

ZIMBABWE PLATINUM MINES
versus
PHILLIP MARUTA

HIGH COURT OF ZIMBABWE
TSANGA J
HARARE, 26 January & 12 June 2018

Opposed application

R Makumbe, for applicant
T Nyamuchera, for the respondent

TSANGA J: On 26 January 2018 I granted an order for eviction in favour of the applicant. I have since received a request for the reasons given thereat *ex tempore* to be furnished in writing as the matter is on appeal. These are the written reasons why the matter was dismissed.

The application was for eviction of the respondent, Phillip Maruta, (Maruta) a former employee of the applicant company, *Zimbabwe Platinum Mines (Zimplats)*. The eviction was from house number 3820 Turf Village in Ngezi. It was not in dispute that Maruta's contract with Zimplats had terminated in May 2016 due to ill health. His refusal to vacate was two pronged. His lawyer, in the main, argued at the hearing that Maruta has a matter before the Conciliation Board concerning the fact that Old Mutual had refused to pay him certain monies arising from the fact that his termination of employment with Zimplats was due to ill health. This arrangement with Old Mutual the court assumes is per a policy that Zimplats has with Old Mutual for its employees. His illness it prepared had been found not to qualify him for the benefits.

Furthermore, he argued that the house in question from which eviction was sought did not belong to Zimplats as Maruta himself is the one recognised by Ngezi Council as his name appears on the rates statement. He had taken occupation in 2014 after taking on a position within Zimplats which entitled him to company accommodation.

Zimplats in its documents clearly averred and outlined how the property is owned by itself on the basis of a memorandum of agreement signed between itself and the then Kadoma

Rural District Council now known as Mhondoro Ngezi Rural District Council. It was Zimplats who built the houses for employees in terms of the agreement and these houses have **not** been disposed of to any employees. More significantly Zimplats attached the lease agreement which had been given to Maruta at the time when he occupied the house which clearly stated that the tenant would be responsible for all utility bills. As such, Zimplats stated that he could not rely on the fact that the utility bill was in his name to argue that he therefore owned the property. Zimplats also relied on the Management Procedures document which they had placed before the court in their papers, in particular clause 7.5 which required those occupying company accommodation to open an account with ZESA and the Rural District Council. In the face of the arguments and supporting documents availed by applicant, the court agreed that there was no reasonably founded dispute at all concerning the ownership of the house and that on that score Maruta was simply clutching at straws. In other words, this court was not left in doubt at all as to the facts after reading all the papers on record regarding the issue of who owned the accommodation. See *Grain Marketing Board v Mandizha* HH 14/16 regarding what would constitute a dispute of fact. Indeed as clearly articulated in the Supreme Court case of *Kingstons Ltd v L D Ineson (Pvt) Ltd* 2006 (1) ZLR 451 (SC) care must be taken not to elevate every alleged dispute of fact into a real issue as it may lead to the abuse by a lessee to delay resolution of a matter. This I found to be quite clearly the motivation in this instance as the papers were very clear on the lease and the terms of occupation. Zimplats through its counsel also highlighted that the right to occupy property terminates together with the contract of employment. (The following cases were drawn on in support of this contention: *ZBC v Gono* 2010 (1) ZLR 8 (H) and *Chisipite Schools Trust v Clark* 1999 (2) ZLR 324 (S).

As regards Mr Maruta's dispute with Old Mutual, applicant's counsel argued that the issue of compensation is one that can be dealt with through mechanisms provided by the Labour Act. In the face of the regulations being clear and it not being in dispute who owns the premises and the contract having been lawfully terminated, and he dispute on benefits being with Old Mutual and not the employer *per se*, I granted the order of eviction as prayed for by the applicant company.

Dube Manikai and Hwacha, applicant's legal practitioners
Lawman Chimuriwo Attorney at Law, respondent's legal practitioners