

KENNEDY GOSWIN MANGENJE
versus
MINISTER OF LANDS, AGRICULTURE, FISHERIES,
WATER AND RURAL DEVELOPMENT
and
RELEASE POWER INVESTMENTS PRIVATE LIMITED
and
ONIYAS GUMBO
and
REGISTRAR OF DEEDS N.O.
and
TBIC INVESTMENTS PRIVATE LIMITED

HIGH COURT OF ZIMBABWE
MAXWELL J
HARARE, 18 October, 2022

Urgent Chamber Application

E Jera, for Applicant
C Chitekuteku, for 1st respondent
Advocate R Mabwe, for 2nd and 3rd respondents
Advocate F Mahere, for 5th respondent
No appearance for 4th respondent.

MAXWELL J:

On the 25th of August 2022, I granted a provisional order with the following interim relief:

“TERMS OF THE FINAL ORDER SOUGHT

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

1. The 2nd respondent be and is hereby ordered to restrain from any action whatsoever on, or with respect to, the piece of land called the remaining extent of Stuhm situated in the District of Goromonzi in Mashonaland East Province measuring 583.1360 hectares until the matter under HC 5231/22 matter (sic) is finalized.
2. The 1st, 2nd and 3rd Respondents jointly and severally one paying the other to be absolved should not be ordered to pay costs of suit.

INTERIM RELIEF GRANTED

That pending determination of this matter, the 2nd respondent be and is hereby ordered to restrain from any action whatsoever on, or with respect to, the piece of land called the

remaining extent of Stuhm situated in the District of Goromonzi in Mashonaland East Province measuring 583.1360 hectares.”

The 2nd and 3rd Respondents requested for reasons for the order. These are they.

BACKGROUND

The first respondent issued a lease to the second respondent with respect to a piece of land called the remaining extent of Stuhm situated in the District of Goromonzi in Mashonaland East Province measuring 583.1360 hectares (the land). The applicant holds an offer letter to the same piece of land. There had been an attempt to withdraw the Applicant’s offer letter but this Court in HH 377/13 set aside the purported withdrawal and confirmed its validity for all intents and purposes. The applicant filed an application seeking the setting aside of the first respondent’s decision to issue the lease to second respondent as well as its cancellation, under HC 5231/22.

The applicant averred that he became aware of the issue of the lease in the evening of 1 August 2022 and immediately acted with haste to protect his interests. He had been made aware of an urgent chamber application under HC 4989/22 set down for the 2nd of August, 2022, which involved the land in question. He had sought a postponement of the matter in order to seek joinder and postponement of the matter. He was given up to 4 August, 2022, to file an application for joinder and the urgent chamber application was postponed to 11 August, 2022. He subsequently made a decision not to apply for joinder but to file his own application, which he did under HC 5258/22, the present application. In his view, given the secretive manner in which the lease was issued to the second respondent behind his back, there is a reasonable apprehension that some other processes relating to the land may be taken behind his back thereby prejudicing his interests on the land in question. He sought that the 2nd Respondent be ordered not to do anything with the lease it is holding, or to evict him from the land until this matter and the matter under HC 5231/22 have been determined

The application was opposed. First respondent raised preliminary issues to the effect that Applicant has no right to the land in question as his offer letter was withdrawn in 2011 and there is no reasonable apprehension of harm as if he is to be evicted, he will be given a notice to wind up operations and vacate and that his eviction would be following a court order. Further that the matter is not urgent. On the merits, it was submitted for first respondent that the issuance of the

lease was within the confines and limits of his power and nothing was done in a clandestine manner.

The second and third respondents also raised preliminary issues, that the matter is not urgent and that the application in HC 5231/22 is fatally defective. On the merits, they gave the historical background to the land in question and averred that there was nothing irregular and unlawful about first respondent's decision. As such, they argued that there is no basis for second respondent to be delayed in receiving and enjoying the property in question. Third respondent stated that the Applicant's offer letter was invalid as the land was not State land, and that he bought it before the land reform programme. He further stated that applicant has been in illegal occupation of the property for a long time.

Though the fifth respondent filed a notice of opposition, the opposing affidavit is in support of the application.

In answer to the respondents' opposition, applicant pointed out that the withdrawal of his offer letter was set aside in HH 377/13 and his offer letter was reinstated and declared valid and effectual. He also pointed out that the threat of eviction raises reasonable apprehension of harm and that there is also a reasonable apprehension that second and third respondents can change the character of the land without his knowledge. He maintained that the matter is urgent. He further pointed out that the question of whether the matter under HC 5231/22 is fatally defective will be dealt with by the appropriate court at the time it will be heard. Applicant submitted that there is nothing to show that second or third respondent ever acquired title to the land and no proof of purchase was provided.

At the hearing of the matter, Advocate *Mabwe* raised additional preliminary issues. The first was that the matter was overtaken by events in that the lease agreement had already been registered and Applicant cannot seek to undo that which was done lawfully. The second was that the relief sought in the interim is similar to the one sought in the final therefore it is defective.

In response Mr *Jera* submitted that the relief sought has not been overtaken by events as applicant is seeking to have the *status quo* preserved. He submitted that the relief sought is not similar as the interim relief is being sought pending the determination of this matter whereas the final relief is sought pending the determination of HC 5231/22. He maintained that the matter is urgent.

After hearing the parties on the preliminary points I reserved my decision and directed that parties address the merits of the matter. Mr *Jera* submitted that applicant had satisfied the requirements for the granting of an interdict in that he has a clear right established in terms of an offer letter he is holding. In addition, he is actually in occupation of the land in question. He pointed out that the attitude of the first to third respondents clearly justify Applicant's apprehension of harm as the second and third respondents made it clear that they are going to exercise rights emanating from the lease and the first respondent supports them. Further that any exercise of such right will prejudice applicant if eventually he succeeds in showing that first respondent's action in issuing the lease is illegal. He also submitted that no other remedy can protect applicant's rights and the balance of convenience favours the granting of the relief sought.

No oral submissions on the merits were made on behalf of the first and fifth respondents.

Advocate *Mabwe* disputed that applicant had demonstrated that he had a *prima facie* right as first respondent can revoke an offer letter and parcel out land to another person. In her view, Applicant cannot have a *prima facie* right on the basis of a contract which can be varied and changed at any stage. She submitted that change occurred in favour of second respondent therefore applicant has no *prima facie* right. Further that applicant will not suffer harm which is irreparable as where damages suffice, harm is not irreparable. She also submitted that applicant had not exhausted domestic remedies as he could have approached either the Land Commission or the Administrative Court.

In reply, Mr *Jera* pointed out that first respondent did not controvert the fact that the withdrawal of the offer letter was set aside by this court and the offer letter held by applicant was declared valid and effectual. Accordingly, he submitted, all actions taken by first respondent with respect to that land and the lease that was issued are invalid, and, therefore a *prima facie* case for urgent relief has been established. He further submitted that the alternative remedies suggested have not been demonstrated to be satisfactory as no amount of damages can compensate loss of land. He also submitted that there is no decision from the Land Commission to warrant applicant approaching it

DECISION ON THE PRELIMINARY POINTS

The first point taken was that the matter is not urgent. The second and third respondents argued that applicant ought to have acted earlier as the matter was widely publicized in

newspapers. There was no proof however that applicant had read the newspapers in which the issue was publicized. There was no proof that applicant was aware of the processes being done in relation to the land in question. His averment that he only became aware of the issue on 1 August 2022 remained uncontroverted. I am persuaded that applicant acted with urgency in letting his interest in the matter known on 2 August 2022. There is no merit in this point.

The second point was that the application was overtaken by events as the lease issued to second respondent has already been registered. Applicant has shown that he was not made aware of the process leading to the issue of the lease. He therefore cannot be barred from protecting his rights when he was not party to the processes that threaten his rights. I find no merit in this point.

The third point taken was that the relief sought in the interim is similar to the final relief sought. I do not agree. The interim relief is sought pending the determination of HC 5258/22, whilst the final relief is sought pending the determination of HC 5231/22. That two different matters are involved makes a difference. The third point also fails.

In the fourth point, applicant is accused of attempting to interdict a lawful process. The legality of the process is questionable in the light of an existing valid and effectual offer letter in the hands of Applicant. It is telling that the first to third respondents did not comment on the judgment that nullified the purported withdrawal of applicant's offer letter which they relied on. There is therefore no merit in this point as well.

For the above reasons all the preliminary points were without merit and were accordingly dismissed.

MERITS

In order to succeed in such an application for an interdict the applicant must establish a clear right, the apprehension of an injury and unavailability of an alternative remedy. All the requirements have to be met in order for the relief to be granted. See *Setlogelo v Setlogelo* 1914 AD 221. The existence of a right is a matter of substantive law. Whether the right is clear is a matter of evidence.

The applicant established that he has a clear right in the form of an offer letter. In addition, he is in occupation of the land. Second and third respondents have expressed an intention to exercise rights emanating from the lease agreement. An apprehension of possible eviction is reasonable in the circumstances. I am satisfied that there was no alternative remedy in the

circumstances of this case. Accordingly, the *status quo* should be maintained until the HC 5258/22 and HC 5231/22 are determined.

For the above reasons I granted the Provisional Order.

Moyo and Jera Legal Practitioners, applicant's legal practitioners
Civil Division of the Attorney General's Office, first respondent's legal practitioners
Gill Godlonton and Gerrans, second and third respondents' legal practitioners
Chambati Mataka and Makonese, fifth respondent's legal practitioners