

CLEVER MANHOMBO  
versus  
MANYAME RURAL DISTRICT COUNCIL

HIGH COURT OF ZIMBABWE  
MTSHIYA J  
HARARE, 18 November 2013 and 18 December 2013

**Opposed matter**

Mrs *M. Kenende*, for the applicant  
*Advocate T. Mpofo*, for the respondent

MTSHIYA J: This is an opposed application wherein the applicant seeks the following relief:

“IT IS ORDERED THAT

1. The applicant be is hereby declared the legal owner of stand formerly known as stand 233 Guzha Township which is now called stand 235 and 236.
2. The respondent and any of its employee be and are hereby interdicted from interfering with occupational rights of the applicant in formerly stand number 233 Guzha Township which is now called Stand 235 and 236.
3. The respondent shall pay the costs of this application on a higher scale.”

It is common cause that the applicant was allocated stand No. 233 Guzha Township as evidenced by the following letter written to him by the respondent on 8 November 2012.

“RE: ALLOCATION OF STAND NUMBER 233 GUZHA TOWNSHIP.

Following your payment of allocation fees for an industrial stand at Guzha Township, council is pleased to allocate you stand number 233 Guzha Township. Please be advised that as indicated in our previous correspondence, the stand is unserviced and you will be expected to meet the full costs of servicing when they become due.

You can now approach the District Planner, Mr Munjanga who will show you the stand and facilitate the processing of the lease agreement.

Yours faithfully,

.....  
F. GUTA  
CHIEF EXECUTIVE OFFICER  
Cc:Finance Officer” (my own underlining)

The dispute in this application is on the identification of the actual stand that was allocated to the applicant. The applicant contends that stand 233 is the stand which the respondent has now changed to be stand numbers 235 and 236 “to suit their evil intent”.

Contrary to the above official communication the applicant states that he was allocated the stand in 2010.

The respondent on the other hand disputes the applicant’s contention. In its opposing affidavit the respondents states, in part, as follows:

“7. **ad para 5**

The said Annexure E to the application is not disputed as the applicant had taken illegal occupation through tenants. Applicant caused the illegal occupation of land by his tenants whom he placed on the open land which he erroneously believed was stand 233 Guzha Township. By the time of occupation, the applicant had not been officially allocated and shown the said stand 233 of Guzha Township by respondent’s officers as he had not yet paid the full allocation fees. Applicant only made full payment on 25 and 27 July 2011 on receipts 35083 for US\$400-00 and 35096 for US\$50-00 respectively.

8. **ad para 6**

This is not correct. Applicant only got allocated stand 233 Guzha Township by copy of an allocation letter dated 08 November 2011 which he refers to as Annexure F in his application. It is therefore not correct that no reasonable explanation was given to applicant who had no rights over the piece of the land he had occupied. Applicant, in contradiction of paragraph 3 of his Annexure F, had already illegally allocated himself land outside stand 233 Guzha Township.

9. **ad para 7**

This is not correct. The applicant was never shown stand 233 of Guzha Township by the respondent’s officers but allocated himself land he thought was stand 233 Guzha Township. Stand 233 has never changed its position. The site plan produced by the Department of Physical Planning clearly shows the position of stand 233 Guzha Township *viz a viz* stands 235 and 236 Guzha Township. See Annexure B hereto attached.

10. **ad para 8**

This is not correct. Stands 235 and 236 were created on open land which the applicant had illegally occupied through his tenants believing same to be stand 233 of Guzha Township. The position of stand 233 *viz a viz* 235 and 236 at Guzha Township are totally different. Stand 233 Guzha Township offered to applicant in 2010 is still the same stand allocated to applicant upon payment of full allocation fees in 2011.

Respondent’s officers are still waiting for applicant to come and be shown stand 233 of Guzha Township as advised in Annexure F to the application.

11. **ad para 9**

This is not correct. The issue is covered in paragraph 10 above. For the avoidance of doubt, the applicant occupied wrong land before payment of full allocation fees erroneously believing such land, which was open then, to be stand 233 Guzha Township. Stands 235 and 236 Guzha Township have no relationship with stand 233 Guzha Township at all.

The correct stand 233 as per Annexure B herein attached has remained the same in shape and size. See Annexure C for clarity on stand 235 and 236 of Guzha Township.”

I think the correct allocation date is 8 November 2012 as the official letter also bears date stamp of 10 November 2012 (a date close to 8 November 2012 and after last payment on 27 July 2011).

Furthermore on 8 April 2011, before official allocation, the respondent had written to Concrete World in the following terms:

“RE: ILLEGAL DEVELOPMENT ON LAND AT GUZHA TOWNSHIP –SEKE DISTRICT

Reference is made to our enforcement and prohibition orders for your brick moulding business sent to Mr C.T. Manhombó and the subsequent follow up site visit on 21 January 2011.

May you please be advised that Mr C.T. Manhombó is not the owner of the land on which you established your brick moulding business. The land belongs to council. This effectively means that any agreement entered between you and Mr Manhombó or any other person or organization other than Manyame Rural Districy Council with regard to the land you are occupying is null and void.

It was also discovered during the site visit that all your buildings were built without approved building plans and they were not inspected by council. You are therefore ordered to do the following:

1. To pay penalty of US\$1000-00 for developing on land that was not allocated to you and for building without approved plans by 22 April 2011.
2. To remove all equipment and demolish all structures that you have established on the land in the next seven days. Should you fail to move and/ or demolish all equipment and structure from the site by 15 April 2011, council will do the work itself and the cost of the exercise shall be invoiced to you.

Please be guided accordingly.

.....  
E.MUNJANGA  
District Planner

FOR CHIEF EXECUTIVE OFFICER” (my own underlining)

I want to believe that, through its agents, the applicant was already occupying stands 235 and 236 which had not been officially allocated to him. The tone of the correspondence herein clearly shows that official confirmation of stand allocation was only upon full payment for the industrial stand, which full payment, *in casu*, was only made on 27 July 2011. There could therefore be no confirmed allocation in 2010.

I am therefore in full agreement with Advocate *Mpofu*, for the respondent, that this matter is to be determined on the basis of the factual issues.

There is nothing in these papers to show that the applicant himself was actually shown the stand and authorized to take occupation. There is evidence in his application, that he took occupation of stands 235 and 236 and proceeded with unauthorized developments on the stands. Those illegal developments were not even on the allocated stand No. 233. The site plans produced by the respondent clearly indicate the position of the stands in question. That was not reflected.

Furthermore, I want to believe that the applicant was fully aware of the contents of the respondent's letter written to Concrete World on 8 April 2011. That was long before the official letter of allocation dated 8 November 2012. The applicant should have taken the necessary steps to establish the "whereabouts" of stand 233 before unleashing his agents on stands 235 and 236.

The offer letter also made reference to the facilitation of "the processing of a lease agreement through the office of the District Planner, a Mr Munjanga". Surely Mr Munjanga, if approached, could have shown the applicant the correct stand. I am also certain that the lease agreement would have assisted in informing the court on whether or not the applicant was authorized to occupy the stand (s) which he is laying claim to.

The above facts indicate that, as a person who paid the full purchase price, the applicant should now approach the respondents to be shown stand number 233 on which he spent his "hard earned cash". The respondent says its "officers are still waiting for the applicant to come and be shown stand No.233."

In view of the foregoing, my finding is that there is no merit in this application. The application is dismissed with costs.

*Messrs Tavenhave*, applicant's legal practitioners  
*Messrs coghlan, Welsh & Guest*, respondent's legal practitioners