WELLINGTON CHIMUTI
versus
BARBRA CHIMBADZO

HIGH COURT OF ZIMBABWE
MANGOTA, MWAYERA JJ
HARARE, 14 February 2014 and 19 March 2014

Civil appeal

M. Makore, for the appellant
W.B Bherebende, for the respondent

MANGOTA J: On 27 May 2005 the appellant was appointed caretaker of the land which is at the centre of the parties' dispute. The Lands Acquiring and Allocating Authority which is commonly referred to as the Ministry of Lands appointed him as such. The appointment was by way of a letter which the lands officer one F. Chikomba signed for, and on behalf of, the Ministry. F. Chikomba was the Ministry's foot soldier in the affected area if one would favour the comparison. The letter of appointment stated three conditions any one of which entitled the Ministry to terminate the appellant's status of caretakership of the land. On 7 January, 2010 the Ministry offered the land which is the subject of this appeal to the respondent. One H.M. Murerwa who was the Minister of the Ministry issued the letter which extended the offer of the land to the respondent.

Armed with the offer letter which had been issued to her and realising that the appellant was insisting on remaining on the land which had been offered to her, the respondent did, on 15 February 2013, file a court application aimed at evicting the appellant and all persons who were occupying the farmhouse through him from the farmhouse and other space which is within Plot Number 3, Stonehurst Farm. The farm, according to papers filed of record, is situated in the District of Zvimba under Mashonaland West Province. The respondent attached to her founding affidavit three annexures. These are Annexures A, B and C which respectively referred to the offer letter, a letter which one S. Mutandiri, wrote for, and on behalf of, the Acting Chief Lands Officer. That letter was written on 23 March 2006 and was addressed to the appellant and another letter which one T.M Chigiya who was the

district Lands Officer falling under the Chief Lands Officer for Mashonaland West Province addressed to the appellant on 14 February 2013. The Chief Lands Officer and the Lands Officer were, or are, officials of the Ministry.

The appellant filed his opposing papers to the respondent's application. He argued, in his opposing affidavit, that he was in occupation of the farmhouse in terms of the caretakership letter which the Ministry issued to him in March 2005. He admitted in the same papers that he did not have an offer letter for the land which was in dispute.

He contended that, in the event that the respondent displaced him by virtue of a court order, he should be compensated for the improvements which he made on the farm. He doubted the authenticity of the offer letters which the Ministry had issued to the respondent. His doubts, according to him, centred on the fact that the offer letters were issued by two authorities. One of the letters was issued by Minister Mutasa and the other one was issued by Minister Murerwa, he said. The Lands Committee, the appellant argued, did not withdraw the caretakership status which it conferred upon him in May 2005.

The court *a quo* granted the respondent's application and it ordered that the appellant and any person who was occupying the farmhouse and/or the land which is in dispute be evicted from the same. The appellant filed the present appeal against the decision of the court *a quo*. He prayed for the dismissal of the respondent's claim. He, in the alternative, prayed that the matter be remitted to the court of first instance and that the Ministry be joined as a party which would clarify the exact or correct position with respect to the rights of the parties *vis – a - vis* the land which is at the centre of the parties' dispute.

It is common cause that the Ministry offered caretakership of the land to the appellant. It did so in May 2005. The caretakership was for an indefinite period of time. According to the letter which the Ministry issued to the appellant, the caretakership could be terminated at any time within a month's notice in the event of any one, or more, or all of the following conditions occurring:

if the property is not properly looked after,

if the property is needed for any other developments for the benefit of the Ministry, or

if the property is needed for any developments for the benefit of the community.

It has not been alleged, let alone established, that the property was not properly looked after by the appellant. The Ministry could not, on the basis of the first-mentioned condition, terminate the appellant's caretakership of the property. It was also not claimed or established that the Ministry needed the property for any developments which were of benefit

to the Ministry itself. The Ministry once again could not, on the basis of the second-mentioned condition, terminate the appellant's caretakership status. It could, and can, however, terminate the appellant's caretakership of the land on the basis of the third-mentioned condition. The property *in casu* was needed for developments which were, or are, of benefit to the community. Respondent is a member of the community who was properly settled on the farm. The Ministry identified the respondent as a fit and proper person who would develop the farm which was allocated to her for the benefit of the community. The fact that the appellant made every effort to regularise his stay on the farm without success meant that the Ministry did not recognise him as the person who was best suited to work the land and meaningfully produce crops for the benefit of the community. The appellant's contention which is to the effect that the caretakership which the Ministry conferred upon him has not been terminated is devoid of any merit. That is so because on 23 March, 2006 the Ministry wrote advising the appellant to vacate the house which is on the land. The letter was written by one S. Mutandiri who wrote for, and on behalf of, the Acting Chief Lands officer for Mashonaland West Province. The appellant was, according to Mutandiri, occupying the house which is on the land illegally and/or without the authority of the Ministry. The letter directed the appellant to vacate the house immediately and make way for the respondent whom the Ministry described as the *bona fide* beneficiary who would carry out farming operations on the land from the house which the appellant was then occupying.

The appellant stated in his opposing papers that two offer letters were issued to the respondent. The first one was issued by Minister Mutasa and the second one was issued by Minister Murerwa, he said. The letter which Minister Mutasa issued to the respondent was not made part of the record of these proceedings. In a letter which Messrs Maunga, Maanda & Associates Legal Partners wrote to the chairperson of the Lands Inspectorate on behalf of the appellant on 19 April 2013, the legal practitioners stated in para 5 of the letter that;

> "- -------in 2006, Ms Barbra Chimbadzo approached him with a **letter** which is also attached here for your perusal, claiming that he was illegally settled on the piece of land--------. Mr. Mutandiri recommended that Ms Chimbadzo's **offer letter** be withdrawn in light of the fact that our client had been in occupation prior to Ms Chimbadzo being issued with an **offer letter** in respect of the same land-----."

There is no doubt that Mr. Mutandiri's directive to the appellant to vacate the house was based on the **offer letter** which Minister Mutasa had issued to the respondent. On 14 February 2013 one T.M. Chigiya who was Lands Officer wrote for, and on behalf of, the

Chief Lands Officer for Mashonaland West Province directing the appellant to vacate the farmhouse which he was occupying with immediate effect. He stated that the house belonged to the respondent whom he described as the *bona fide* plot holder. He threatened the appellant with prosecution if he failed to heed the notice. This letter was written following the second offer letter which Minister Murerwa issued to the respondent on 7 January 2010.

It is when such matters as are stated in the foregoing para(s) are taken account of that appellant's insistence on the point that his caretakership status still subsists cannot be taken seriously by anyone let alone the court. His caretakership status terminated as soon as the Ministry allocated the house and the land on which he house is standing to the respondent. The two letters which the Ministry's officials addressed to him clarified his status on the matter to a point which requires little, if any, debate.

Elsewhere in the papers which are filed of record in this matter the appellant made the following admission:-

"We accept that the applicant has been given an offer letter."

The appellant also sought, on the same page, the following admission:

"May we be given an alternative farm to settle" (p 18 of the record refers).

Such admissions as the appellant made as well as sought clarify the status of the appellant in a manner which requires no debate. In his opposing papers, the appellant stated that where the respondent is allowed to evict him on the basis of a court order, he should be compensated for all the improvements which he made on the farm. However, the caretakership letter which the Ministry issued to him stated clearly and categorically that no compensation would come to him for any improvements he would have made on the farm. The letter stated further that where he made any developments, he would not be allowed to remove such because, in doing so, he would be causing damage to the property. It goes without saying, therefore, that his argument on the issue of compensation is not a sustainable one.

The contents of the caretakership letter which the authority issued to the appellant are clear and straight forward. There is nothing in them which, by any stretch of imagination, confers on the appellant the right of first refusal in the event that an offer letter was to be issued in respect of the land. There is no doubt in the court's mind that the caretakership agreement was terminated when the Ministry offered the land to the respondent.

The appellant's argument which was to the effect that the caretakership agreement constituted a permit in terms of the Gazetted Lands (Consequential Provisions) Act was a

thoroughly far-fetched proposition which was not supported by any statute or case law. It was never raised during the proceedings which led to the present appeal. It, if anything, was a matter which the appellant placed in his grounds of appeal without any basis at all in law or logic. The court has, therefore, no difficulty in dismissing it as it has no relevance to the matters which are currently under consideration.

In as far as para 2 (a) of the appellant's grounds of appeal is concerned, s 3 (1) of the Gazetted Lands Act addresses the point which the appellant raised in a manner which requires no further analysis. The section reads:

> "Subject to this section, no person may hold, use or occupy Gazetted Land without lawful authority."

Lawful authority is defined in s 2 of the Act to mean:

(1) an offer letter, or

(2) a permit, or

(3) a land settlement lease.

Anything which is outside the abovementioned three situations is not lawful authority in terms of the Act.

It cannot, in view of the above-mentioned piece of legislation the language of which is clear and unambiguous, ever be suggested that the offer letter which the Ministry issued to the respondent is on an equal footing with the caretkership status which the Ministry conferred upon the appellant and later terminated. The offer letter, it is evident, takes precedence over the caretakership letter.

One of the appellant's grounds of appeal was that the trial magistrate misdirected herself when she placed emphasis on the letters of eviction which the Ministry's officials wrote to him. He argued that the letters were drafted and sent to the appellant in error. The error, he said, emanated from the fact that the letters described him as an illegal occupant in circumstances where the Ministry had granted to the appellant caretakership of the land for an indefinite period. It requires no emphasis to state that the letters were written and forwarded to the appellant after, and not before, the land which he had been authorised to take care of had been offered to the respondent. The appellant's continued occupation of the farm after that event had occurred tainted his conduct with an element of illegality. He was in that sense disobeying lawful instructions which those who had offered him caretakership of the land in the first place were later telling him to comply with. The letters of eviction communicated to the appellant in very clear terms that his caretakership of the land had been terminated and

that his continued occupation of the same was no longer within the law. The court *a quo* did not, therefore, misdirect itself at all on that matter. It, if anything, properly interpreted the evidence which was then before it and placed the emphasis where it was supposed to be placed.

The appellant's title to the occupation of the land did, in the court's view, cease when the Ministry issued an offer letter to the respondent. What the Ministry's officials did was to formally communicate to the appellant the true and correct position as well as the changed circumstances of the matter. The court *a quo*'s decision on the case is unassailable. The appeal is, accordingly, dismissed with costs.

MWAYERA J agrees _____

Maunga Maanda and Associates, appellant's legal practitioners
Bherebende Law Chambers, respondent's legal practitioners