

NYARAI HWAIRE
versus
MACHONA FRANCIS MUGANDANI
and
VENAH SHUPIKAI CHIKWENA
and
THE CITY OF HARARE
and
THE REGISTRAR OF DEEDS

HIGH COURT OF ZIMBABWE
MAKARAU J
Harare, 25 November 2005

Mr *Manjengwa* for plaintiff
Mrs *Wood* for 2nd and 3rd defendants

MAKARAU J: On 23 November 2005, I handed down a judgment in the above matter. In handing down the judgment I omitted to dispose of the second and third defendant's counterclaim. The issue has since been brought to my attention and using the powers granted to me under rule 449(1)(b) to correct the patent, I called both parties to give them notice that I would be amending the order given to include a disposition of the counterclaim. This it is.

The second and third defendants counter-claimed for the eviction of the plaintiff and all those occupying through her. They also claimed payment of the sum of \$10 413 000-00 as holding over damages from the date of transfer of the property into their names up to August 2004 and further, holding over damages at the rate of \$1 million per month from September 2004 to date of eviction.

The evidence led by the parties in support of their respective claims has already been set out. On the basis of that evidence and my findings of fact in the matter, the second and third defendants are entitled to an order evicting the plaintiff and all those occupying through her. No evidence was led on the quantum of the holding over damages prior to the issue of summons or after the issue of summons. This claim is therefore dismissed.

In the result, the judgment handed down between the parties is amended to read as follows:

1. The plaintiff's claim is dismissed.
2. The plaintiff shall vacate the property commonly known as stand no 9771 Glen View Harare within 30 days of service of this order failing which the Deputy Sheriff is hereby authorised to evict the plaintiff and all those occupying through her.
3. Each party shall bear its own costs.