

PENIAS KAZINGIZI
versus
JONAS SAMUEL
and
CLEOPAS MUDZIMU
and
CHRISPEN CHIPINGA
and
TAWANDAMUSEREDZA
and
OLIVER KASEKE
and
ENET JIMU
and
NASHINGTON KAMBANGU
and
MARETA MOSTAFF
and
KENIAS MATEMAYAKA
and
SABORA SABORA
and
TRUST MUDZINGA
and
ARON SIMON
and
JULIUS MUSEREDZA
and
TRYMORE CHIMUPAKA
and
GETRUDE SIMENDE
and
SHORAI KWANGWARI
and
MINISTER OF LANDS, LAND REFORM AND RURAL RESETTLEMENT

HIGH COURT OF ZIMBABWE
MANGOTA J
HARARE, 17 and 27 March, 2015

Civil Trial

Plaintiff in person
1st – 16th defendants in person
Ms *E Summowah*, for the seventeenth defendant

MANGOTA J: Plaintiff is the lawful occupier of Subdivision 1 of Bloomfield Farm (the farm) which is situated in Mazowe District, Mashonaland Central Province. He occupies the farm in terms of an offer letter which the seventeenth defendant issued on 15 November, 2013. The farm is 204 hectares in extent.

The sixteen defendants reside at the farm. They were in occupation of the structures at the farm prior to the period that the seventeenth defendant offered the farm to the plaintiff. They worked for the previous farm owner.

On 28 January, 2014 plaintiff issued summons against the sixteen defendants. He moved the court to evict the defendants from the farm. He cited the seventeenth defendant in his official capacity.

The sixteen defendants, who at the time of the summons were represented by the Legal Aid Directorate, entered appearance to defend and requested for further particulars which were duly furnished after which they tendered their plea to the plaintiff's claim.

The pleadings having been closed, the court invited the parties to a pre-trial conference. The conference was set down for 3 pm of 17 March, 2015. A day before the conference, the Legal Aid Directorate filed a notice of renunciation of agency. The renunciation left the sixteen defendants on their own. Ten of the sixteen defendants appeared in person and so did the plaintiff who was a self-actor. Ms *Summowah* who was a legal practitioner for the seventeenth defendant appeared for, and on behalf of, the latter.

The defendants who attended the conference advised the court that the six defendants who did not appear had lost interest in the case and had, in fact, voluntarily left the farm. The plaintiff confirmed that to have been the position. The court, accordingly, proceeded to deal with the conference on the basis that the six defendants who were cited together with the others were no longer part of the case with which it was seized.

During the conference, Ms *Summowah* highlighted the position of the seventeenth

defendant on the matter. She stated in clear and categorical terms that the offer letter which the seventeenth defendant issued to the plaintiff on 15 November, 2013 was valid. The letter, she said, authorised the plaintiff to use, as well as to take possession and control of, all the structures which were on the farm. She submitted that any person who wanted to use the infrastructure on the farm would do so with the consent of the plaintiff. She referred the court to clauses 1 (c) (i) and 2 (d) of conditions which she said were applicable to the offer of land under Zimbabwe's Land Reform And Resettlement Programme (Phase II Model A2 Scheme).

Clause 1 reads:

“The offer is subject to the following conditions-

(a) (i) -----

(ii) -----

(b) -----

(c) (i) that you shall not cede, assign or make over any right or obligation or sublet or part with possession or grant any form of right of occupation in respect of this farm or part thereof without the prior written consent of the Minister;

and

(ii) -----

(iii) -----”

Clause 2 reads:

“You are further advised as follows:

(a) -----

(b) (i) -----

(ii) -----

(c) -----

(d) You shall be required to assume responsibility for any existing developments on the farm from the date of your acceptance of this offer” (emphasis added).

She stated that the plaintiff had an obligation to comply with the above-stated conditions. She, in explanation, gave three set of circumstances through which a person may, in terms of the law, remain on any agricultural land which government would have acquired for purposes of resettlement. She said a person may occupy land in terms of:

(i) a permit which is issued to him or her; or

(ii) an offer letter as *in casu*; or

(iii) a lease.

She said any persons who occupied the farm without the consent of the plaintiff and/or not being in possession of any of the abovementioned three documents would have illegally settled themselves on the farm and should not, therefore, be allowed to remain on the same.

The defendants followed with keen interest the submissions of Ms *Summowah*. They did so through the assistance of an interpreter whom the court arranged for them for their benefit.

Shortly after Ms *Summowah*'s submissions, the plaintiff stated his case. He said he held not less than ten meetings with the defendants whom he persuaded not to interfere with his operations. He said his persuasions were without success. He stated that the defendants refused to work for him or leave his farm. Their attitude, he said, compelled him to sue and have them evicted from the farm. He confirmed that the defendants were workers of the previous farm owner who were waiting for the latter to give them their terminal benefits.

The defendants apologised for the attitude which they had taken of the matter. The court accorded an opportunity to each one of them to state his or her case. All of them stated that none of them had any legal document which allowed them to remain on the farm.

Evidence which was presented showed that the defendants had illegally remained on the plaintiff's farm. None of them had either a permit, or an offer letter or a lease which permitted him or her to remain in occupation of the structure(s) which were on the farm. They requested for time within which they would discuss with the plaintiff the matter which pertained to their presence on the farm. They stated that, if the plaintiff would not accommodate them, they would leave the farm. A number of them advised the court that they were on the farm awaiting their previous employer to give them their terminal benefits after which they would leave.

An examination of the defendants' plea as read with their above-mentioned statement left the court in no doubt that there were no issues(s) which existed in the case. The parties were *ad idem* in respect of the plaintiff's claim. The matter could not, therefore, be referred to trial when there were no triable issues.

The court remained cognisant of the fact that, if the parties were legally represented, the matter could easily have been resolved at the pre-trial conference stage. It would, under the stated circumstances, have directed the parties' legal practitioners to draw up and file with it a deed of settlement or a consent to judgment and that would have disposed of the case in a conclusive manner.

The fact that both parties were self-actors placed the court into a very invidious position. The unrepresented parties did not have the means to engage qualified legal practitioners who would draw up the requisite document for them. The defendants had

engaged the services of the Legal Aid Directorate which abandoned them at the eleventh hour. That stated matter convinced the court of their inability to pay for the services of a qualified legal practitioner who would perform the work for them. The parties, the court opined, did not have the technical expertise to draw up the document.

The court could not, and does not have the mandate to, draw the document for them. Its dilemma was two-pronged. It had before it a matter which, to all intents and purposes, could not meaningfully be referred to trial. It, on the other hand, could not allow the case to remain in abeyance *ad infinitum* particularly when regard is had to r 182 of its rules which encourages parties to endeavour as much as they can to settle their cases at the pre-trial conference stage.

Case authorities which were examined defined the meaning and purpose of the conference and the duty as well as the role of a pre-trial conference judge as having been those of assisting the parties to crystallise issues and, where possible, have the case settled. The court associates itself in this regard with the remarks of GILLESPIE J who, in *Doekam (Pvt) Ltd v Pichanick & Ors*, 1999 (1) ZLR 391 (H) said:

“A pre-trial Conference has two purposes. The primary one is to assist towards the resolution of the dispute without recourse to trial. The secondary aim, if a settlement is not reached, is to ensure that all pleadings and pre-trial procedures are considered and correct, that the issues are limited as far as possible, and that the case is ready for trial; on the merits. The judge should do all that is necessary to achieve the objective of the conference. He should play an active part, expressing his views on the law, the facts and the prospects of success.”

It was on the basis of the foregoing that the court remained of the view that, after all had been said and done, the plaintiff’s claim was unassailable and the matter had to be concluded at the pre-trial conference stage. The case of *Marijeni v Mufudze & Ors*, 2000 (2) ZLR 498 stated in clear and categorical terms the duty and role of a pre-trial conference judge. MAKARAU J (as she then was) stated in the case that:

“The role of a judge presiding at a pre-trial conference is to engage the parties and their lawyers meaningfully, and to assist towards a settlement... The judge is not a mere observer. He should be an active participant at the conference. Where opportunities to settle the matter arise, he must point them out to the parties.”

It requires little, if any, debate to emphasise the position that it was the duty and role of the court to assist the parties who were before it to settle. The court took its time with the unrepresented parties. It explained to them the law and its import on the case. It did so as it remained alive to the fact that opportunities for them to settle were abundantly present. The parties expressed the desire to settle but they could not, for reasons which have already been

stated, do so on their own. The other hurdle which the court was confronted with was that its rules did not provide for the disposal of the matter at the pre-trial conference stage in any manner other than by way of either a deed of settlement or a consent to judgment drawn up by the parties who, after signing, should file the same with the court as evidence that the case has been conclusively dealt with. The observed matter exposed the shortcomings of the court's rules which must be addressed in respect of such unrepresented litigants as those who were before the court. One hopes that the Rules Committee's attention will be drawn to such an anomaly as the present so that it is addressed for the benefit of parties who would fall into the predicament which the parties in *casu* found themselves to have fallen into.

Out of an abundance of caution, the court made up its mind to, and did actually, invoke r 4 c of its rules as a way of surmounting the hurdles which were standing in the way of progress. It had to do so in the interests of justice between the parties who most likely could not, after the pre-trial conference, proceed to the next stage of the case. The remarks of SMITH J (as he then was) in *Samburera v Chirunda* 1992 (1) ZLR 240 were pertinent and they, in a large measure, persuaded the court to take the approach which it did in the resolution of the present matter.

The court considered the circumstances of this case. It was satisfied that the defendants' case was devoid of merit. It, accordingly, ordered as follows:

- (a) that the defendants be and are hereby allowed to remain on the farm up to 17 April, 2015;
- (b) that, in the intervening period, the defendants be and are hereby offered an opportunity to engage the plaintiff with a view to becoming his workers;
- (c) that all the defendants whom the plaintiff refuses to employ at the farm be and are hereby evicted from the farm with effect from close of business on 17 April 2015;
- (d) that the sheriff of this court be and is hereby authorised, at the plaintiff's expense, to evict all the defendants who fall under clause (c) of this order;
- (e) that each party be and is hereby ordered to bear its own costs.

National Prosecuting Authority, seventeenth defendant's legal practitioners