

SOLOMON CHIRIPASI
versus
GELLY MITI

HIGH COURT OF ZIMBABWE
MUZENDA J
MUTARE, 23 May 2022

OPPOSED APPLICATION FOR SUMMARY JUDGMENT

O Mushuma, for the applicant
Miss *N Makoni*, for the respondent

MUZENDA J: This is an opposed application for summary judgment where applicant is seeking the following relief:

- “1. Summary judgment in case No. HC 249/2021 be, and it is hereby granted in favour of the applicant and against the respondent.
2. The respondent including all persons whatsoever claiming right of occupation through her be and is hereby ordered to vacate certain piece of land situate in the District of Umtali called the Remainder of Lot C of subdivision D of Dora measuring 85, 7844 hectares within seven (7) days after service of this order upon her.
3. In the event that the respondent including all persons whatsoever claiming right of occupation through her refuse, fail and or neglect to vacate the said immovable property in terms of paragraph 2 hereof, the Sheriff of Zimbabwe be and is hereby ordered, directed and authorised to evict the respondent and all persons whatsoever claiming right of occupation through her from the said property.
4. the respondent shall pay costs of suit in this application as well as in the *action rei vindicatio* in case number HC 249/2021 on an attorney and client scale.”

Background facts

Applicant is a title holder of the Remainder of Lot C of Subdivision of Dora situated in the District of Umtali under Deed of Transfer 1421/2014 dated 4 June 2014 measuring 85, 7844 hectares which property was sold to him by one Gina Fellowes. On 13 November 2021 he caused summons to be issued against the respondent and her husband for ejection. Respondent entered appearance to defend and in her plea claims that she is in rightful possession of the property and that she bought it in 2006 and the same piece of land was transferred to applicant without her knowledge. She also alleges that applicant is not the owner of the farm in question. Respondent adds that the issue is that of a double sale and that Lot C Subdivision D of Dora measuring 85, 7844 is owned by her.

Applicant has now applied for summary judgment stating that in his view respondent has no defence to his claim and that she had entered appearance for the purposes of delay so as to prejudice the applicant. Respondent denies that and challenges the ownership of the land in question.

The Law

In the case of *Savanna Tobacco Company (Pvt) Ltd v Al Shans Global Ltd and Anor*¹ it was held at p 185 G-H.

“That it is trite that the procedure for summary judgment is a drastic remedy which only be granted if the plaintiff’s claim is unassailable and the defendant does not have a bonafide defence to the claim. Summary judgment is allowed to a plaintiff who establishes a clear case and consequently should not be subjected not the expense and delay of going through a trial. The plaintiff must therefore show that his case is unanswerable, summary judgment is the principal means by which unscrupulous litigants seeking to delay a just claim by defending are frustrated and it is of the utmost importance that its utility should not be impaired. To defend a claim for summary judgment a defendant need no more than establish a plausible defence. In other words, the defendant need only establish a prima facie defence and must allege facts, which if he succeeds in establishing them at trial would entitle him to succeed in his defence at trial.”

Applying law to the facts

Applicant holds title to the immovable property and produced title deeds. The respondent does not impugn title but claims that she owns the very piece of land whose title vests in the applicant. It is trite that a title deed holder has real rights over the land against any claimant in the whole world and can seek eviction of any person who occupies, uses or settles on the piece of land without the consent of the registered owner. Applicant by attaching a copy of the title deed to the application, manages to establish a clear case which is unanswerable by the respondent. Applicant bought the property from the previous owner and he proceeded to register title and his claim is patently unassailable and defendant does not have a *bona fide* defence to the claim. She attached an agreement of sale² dated 23 November 2006 signed by Fellowes Gina as seller and George Pfumai Miti respondent’s husband. The agreement of sale does not show respondent’s name, and the land measured 8 acres 3, 2375 hectares yet in her opposing affidavit she claims that she owns 85, 7844 hectares. She does not explain how the purchased piece of land 3, 2375 hectares in 2006 “grew” to 85, 7844 hectares? Respondent also speaks of “double” sale by Fellowes Gina, first the size of land purchased differ in description

¹ 2018 (2) ZLR 185 per Gowora JA (as she then was) see also *Kingston Ltd v L D Ineson (Pvt) Ltd* 2006 (1) ZLR 451 (S) cited by applicant in his heads.

² P 45 of the record

and size and secondly, if it is a double sale, then respondent should sue Fellowes Gina. For all interests and purposes applicant holds an untainted title and scales of justice weigh heavily in his favour.

I am satisfied that applicant successfully met all the requirements for an application of summary judgment and he ought to succeed. Accordingly the application for summary judgment is granted in terms of draft order which is as follows:

IT IS ORDERED THAT:

1. Summary judgment in case number HC 249/2021 be and is hereby granted in favour of the applicant and against the respondent.
2. The respondent including all persons whatsoever claiming right of occupation through her be and is hereby ordered to vacate certain piece of land situate in the District of Umtali called the Remainder of Lot C of Subdivision D of Dora measuring 85, 7844 hectares within seven (7) days after service of this order upon her.
3. In the event that the respondent including all persons whatsoever claiming right of occupation through her, refuse, fail or neglect to vacate the said immovable property in terms of *pararaph 2* hereof, the Sheriff of Zimbabwe be, and is hereby ordered, directed and authorised to evict the respondent and all persons whatsoever claiming right of occupation through her from the said property.
4. The respondent shall pay costs od suit in this application as in the *action rei vindicatio* in case number HC 249/2021 on legal practitioner and client scale.”

Mushumha Law Chambers, applicant’s legal practitioners
Mutungura and Partners, respondent’s legal practitioners