

LISMATI MAHAKUTE
versus
EQUISTRUCT (PRIVATE) LIMITED t/a ICP FARMING
and
THE MINISTER (N.O)
MINISTRY OF LANDS, AGRICULTURE, WATER,
CLIMATE AND RURAL RESETTLEMENT

HIGH COURT OF ZIMBABWE
WAMAMBO J
MASVINGO, 4 November 2021 and 14 February 2022

Opposed Application

D Chirima, for the applicant
C Muchichwa, for the 1st respondent
T Undenge, for the 2nd respondent

WAMAMBO J: In this opposed matter applicant seeks the cancellation of a memorandum of lease No. 2023 Hippo Valley Estates, Farm 54, Chiredzi Ref. LF/1978.

The background to the matter is as follows:

The applicant has an offer letter with respect to S/D 16 of Farm 54, Lot 3 of Buffalo Range, Chiredzi District. On the other hand first respondent holds the lease referred to earlier which lease was between the first respondent and the second respondent.

The said lease relates to a pack shed situated at Farm 54 Hippo Valley more fully described as Lot 3 of Buffalo Range. The lease reflects that it commenced on 1 August 2019 and will run up to July 2024.

The applicant's version runs as follows. The pack shed is situated within his farm, namely S/D 16 of Farm 54, Lot 3 of Buffalo Range, Chiredzi District.

He has had peaceful and undisturbed occupation of his farm including the infrastructure within its boundaries till April 2021 when first respondent invaded his farm and cordoned off the fruit packaging shed. First respondent erected a fence and vandalised the fruit packaging machines therein and in its place erected grinding mills.

Employees of the second respondent recommended that first respondent be granted the lease on the basis of false representations made to it by first respondent. Thus the lease

agreement is illegal and unlawful. The applicant has an agreement with his neighbours who along with himself use the same shed for sorting out their mangoes and oranges for marketing. The pack shed is intrinsically limited to the farming operations of the applicant and his neighbours. The first and second respondent are opposed to the application.

The first respondent abandoned points *in limine* raised. The first respondent's position is as follows:- She applied for consideration in the occupation of the pack shed at the centre of this dispute. The District Lands Officer after satisfying himself that the said shed was vacant recommended that she be granted authority to utilise it. The same position was endorsed by the Provincial Lands Officer. The first respondent only took up occupation of the farm shed after being so authorised by the second respondent. Since then she has made some infrastructural developments to the pack shed. The pack shed is situated separately from the applicant's piece of land.

Second respondent's position is that the pack shed does not form part and parcel of applicant's land. Citing the case of *Brian Andrew Coward (No. 2) v Elastos Madzingira and Minister of Lands & Rural Resettlement* HMA 47-17, the second respondent avers that in order to utilise property within the acquired land one has to apply for a lease. While the applicant may have mangoes and oranges to harvest and sort the legal position is that he should have applied for and obtained a lease for the pack shed. Mr *Undenge* for the second respondent also cited the Acquisition of Farm Equipment or Material Act [*Chapter 18:23*] and The Rural Land Act [*Chapter 20:18*] as being directly relevant to the issue to be decided in this case.

It is noteworthy from the start that the applicant has averred but not proven that the first respondent misrepresented the second respondent's employees in order to be granted a lease to the pack shed. What the applicant has done is to append portions of the application form filed with the second respondent. These appear at pages 7 to 9. The title to the form used is "Application for an old farm homestead/government building in resettlement schemes".

The portions that appear at page 8 are filled in by the District Estates Management Officer and the District Land Officer. At page 9 the portion was filled in by the Chief Lands Officer. Nowhere on the portions relied on by applicant is there any averment, submission or allegation by the first respondent.

At page 8 on Part II the district estate Management Officer is reflected as having written the following:

"Recommended, Applicant willing to renovate and maintain the shed and put in brand new machinery."

On Part III the District Lands Officer makes the following recommendation:

“The applicant is recommended for the structure is currently idle.”

At page 9 the Provincial Chief Lands Officer recommends as follows:

“The structure is vacant and not yet leased out.”

The three recommendations above imply that the three officials visited and inspected the pack shed. I take it there is no way an official carrying out official duties would describe a property as vacant and idle unless there was a physical check on the said property. Thus the proposition that applicant made misrepresentation to the second respondent is not borne out by the record. To the contrary it is the second respondent’s officials who are reflected as having been satisfied by the application by the first respondent.

The second respondent is at the forefront of among other things maximizing production and ensuring resettled farmers are assisted to the fullest. It boggles the mind why the officials of the second respondent would block applicant from maximizing on his fruit produce for the benefit of the first respondent. It is even more puzzling that the second respondent’s officials would themselves misrepresent facts on the ground to please the first respondent while the pack shed is situate and in full use not only by the applicant but also by his neighbours.

That applicant does not hold a lease agreement for the pack shed is common cause.

The other issue as raised relates to where exactly the pack shed is physically situated. While applicant avers that it is on his given land the respondents are of the view that the pack shed is situated apart and separately from applicant’s farm.

The latter position seems to resonate with the fact that applicant was offered S/D 16 of Lot 3 of Buffalo Range Chiredzi. The lease agreement at the centre of the dispute is described as being at Lot 3 of Buffalo Range.

The applicant has not proven that the pack shed is on his property. The applicant does not have a lease to the pack shed. The second respondent’s position as was more fully ventilated in oral argument, was that although applicant on equities may have fruit to harvest the fact that he does not have a lease agreement to that effect leaves the second respondent to grant a lease to a deserving party.

The Acquisition of Farm Equipment or Material Act [*Chapter 18:23*] is not directly relevant. Section 2(1) thereof provides as follows:

“Farm equipment” means movables used for agricultural purposes or any agricultural land acquired for resettlement purposes under the Land Reform Programme, including irrigation equipment not embedded in the ground, tractors, ploughs, disc harrows, trailers, combine

harvestors, pumps not permanently attached to the land sprinklers, rises movable storage facilities and Modrho, tobacco cure.”

A packaging shed does not seem to fall under the above definition of farm equipment. I thus find no application of the above Act to the instant case.

The key, word used is “movable”. A packaging shed as described in the papers appears to be a moveable property as opposed to a moveable piece of property.

The case of *Brian Andrew Cawood (2) v Elasto Madzingira* (supra) dealt with immovable property such as in this case. In that case, however, the previous owner of the farm (the applicant) had held on to the homestead. The first respondent in that matter had rights to the homestead under a written lease agreement. The court found that in the absence of lawful authority the applicant in the case had no right to hold on to the homestead.

In this case the applicant holds no lease to the packaging shed. I have found, as well that the packaging shed has not been proven to be situated on his gazetted farm.

Effectively the applicant, has no right to question the lease agreement granted to the first respondent on the grounds that the packaging shed is on his gazetted land. Neither has he proven that he holds a lease to the packaging shed whether or not it is situated within his gazetted land.

To that end I find that the application is *unmeritorius*.

To that end I order as follows:

1. The application be and is hereby dismissed with costs

Chirima & Associates, applicant’s legal practitioners

P. Ganyani Legal Practitioners, first respondent’s legal practitioners

Civil Division of the Attorney General’s Office, second respondent’s legal practitioners