

WONDER MASHANGE
versus
TAWANDA MATANGIRA

IN THE HIGH COURT OF ZIMBABWE
DUBE J
HARARE, 28 and 31 May 2018

Opposed Matter

T. C Sengwe, for the applicant
Z Kajokoto, for the respondents

DUBE J: The applicant seeks to evict the respondent from subdivision 4 of Pabwino Farm, Bindura.

The applicant states that he was allocated plot 4 of Pabwino Farm, measuring 239, 3615 Hectares in November 2014, by the Ministry of Lands and Rural Resettlement, [hereinafter referred to as the MOL]. He is a holder of an offer letter. He took occupation of the farm and sometime in 2016, the respondent illegally took occupation of the land without his authority or that of the MOL. The respondent carries on farming activities at his farm and refuses to vacate the farm. He seeks an order for eviction of the respondent from the farm.

The respondent defends the application. His version is that he was the first to settle on the farm before the MOL subdivided the farm into five plots. He was allocated subdivision 3 of Pabwino farm measuring 93, 3205 where he resides and carries out farming activities. He claims that the applicant clandestinely obtained the offer letter. His offer letter is being prepared. For this reason, the applicant has been given a notice of withdrawal of the offer letter and the withdrawal process is on-going. He avers that he has full authority from the MOL to occupy the plot allocated to him and the applicant has no authority over his plot. The applicant has no cause of action and it is only the acquiring authority that must evict him and not the applicant.

During argument it emerged that there was a dispute regarding the exact positions of the parties on the farm and the boundaries of their respective plots. The parties resolved to call an official from the MOL to come and clarify the issue regarding the allocation of plots at the farm, their boundaries and the exact location of the parties on the farm. The parties agreed to

call Charles Kadzere, the Chief Lands Officer for Mashonaland Central. His testimony is as follows. The subdivision and allocation of Pabwino Farm was done before he was in the office. His records show that the applicant was initially allocated plot 4 of Pabwino measuring 141, 6436 Ha with the respondent being allocated plot 3 measuring 93, 3205 Ha. Later, the applicant was offered 239 3615Ha. There are two maps that capture these respective positions. The second map is the one that supports the applicant's offer letter and it shows that the applicant was allocated 239 3615Ha. The respondent is on subdivision 3 on the map on p 15 of the record and appears to be on the subdivision allocated to the applicant. The original subdivision 3 is now part of subdivision 4 which was offered to the applicant.

The respondent does not have an offer letter to the land he occupies. The respondent complained to the authorities after the applicant was issued with the offer letter. An intention to withdraw the offer of land was then issued and served on the applicant. The Provincial Lands Committee decided that the two should co-exist on the farm based on the intention to withdraw the offer letter issued to the applicant. This is going to entail downsizing the 239 3615 Ha offered to the applicant. When the intention to withdraw the offer letter was issued, the intention was to re-plan and accommodate the parties on the same farm. Because of the complexity of the matter, it has been referred to the National Lands Committee for resolution. The applicant's offer letter is still extant as no withdrawal of the offer letter was ultimately done. Recommendations have been made to have the respondent allocated plot 3 of Pabwino Farm. He does not know when the National Lands Committee will resolve the matter.

The evidence of the witness reveals the following. The applicant has a valid offer of land which has not been withdrawn. The respondent on the other had has no offer of land. He occupies part of the land that was allocated to the respondent in terms of the offer of land. The MOL has realised that it made a mistake resulting in double allocation of land. The MOL has issued a notice of withdrawal of the offer letter but has not formally withdrawn the offer of land to applicant. They plan to re-plan and redistribute the land to accommodate both parties. The matter is still being considered by the MOL.

A litigant who seeks to evict another from land allocated to him can only do so where he has shown that he has lawful authority occupy that land. Section 2 (1) of the Gazetted Land (Consequential Provisions) Act [Chapter 20:28], the Act, defines the term 'lawful authority' as follows,

“lawful authority” means “

(a) an offer letter, or

- (b) a permit, or
- (c) a land settlement lease

A Lawful occupier must show that he possesses an offer letter, a permit or a land settlement lease. The applicant is a holder of an offer letter. An offer letter is defined in the same Act as,

“a letter issued by the acquiring authority of gazetted land to any person that offers to allocate to that person any gazetted land”.

An offer letter is proof that the holder has been allocated land by the acquiring authority. In the case of the *Commercial Farmers’ Union and Others v The Minister of Lands and Rural Resettlement and Others* 2010(2) ZLR 576(S), the court examined the provisions of the Act to define what constitutes lawful authority and remarked as follows as regards the import of an offer letter,

“The holders of offer letters have the right of occupation and should be assisted by the courts, the police and other public officials to assert their rights as may be applicable in each particular case.”

An offer letter is an offer of land and constitutes conclusive proof that the person referred to in the particular offer letter is the lawful possessor and holder of the land which is the subject of the offer. A holder of an offer letter has lawful authority over the land concerned. Such person has permission to exercise rights and control the land including the right to occupy and use the land and to evict any person who occupies the land without his authority. It is the duty of the courts to assist holders of offer letters to assert their rights when faced with unlawful occupiers of land.

A notice of intention to withdraw an offer of land is issued in circumstances where the acquiring authority decides to withdraw an offer of land. It merely shows the desire by the responsible authority to withdraw the offer of land. It is an intention to withdraw the offer of land and goes no further. It does not translate into a withdrawal of the offer of land. Where the acquiring authority issues a notice to withdraw an offer letter, it may follow it up by formally cancelling or terminating the offer of land. Sometimes the notice of withdrawal is not followed up as in this case. Where a notice to withdraw an offer of land is not followed up by a cancellation of the offer of land, no cancellation takes effect. The offer of land remains extant. The rights of the holder of the offer letter remain intact until the withdrawal has been affected. For as long as the holder of the land still has a valid offer letter, he is entitled to exercise all rights flowing from the offer letter. A notice of withdrawal of land does not confer any rights

to a party squabbling over the land concerned or wishing to be offered the same land. The issuance of a notice of withdrawal of land is not a basis for resisting an eviction.

The land in issue was offered to the applicant. The applicant is a holder of a valid offer letter which is still extant. He has lawful authority to occupy, possess and utilise the land so offered. The respondent has no offer of land. A notice to withdraw the offer of land made to the applicant was issued in January 2015. Three years down the line; the notice of withdrawal has not been pursued. The acquiring authority cannot issue a notice of withdrawal of land and hold it in abeyance forever. It is expected that when a notice to withdraw an offer of land has been issued, the matter is speedily resolved. That brings certainty and finality to the issue. The fact that the acquiring authority issued a notice of withdrawal of the land does not amount to a withdrawal of the offer of land to the applicant. Having failed to follow-up the offer letter, the offer letter remains valid until it has been withdrawn. The applicant remains the holder of the land offered and is at law entitled to evict any illegal occupants on the land.

The court was told that the dispute was referred to the National Lands Committee for resolution. I do not find favour with the respondent's argument that there is a dispute that is set to be resolved by the National Lands Committee which obliges this court to stay these proceedings or dismiss the application pending resolution of the dispute. First, the respondent has no right to the land so surely, there cannot be a dispute in existence between the parties... The National Lands Committee is an administrative tool set up by the acquiring authority to assist it in the resolution of issues concerning land distribution. It is not a legally recognisable mechanism for dispute resolution. The National Lands Committee has no legal standing as far as I am aware. The committee cannot be recourse for the parties for the reason that it cannot come up with a legally binding decision. There is no dispute between the applicant and the respondent pending before the said committee as the parties are not before it. The committee is not an alternative dispute resolution mechanism in the real sense of the term. I find no basis for staying proceedings or dismissing this application on the basis of deliberations of an administrative body.

A notice to withdraw an offer letter does not affect the rights of the holder of an offer letter until such an offer of land has subsequently been withdrawn. A prospective owner of land which is the subject of a notice of withdrawal cannot ward an eviction simply on the basis of the existence of a notice of withdrawal. A notice to withdraw an offer letter is not a basis for resisting an eviction. The applicant has shown an entitlement to occupy, possess and exercise rights over the land allocated to him in terms of the offer letter issued to him. The respondent

has not shown legal entitlement to possess and occupy and use the land he occupies. The applicant is entitled to an order for eviction of the respondent.

In the result it is ordered as follows;

1. The respondent and all those claiming occupation through him are hereby evicted from subdivision 4 of Pabwino Farm, Bindura.
2. The respondent is to vacate Plot 4 Pabwino within 3 months of the date of this order.
3. Should the respondent fail or refuse to vacate subdivision Plot 4 of Pabwino farm within the stated time, the Sheriff of the High Court is hereby ordered to evict the respondent from subdivision 4 Pabwino Farm.
4. The respondent is to pay the applicant's costs.

Sengwe Law Chambers, applicant's legal practitioners
Chengeta Law Chambers, respondent's legal practitioners