

FREDERICK GARTH HEATHCOTE

And

JEAN PAMELA VANT (nee HEATHCOTE)

versus

SHEPHERD MUNDENGUMA

And

EXECUTOR OF THE ESTATE LATE LEON GEOFFREY HEATHCOTE
(being represented by DAVID WYNN ROSSER in his capacity as Executor Dative)

And

TREVOR SHAW

HIGH COURT OF ZIMBABWE

WAMAMBO J

MASVINGO, 27 May 2020, 1 June 2020 & 5 February, 2021

Unopposed Application

J.G. Mpoeri, for the applicant

WAMAMBO J. This matter came up on the unopposed roll. I requested the applicant to file heads of argument because of the draft order and its effect on another matter namely HC 379/19.

The applicant seeks the following relief:

“IT IS ORDERED THAT

- 1. The application for joinder of parties be and is hereby granted*
- 2. The 1st and 2nd applicants be and are hereby joined as 3rd and 4th respondents in the summary judgment application under case no HC 379/19 and as 3rd and 4th defendants in the eviction matter under case number HC 379/19.*
- 3. The 1st and 2nd applicants be and are hereby granted leave to file their notice of opposition to the summary judgment application within the next ten (10) days of the granting of this order.*
- 4. In the event of the court application for summary judgment being dismissed the 1st and 2nd applicants be and are hereby granted leave to file their defendants’ plea or any other response prescribed by the Rules within ten (10) days from the date of obtaining a court order for the dismissal of the summary judgment application.*
- 5. Costs be in the cause.”*

The instant matter came up on the unopposed roll on 27 May 2020. Meanwhile the application for summary judgment had come up before ZISENGWE J. on 13 May 2020. The judgment by ZISENGWE J. is encapsulated under HMA 17/20.

The 1st and 2nd applicants duly filed heads of arguments. They can be summarised as follows:-

The 1st and 2nd applicants should be joined to this case as they are son and daughter of the late Leon Geoffrey Heathcote. The executors of the estate confirm that the 1st and 2nd applicants are beneficiaries to the estate. A letter from Honey and Blackenberg law firm which forms part of the record reflects this information.

The 1st and 2nd applicant have demonstrated their real and substantial interest in the matter.

A party can apply to be joined to the proceedings at any stage – see Order 13 Rule 87 (2) (b) of the High Court Rules 1971. In essence the argument being raised is that in the matter referred to earlier HC 379/19 the court did not give a final judgment.

There are further arguments raised namely that the late Leon Geoffrey Heathcote was a South African citizen and thus protected under the BIPPA agreements. A lot is made of the provisions under the Gazetted Lands (Consequential Provisions Act [Chapter 20:28] to justify the application.

The major stumbling block to the application is that the 1st respondent not only has an offer letter but also has a declaratory order confirming the validity of the offer letter.

Rule 85 of the High Court Rules (1971) provides as follows:-

“Subject to Rule 86 two or more persons may be joined together in one action as plaintiffs and defendant whether in convention or in reconvention where –

(a) if separate actions were brought by or against each of them as the case may be some common questions of law or fact would arise in all the actions and

(b) all rights to relief claimed in the action, whether they are joint, several or alternative are in respect of or arise out of the same transaction or series of transactions”

In *Dilip Kumar Hassamal and Dolores (Private) Limited v Jeronda (Private) Limited* HB 209/18 MOYO J at page 2 – 3 said;

“In terms of this rule all an applicant for joinder needs to show in such an application is that he has claims or interests in the transaction leading to either relief sought or the action itself. I believe that then it is a question of an interpretation of the facts before a court that sways the court either in favour of joinder or against.”

In *Maxwell Matsvimbo Sibanda v Gwynne Ann Stevenson and 7 Others* HH 474/18 MUZOFA J at page 3 said;

“Joinder is therefore an exercise of discretion of the court on a proper consideration of the facts. The onus is on the applicant to show that the party sought to be joined is necessary in the resolution of the pending matter or has an interest in the matter.”

The 1st and 2nd applicants base their interest in the matter on being biological children of the deceased Leon Geoffrey Heathcote. It is not enough just to allege that I am the son or daughter of the deceased. I do not see how the 1st and 2nd respondent are necessary in the resolution of this matter. I do not see what they add or subtract to this matter in the circumstances.

To motivate the argument that because deceased Leon Geoffrey Heathcote was a South African citizen who falls under BIPPA farms which are protected a number of documents were relied on by 1st applicant. One of these documents appears at pages 15 to 16 of the record.

The document is rather broad and is directed to the Ministers of State for all the provinces by the then Minister of Lands and Rural Resettlement. The document effectively directs the said Ministers to stop land allocations that disrupts among other agricultural operations BIPPA farms.

The relevance or interests of the 1st and 2nd applicants in these circumstances has not been demonstrated to me in the light of the above letter by the Minister of Lands and Rural Resettlement. If the Minister intended to resolve the issues at hand through the Provincial Ministers of State why didn't the 1st and 2nd applicants if so inclined approach these offices. I cannot resolve that issue by joining 1st and 2nd applicants to this application.

There is a letter from the Provincial Crop and Livestock Production Officer, Midlands insinuating that Lot 20 Umsungwe, Gweru district is to be given back to the Heathcote family. The particular members of the family are not mentioned in the letter. The letter also provides that a follow up would be made with the relevant Minister "after the holidays". The letter is dated 24 December, 2019. The results of the follow up with the Minister do not form part of the application.

In the circumstances I am not convinced that the 1st and 2nd applicants have a direct and substantial interest in the issues raised in the proceedings nor that their rights may be affected by the judgment of the court.

To that end I order as follows :-

The application is hereby dismissed.

Saratoga Makaanzi, applicants legal practitioners