

FARAYI ZVAVAMWE
versus
CHARLES CHOMBO

HIGH COURT OF ZIMBABWE
CHIWESHE JP
HARARE, 7 July 2017 and 10 July 2017

Opposed Matter

P Kwenda, for the applicant
T Chivale, for the respondent

CHIWESHE JP: This is an application for summary judgment in terms of Rule 64 of the High Court Rules, 1971.

The facts of the matter are common cause. These are they. The respondent is the former owner of the immovable property described as Stand 625 Athlone Township of Lot 2 Township of Greengrove, also known as number 10 Athlone Avenue, Greendale, now held by the applicant under Deed of Transfer No. 6420/2016 dated 30 December 2016.

This property was wrestled from the respondent's ownership through a writ of execution issued by the Magistrates Court under case number 79/20 in terms of which it was sold to the applicant pursuant to a sale by auction. The property was duly transferred to the applicant who now holds full title to it. Despite that development, respondent, the former owner, has remained in occupation of the property without the applicant's consent.

On 17 January 2017 the applicant's legal practitioners wrote to the respondent demanding that he vacates the property on 20 January 2017 and that a handover be carried out on that date. The respondent refused to vacate the property insisting that he required 3 months' notice to do so.

The applicant issued summons in terms of which it prayed for the eviction of the respondent and all those claiming occupation through him, holding over damages in the sum of \$1 500.00 per month beginning from 1 February 2017 and costs on a legal practitioner and own client scale. The respondent entered appearance to defend on 10 February 2017. Being of the view that the respondent had no *bona fide* defence to its claim and that appearance to defend had been entered purely for purposes of delay, the applicant filed the present application for summary judgment to be granted against the respondent.

At the hearing of the matter the parties indicated that they wished to settle the matter. The applicant had agreed to drop his claim for holding over damages and in turn the respondent had agreed to vacate the property. They were yet to agree on the date upon which the respondent would vacate the property. The respondent seemed to suggest that he be given 3 months' notice but the applicant was adamant that the most he would accept was 15 days. I gave the parties time to find common ground and file a deed of settlement and a draft consent order. I have since received correspondence from the applicant's legal practitioners advising that the parties are unable to agree on the date of the respondent's vacation of the property and that I should now make a ruling on that particular point.

I agree with the respondent that he is entitled to a reasonable notice period, *moreso* because he has lived at this property for a period of ten years. In my view anything less than one month is unreasonable. Ordinarily a party who wished to stay on longer than that is expected to compensate the new owner by way of agreed rentals, failing which he should vacate the property. The respondent is no longer the owner of the property. He cannot hold onto it on his own terms or against the owner's wishes. Although no reasonable notice was initially given by the applicant, the fact of the matter is that the respondent is still in occupation since 20 January 2017, a period of almost six months. During that period he has not paid any compensation to the new owner of the property. The prejudice is obvious. Should the respondent now be given three months' notice period in addition to the nearly six months he has already expended against the owner's consent? In my view that approach is no longer tenable in view of the prejudice already suffered by the applicant. The respondent must vacate the property at the shortest possible notice, *moreso* in view of the fact that the applicant has agreed to abandon its claim for holding over damages. In any event, the respondent has known since 20 January 2017 that he was required to vacate. He has had

more than ample time to rearrange his life and seek alternative accommodation. The owner is entitled to vindicate his property. (See *Indium Investments (Pvt) Ltd vs Kingshaven (Pvt) Ltd and Ors* 2015 (2) ZLR 40 (S))

Accordingly it is ordered as follows:

1. The respondent and all those claiming occupation through him shall vacate the property, namely stand number 625 Athlone Township also known as number 10 Athlone Avenue, Greendale, Harare by the 31st July 2017, failing which, the Sheriff be and is hereby authorised to evict the respondent and all those claiming occupation through him, from the said property.
2. The respondent shall bear the costs of suit.

Kwenda & Chagwiza, applicant's legal practitioners
J Mambarara & Partners, respondent's legal practitioners