

PETER NICHOLAS NEL
and
MAPARAHWE PROPERTIES (PVT) LTD
versus
TEMBA MLISWA
and
SIMON NYASH SIBIYA
and
KINGSDALE HOUSING COOPERATIVE SOCIETY LIMITED

HIGH COURT OF ZIMBABWE
MANGOTA J
HARAE, 24 March 2014

Urgent chamber application

Advocate Uriri, for the applicants
M.D. Hungwe, for the respondents

MANGOTA J: The first applicant is the owner of a certain piece of land which is situated in the district of Hartley. The land which is registered under Deed of Transfer Number 2488/82 is 1 618 288 hectares in extent. It is registered under the name Kingsdale of Johannesburg.

The first applicant's title to the mentioned land was confirmed by the constitutional court under case number CZ 378/12. The court nullified the acquisition of the first applicant's land by the Minister of Lands and Rural Settlement. It did so on 2 October, 2013.

The following nullification of the acquisition order by the court, the first applicant sold the piece of land which lied at the centre of this matter to the second applicant. The land was sold for \$1 100 000-00 which the second applicant was to pay to the first applicant over a period of 30 months and at monthly instalments of \$36 666-67. Transfer of the land was to take place when the second applicant had paid the full purchase price to the first applicant.

Because the second applicant had acquired personal rights in the land by virtue of the agreement of sale which the parties had entered into on 16 May, 2013 the second applicant did, therefore, have an interest in the matter. The first applicant retained title to the land

pending payment to him of the full purchase price by the second applicant. He, like the second applicant, did have an interest in the same matter.

The above stated situation prompted the applicants to approach the court with the present urgent chamber application. They stated that, when the issue of the land which related to them had been settled between, and amongst;

- (1) the Ministry of Lands and Rural Settlement which had acquired the same as well as
- (2) the settlers whom the Ministry had, pursuant to acquisition order, settled on the land and
- (3) themselves, the first respondent who was the chairperson of ZANU (PF) party for Mashonaland West Province under which the land falls did, on 7 March, 2014 convene a meeting at Kingsdale Farm where he told the gathering that he was taking back Kingsdale Farm. The first respondent, they said, had been approached by the second respondent whom they said was chairperson for the third respondent. They stated that the first respondent denounced the constitutional court ruling and declared himself the supreme authority in Mashonaland West Province. The first respondent, according to them, told the gathering of people who were at the meeting that he was prepared to go to jail for contempt of court as long as it was in the interests of his people. They stated that, on the next day, the first respondent reiterated that he was taking back Kingsdale. They said he directed the second respondent to arrange for the re-allocation of residential stands to his people. They stated that on 12 March 2014, the second respondent called a meeting which was aimed at putting the first respondent's directive into effect. This, according to them, resulted in a panic by persons to whom the second applicant had sold some stands on the land. The utterances of the first respondent, they said, disturbed the peace and tranquil which the applicants had established on the land before the respondent's utterances. They, therefore, prayed the court to interdict the respondents from continuing with what they described as their illegal activities on the land.

The first respondent denied having ever made the utterances which the applicants attributed to him. He stated that there was no time that he ever threatened to, in his own words, grab Kingsdale from the applicants or from anyone else for that matter. He submitted that he remained cognisant of the fact that he did not have the capacity or the desire to repossess the applicants' land. He stated that he was neither the sovereign in whom all land was vested nor the Minister of Lands and Rural Resettlement through whom the State

acquires and/or distributes land to persons who required such. He said he had done no wrong against the applicants and he intended no harm to their interests in any way. He stated, further, that there had been no allocation of the land, there had been no intention to acquire the same and there had been no resell of the land at Kingsdale.

The second respondent associated himself with the sentiments of the first respondent in every aspect of them. He spoke for himself as well as for the third respondent which he chairs.

During the hearing of the application, both respondents remained adamant on the point that they never at any time did what the applicants were alleging against them. They stated that it was never, nor is it now, or in the future, their intention to interfere with the operations of the applicants.

They, to the extent of what they said, put the matter which related to the applicants' application to rest. All the parties who were then present agreed that there was no triable issue in the application. The parties agreed with the court that the provisional order which the applicants were seeking be granted by consent. The order was granted on the mentioned basis and the issue of costs, it was agreed, was reserved for determination in the cause.

Musunga and Associates, applicants' legal practitioners
Kadzere, Hungwe and Mandeverere, respondents' legal practitioners