

REMMINGTON MUTANGA  
versus  
BIGBOY CHINYANGA

HIGH COURT OF ZIMBABWE  
TAGU & MAXWELL JJ  
HARARE, 21 June & 2 November 2022

### **Civil Appeal**

*Mashura*, for appellant  
*Chikwari*, for respondent

**TAGU J:** This is an appeal against the whole judgment of the Honourable Magistrate sitting at Murehwa Magistrate Court on 14 day of December, 2021.

### **FACTUAL BACKGROUND**

The appellant and the respondent are neighbors. The appellant resides in Chidziva village, under Chief Musana in Bindura. The respondent is a resident of Majero-Chitenga village, Chikwaka, Mrewa. The parties have been embroiled in a boundary dispute for a long time as they shared the same boundary. At one time Chief Chikwaka ruled in favour of the respondent. Later headman Chikosha also ruled in favour of the respondent. Headman Chikosha also wrote a letter to the Police confirming the status of the land, but appellant seemed undeterred. This prompted the respondent to file an application for an interdict against the appellant and all those claiming occupation through appellant which is prohibitory in nature, restraining the appellant from ploughing, staying, constructing any structure, cultivating or planting crops on respondent's piece of land.

Having heard the parties' submissions and having read the papers filed of record, the court *a quo* granted the order for an interdict against the appellant as prayed for. Dissatisfied by the ruling, the appellant noted an appeal to this court. This is the appeal that this court is seized with.

## GROUNDS OF APPEAL

- “1. It shall be contended on appeal that the court *a quo* erred and misdirected itself in fact and in law when it arrived at the decision that the appellant be interdicted from using a piece of land which he has been occupying peacefully with the full knowledge of the respondent for the past 10 years after the matter has been resolved by the late headman Chikosha.
2. It shall further be contended that the court *a quo* rushed into arriving at its decision despite the fact that this is a purely boundary dispute between Goromonzi District and Bindura District as such the Court *a quo* was supposed to see evidence from both Districts before passing its judgment.
3. That the purported interdict has the effect of evicting appellant herein from his homestead without any compensation despite the fact that the appellant herein had made notable developments on the said piece of land.
4. It shall also be further contented that this was a proper case wherein the Court *a quo* was supposed to conduct an inspection in loco before passing judgment to enable it to have a clear picture of what is obtaining on the ground and the born of contention thereof.
5. Moreover, the court *a quo* was supposed to refer the boundary dispute to the relevant Ministry for proper mediation and resolution.”

In deciding whether or not the court *a quo* erred in one or all the grounds of appeal, the court looked at the papers filed of record as well as the Ruling by the court *a quo*. In its ruling the lower court properly outlined the requirements that must be met if one is to succeed in an application for an interdict. These are that the applicant must establish a clear right, that there is no other remedy available to him and that he will suffer irreparable harm if the application is not granted.

In the court *a quo* the appellant opposed the matter on the premise that the land in question is in Majero village, under Headman Chikosha, Chief Musana. In dismissing the appellant's version the court *a quo* properly referred to a letter written in 2018 where the Mistry of Lands and Rural District Council had written to the court to the effect that the land in question is in Chitenga village in Trascat Farm Goromonzi District under chief Chikwaka's jurisdiction. Hence the appellant was opposing a matter of land that does not belong to his area of jurisdiction as evidenced by the confirmation letters given by authorities that give directions on Communal lands.

Indeed I read letters on pp 26 and 27 of the record. On p 26 is a letter dated 22 October 2018, written by officials of the Ministry of Lands and Rural Resettlement in Bindura, addressed to “The Magistrate, Mashonaland East Province Murehwa” which says-

**“CONFIRMATION LETTER**

This letter serves to confirm that Chitenga Village is in Frascas Farm under Goromonzi District, Mashonaland East Province.

The farm borders with Musana Communal Lands in Bindura District of Mashonaland Central Province and is not under our jurisdiction”

Another letter on p 27 dated 12 May 2018 from officials of Goromonzi Rural District also addressed to the Magistrate says-

**“RE: CONFIRMATION LETTER**

This note serves to confirm that Chitenga Village is in Frascas Farm Goromonzi District under Chief Chikwaka’s jurisdiction.

Council has no objection in any assistance pertaining to the issue.”

Apart from these two letters there are letters written by Chief Musana, decision by the late Headman Chikosha, but the position was thus clarified by the Ministry of Lands and Rural Resettlement and Goromonzi Rural District Council dated 22 October and 12 May 2018, respectively. Their letters are authorities to the effect that the appellant is clinging to a piece of land that does not belong to him. The grounds of appeal therefore lack merit as the court *a quo* had access to letters confirming the boundaries, hence did not err at all. The appeal lacks merit and it is dismissed with costs.

**IT IS ORDERED THAT:**

1. Appeal is dismissed with costs.

MAXWELL J:.....Agrees

*Maringe and Kwaramba*, appellant’s legal practitioners.