own personal capacity.

The first respondent is Takawira Chaonza alleged to have dispossessed the applicants whilst second respondent is the Minister responsible for lands and rural resettlement, amongst other things.

The common cause facts are that the first applicant was issued an offer letter on 13 June 2002, in respect of subdivision 15 of Kildonan R/E farm in Zvimba and the farm unit is described as approximately 265.62 hectares in extent. In 2014, the first applicant died and second applicant was appointed executrix dative to the estate and is currently winding up the estate.

It has emerged that the first respondent was issued with an offer letter for the same subdivision 15 of Kildonan farm in Zvimba, but the extent of the land is given as measuring approximately 130.00 hectares in extent. This was done on 21 June 2021.

The second applicant alleges that she was in peaceful and undisturbed possession of the farm when on 24 August 2021 she was advised that the first respondent and/or his employees invaded the farm and started building structures and fencing off portions thereof. It is averred that

such invasion has disturbed applicant's farming operations particularly in relation to security of her livestock which will be exposed to various diseases resulting in her losing same. Another fear is that she may lose the land resulting in the livelihood of her employees and relatives who depend on the farm, being negatively affected.

Furthermore the second applicant avers that upon allocation of the farm in 2002, they immediately started utilizing the farm and engaged in animal husbandry and horticulture projects, which projects she has continued even after her husband's death. Though she states she is ordinarily resident in Harare, she indicates she has 10 full time employees who are resident at the farm at her specific instance and request and that she also takes on seasonal contract workers as and when necessary. It is also indicated that attempts to get assistance from the Zimbabwe Republic Police on 24<sup>th</sup> August to remove the first respondent were unfruitful as were direct engagements with the first respondent. Letters in respect of these actions were attached.

Ms *Chiro*, second respondent's counsel, submitted that they are not opposed to the granting of the application being sought as they erred in issuing out a second offer letter for the same land without first withdrawing the first offer letter. She conceded that this was a huge administrative error and the way forward would be a restoration of the status quo ante to enable their offices to rectify the error.

First respondent's counsel, Mr *Mukanganwi*, was vehemently opposed to the granting of the application starting with raising several points *in limine* which I dismissed. The first related to urgency and I found that a matter of spoliatory relief is urgent in its nature particularly where an applicant takes action as soon as the cause of action and need to act arises. I further found that the fact that the applicants had put 10 days *dies induciae* does not take away from the urgency of the matter as the court can give directions, as was done herein leading to the matter filed on 1 September being initially set down for 3 September 2021. Another issue related to the draft order which was alleged to be incompetent as it provides for a *rule nisi*. I found that where a spoliation order is granted *ex parte*, the general principles of law would require the issuance of a *rule nisi*. Where, however, as in this case, the spoliator has received notice of the application and has placed his case before the court, a *rule nisi* would be unnecessary. In this case the court will issue the appropriate order to the circumstances.

I did not rule on the preliminary point raised, that the answering affidavit of the applicant is improper in that it attaches, for the first time, some supporting affidavits and pictures which could very well have been availed with the founding affidavit, thus denying the first respondent a chance to reply. It was argued that a case stands or falls on the founding affidavit and applicant should not be allowed to make its case as it goes. Mr *Chidyausiku*, for the applicants contended that the answering affidavit and its attachments were only amplifying what was already set out in paragraphs 10 to 14 of the founding affidavit and not introducing anything new and should be allowed to stand. . I do not intend to make a determination on this point because the application can be determined without reference to the impugned answering affidavit and its attachments.

The first respondent's defense is essentially that the second applicant was not in peaceful and undisturbed possession of the farm as the earlier letter is not in second respondent's database. Ms *Chiro's* concession of administrative bungling deals a blow to this defense. It was also argued that when the first respondent took occupation of the farm in issue, it was all a thick forest with no one in occupation and no livestock or other activities taking place, particularly as the applicant did not provide the names of employees in the founding affidavit. The fact that second applicant said she is ordinarily resident in Harare was harped on as an indicator of lack of physical control of the farm. I note however that the applicant lays out clearly that she has employees and is carrying out animal husbandry and horticultural projects. I am satisfied that she is in control of the farm in question. Given that the farm is 265.62 hectares, it is understandable that a portion of the farm would be forests, particularly as explained that it is used as pastureland for the livestock.

The first respondent admits to moving onto a portion of the farm and putting a 1.5 ton truck, a scotch cart, grinding mill, water pump, ox drawn plough, cultivator and six cattle, among other things and fencing off part of the farm. There are even receipts of payment of relevant taxes for the land.

In as far as first respondent admits to having moved onto and occupied the farm and carrying out the activities detailed above, without the consent of the applicants nor a lawful court order authorizing him to do so, he is in fact, admitting to having despoiled the applicants, who through second applicant were in peaceful and undisturbed possession before his arrival.

The *mandament van spoilie* is a restitutory interdict that accrues to a possessor where another has deprived him of possession on the pretext that the latter was entitled to do so, or where dispossession is unlawful. *In casu*, the first respondent's case is that he was entitled to act as he did.

Public policy requires that no one may take the law into his own hand. All possessors, whether in lawful possession of an item or not, who are deprived of their possession must first have their possession restored to them before the unlawfulness of their possession is investigated. This prevents people from taking the law into their own hands. See *Eckard's Principles of Civil Procedure in the Magistrates Courts, 5<sup>th</sup> ed, Juta and Company p 73.*

It is therefore fitting in this case not to go into the merits of the validity or otherwise of the offer letters in issue and whether the second applicant as the widow could benefit from the offer letter issued in the name of her late husband as Mr *Mukanganwi* wanted to draw the court to do. I am satisfied that second applicant was in peaceful and undisturbed possession of the farm, subdivision 15 of Kildonan in Zvimba when first respondent dispossessed her of 130.00 of the 265.62 hectares.

The applicant did not justify its prayer for costs on a higher scale and I will award costs on an ordinary scale, therefore.

I accordingly order as follows:

1. The first respondent and all persons claiming occupation through him or any other person occupying subdivision 15 of Kildonan farm in Zvimba shall forthwith vacate and remove all property introduced by them on the said farm so that the status quo ante is restored as before the issuing of the offer letter to the first respondent on 21 June 2021.
2. To the extent that it becomes necessary, the Deputy Sherriff is hereby authorized and empowered to attend to execution of paragraph 1 of this order and he may enlist the assistance of any member of the Zimbabwe Republic Police for that purpose.
3. The first respondent is to pay costs on an ordinary scale

*Madzima Chidyausiku Museta*, applicant's legal practitioners

*Mugiya and Muvhami Law Chambers*, 1<sup>st</sup> respondent's legal practitioners

*Civil Division of the Attorney General's Office*, 2<sup>nd</sup> respondent's legal practitioners