

WYNONAH O.M. SIMANGO-KANETA
versus
MOSES KUSENA
and
DEPUTY SHERIFF

HIGH COURT OF ZIMBABWE
BERE J
HARARE, 23 November 2009

Urgent Chamber Application

D. Atukwa, for the applicant
In person, respondent

BERE J: The applicant who is a holder of an offer letter dated 31 October 2008 conferring on her possession of subdivision of Lot 1A Nil Desperandum Twentydales, Goromonzi in the district of Mashonaland East province, has sought the following interim relief by way of an urgent application against the first respondent:

“That pending confirmation or discharge of this provisional order herein it is ordered as follows:-

1. That the first respondent or anyone acting on his behalf be and is hereby ordered to immediately stop all farming activities on lot 1A of Nil Desperandum of Twentydale farm.
2. That the Deputy Sheriff or his lawful attorney be and is hereby ordered to give effect to this order

The first respondent, though not in possession of an offer letter, brought in two official letters from his province, one signed by the Governor and Resident Minister of the province, the Acting Chief Land Officer and the Provincial Administrator. This letter was written on 8 September 2009.

The other official letter dated 22 October 2007 was signed by the Provincial Chief Land Officer for the same province confirming that the first respondent had been recommended for allocation of land at Lot 1A of Nil Desperandum farm subdivision 2 measuring 152,50 hectares and in the district of Goromonzi.

It is clear that in both letters the first respondent was recommended for allocation of the land defined in those two letters.

Apart from the two letters the first respondent tendered in a map of the land in question and that map seems to suggest that the land in question is divided into subdivisions 1 and 2, with him having been allocated subdivision 2 thereof.

The applicant's position was that the first respondent had by the 18th and 19th of November unlawfully ploughed 10 hectares of her land hence her being prompted to file the instant urgent application.

The applicant further argued that because she is armed with an offer letter, she has a greater claim of possession of the land in question than the first respondent who only has letters of recommendation from his province.

In my view both parties appear to have a legitimate claim to the disputed property and on the face of it the dispute now raging between the parties cannot be resolved by way of an urgent chamber application.

It would be a clear miscarriage of justice if the applicant were to be granted the relief she seeks without both parties being given an opportunity to lead evidence in order to assist the court determine the specific rights of the parties over the disputed land. These issues cannot be determined by way of an urgent chamber application.

I do not accept that the applicant's offer letter *per se* when looked at in the light of the two letters brought and tendered by the first respondent should be read to confer greater rights over the land in question than the competing right claimed by the first respondent. As a matter of practice where it is clear that parties have potentially competing rights over the same property, courts must not feel inclined to determine such rights by way of urgent chamber application.

For this reason I decline to treat this matter as urgent and consequently decline to grant the interim remedy sought.

Kanoti & Associates, applicant's legal practitioners
In person, first respondent