

AMIN MUCHURO
and
EDGAR MATSIKAWAFA
versus
NAISON MAMBOZA

HIGH COURT OF ZIMBABWE
WAMAMBO AND ZISENGWE JJ
MASVINGO, 7 October 2020 and 31 March 2022

Civil Appeal

A Khumbula, for the appellants
H Chikosi, for the respondent

WAMAMBO J: At the end of the appeal proceedings we dismissed the appeal with costs. We have now been requested to furnish what is referred to as a full judgment and reasons for the dismissal of the appeal.

The respondent applied before the Trial Court for an interdict against the appellants. The interdict was specifically to stop appellants from bringing building materials and from conducting any construction at the disputed business stand at Machongwe Growth Point pending the finalisation of an eviction matter under GL 152/19.

The Trial Magistrate was satisfied that the respondent had proven his case and granted the order as prayed for. Appellants dissatisfied with the said order launched an appeal.

I will proceed to summarise the evidence of the relevant witnesses who testified.

The respondent's testimony unfolded as follows:

He was granted a piece of land 100 square metres (100m²) in extent next to Blue Sky Machongwe Growth Point by the village head Pfumo in 1980. He leased the said piece of land to various people namely Jeny Jambaya, Robert Maphosa and Lizzy Takaya. According to him he once ran a shop from which the appellants as young boys would buy books from. The shop he constructed at the said piece of land was constructed largely from a lumpsum he obtained from his leave days. The shop was later swept away by Cyclone Eline.

His stand among others was attached under the village head while there were some stands that fell under the Council including that of the appellants. In November 2019 the appellants started bringing building material and constructing buildings at what respondent

considers as his premises. He has been in peaceful occupation of the stand since 1980. In cross-examination the respondent was taken to task with questions suggesting that the land in question actually belongs to the appellants. Further that the land actually belongs to the Mamvura family. That the appellants only put up a structure after he had filed a complaint. According to the respondent before he owned the land it belonged to a white farmer and Mamvura was only an employee of the said white farmer.

To buttress his case, the respondent called a number of witnesses. Nick Pfumo supported respondent's version. His evidence was that he allocated the land to respondent in 1980. In cross-examination however he indicated that the land was actually allocated to the respondent by his brother Pencil Pfumo.

Elijah Ndlovu an administrator of Nyahode Co-operative testified and was adamant that the piece of land was allocated to the respondent.

Elijah like Nick Pfumo was rather vague when questioned on the document ostensibly reflecting that the land in question belongs to appellants.

Ronnie Chimbarara a councillor confirmed that the land in question was allocated to the respondent. He also testified that John Pfumo told him he lost his date stamp which has not been recovered till now. The letter that appellants rely on which the first two witnesses for the respondent were rather vague about is Exhibit 1.

Exhibit 1 is dated 7 August 2010.

Against the background of a stolen date stamp a closer look at Exhibit 1 reflect the following: It makes no specific reference to the land at the centre of this case. It is vague in its identification of land apparently allocated to some of the appellants. The author of Exhibit 1 and his witness did not testify to bring clarity to the stand referred to or to authenticate the document in the first place I also note that the purported author and witness to Exhibit 1 were, both now deceased at the time of the trial.

Appellants' case was comprised of first appellant's evidence as supported by Edgar Matsikawafa, Munotsiwa John Mufundisi, Posukufa Mhlanga and Christopher Maromo.

First appellant testified as follows: He bought a building from Mr Mamvura when was what is colloquially referred to as the box stage in Pfumo Village, Mamvura was the original owner of the land. He gave village head J M Pfumo, a chicken culminating in a document being crafted ostensibly Exhibit "1". Although first appellant testified that Annexure '1' was signed by the witnesses including one Mhlanga that is not reflected on the face of Exhibit 1.

Exhibit 1 reflects the signatures of two persons namely: J M Pfumo as the village head and D.C. Chikondiro as a witness. Nowhere in the document is the name of Mhlanga reflected.

Second appellant testified. His evidence initially seemed to suggest that he acquired the land on his own. In response to a leading question he confirmed that he acquired the stand along with first appellant.

Munotsiwa John Mufundisi also testified. His evidence was that he sold a portion of land to the appellants in 1990. Exhibit 2 was produced in support of his testimony. He testified that Exhibit 2 reflects that he is the previous owner of the land before selling it to the appellants. Like Exhibit 1, Exhibit 2 is rather vague on the description of the land in question. A number of places like Musinge, Chikati road and Musitu are mentioned. I do not see how Exhibit 2 advances the appellants' case. Exhibit 2 does not specify to whom specifically the land was allocated.

In one breath the second appellant said the land was allocated to his father and in another he says the land was allocated specifically to himself.

Posukufa Mhlanga testified that he has been a village head aide since 1999. He refuted the allegation that the village head's stamp was stolen. In his evidence he does not confirm that he was a witness to either Exhibit 1 or 2.

Christopher Manono also supported the stance that appellants were allocated the land in dispute. There was an apparent contradiction in his evidence. He testified that a subject granted land cannot sell it to another. The tenor of the evidence for appellants is that the land was allocated to Mamvura who then sold it to the appellants who are now the owners of the land.

The Trial court analysed the evidence of all the witnesses. It found that respondent's version was more credible and was corroborated. The Court made a specific finding that Posukufa Mhlanga was not credible as he was too young at seven years old to remember events that took place forty years ago.

The Trial Court noted that the exhibits relied upon by the applicant were alleged to be forged. The Trial Court stated and correctly applied the requirements of an interdict as pronounced in case such as *Anfield Investments (Pvt) Ltd v Minister of Lands & Others* 2004(1) ZLR 511 and *Setlogelo v Setlogelo* 1914 AD 221. At the end of the day the Court found for the respondent.

The two grounds of appeal talk to the requirements of an interdict not being satisfied and that Posukufa Mhlanga's evidence should not have been discredited. The findings of fact

appear from the analysis made by the Trial Court. We are cognisant of the fact that as an appellate court we should be slow to reject such factual findings.

In *Zinwa v Mwoyomunotsva* 2015(1) ZLR 935(S) at p 940E-F it was pronounced as follows:

“It is settled that an appellate court will not interfere with factual findings made by a lower court unless those findings were grossly unreasonable in the sense that no reasonable tribunal applying its mind to the facts would have arrived at the same conclusion or that the court had taken leave of its senses, or put otherwise the decision is so outrageous in its defiance of logic that no sensible person who had applied his mind to the question to be decided could have arrived at it or that the decision was clearly wrong.”

We find the factual findings in tandem with the evidence tendered considered as a whole and find no reason to disturb them.

We are of the view that the Trial Court made proper and correct findings of fact in this case.

To that end we dismissed the appeal with costs.

ZISENGWE J, agrees:

Mhungu & Associates, appellant’s legal practitioners
Gonese & Ndlovu, respondent’s legal practitioners